

**(1869) 12 CAL CK 0001**  
**In the Calcutta High Court**  
**Case No : Criminal Reference No. 103**

The Queen

APPELLANT

Vs

Mahima Chandra Chuckerbutty

RESPONDENT

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**Date of Decision :** 18-12-1869

**Acts Referred:**

**Citation :** (1869) 12 CAL CK 0001

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### **Judgement**

L.S. Jackson, J.—In this case one Mahima Chandra Chuckerbutty was charged before the Cantonment Magistrate of Dum Dum with criminal trespass. There were several other persons also charged with the same offence. These parties were convicted, and the Magistrate, considering that Mahima Chandra Chuckerbutty was the principal offender, sentenced him to rigorous imprisonment for one month, and the other parties concerned to less periods of imprisonment. Against these sentences, u/s 411 of the Code of Criminal Procedure, no appeal could lie. Mahima Chandra Chuckerbutty, accordingly, presented a petition to the Sessions Court of the 24-Pergunnas, praying that his case might be sent up for revision to the High Court, and the Sessions Judge accordingly referred the case to this Court by his letter No. 103 dated the 11th of December last. The substance of the Judge's letter was that he found no such irregularity in the proceedings as would necessitate a reference to the High Court, and that although he considered the punishment awarded excessive! that, in his opinion, would not justify him in recommending a revision of the proceedings. But," he said, the appellant has set forth in his "petition various facts with reference to which he alleges that the "Cantonment Magistrate, actuated by a personal feeling, has treated him with great and unnecessary severity and injustice. This allegation, so far as the facts are concerned, is borne out by the record; and I think the excessive bail demanded by the Magistrate, and the subsequent detention of the appellant on a charge of this petty nature, is deserving of censure, and in the view of this treatment it appears to me chat the High Court may be of opinion that the imprisonment which the defendant has already suffered is sufficient for the offence of which he has been convicted." Now it

appeared to me, and also to Mr. Justice Markby, that this was a recommendation of the Judge on which we could not possibly act. The Judge was of opinion that no such irregularity had taken place in the proceedings as to warrant an interference by this Court by way of revision; but on a consideration of certain allegations of misconduct against the Joint Magistrate, he proposed to us to take such conduct into consideration, and upon that ground to mitigate the sentence passed upon the petitioner. This, as we intimated, on a former occasion, it was impossible for us to do, because, in the first place, it would be impossible for us to make any order on such allegations of misconduct without hearing what the Joint Magistrate had to say by way of explanation or defence; and, in the next place, such acts of misconduct, if made out, might be ground for the Lieutenant Governor, or other proper authority, making such order as might be required in regard to the Joint Magistrate, but would not be ground for our reversing a conviction legally arrived at. But the vakeel, who appeared for the petitioner in this Court, informed us that he was prepared to make a substantial application to the Court, and to show ground upon which the Court ought to interfere by way of revision, and set aside the conviction.

2. Accordingly we have heard him this morning. He has stated to us two grounds on which his application was to proceed. The first of these is, that the Magistrate has irregularly and illegally examined the defendant, or the accused person, in this case, although, as the trial before the Magistrate was one under the 15th Chapter of the Code of Criminal Procedure, the law does not allow any such examination. He has pointed out, and I think, correctly, that a Magistrate holding a preliminary investigation under the 12th Chapter of the Code, and a Magistrate holding a trial of an offence within his jurisdiction, under the 14th Chapter of the Code, are distinctly empowered by sections 202 and 250 to put questions to the accused and to examine him as they may consider necessary, and the Court of Session has similar power in regard to persons on trial before that Court; but the Procedure Code The omission is supplied by Act VIII of 1869, section 262-A makes no such provisions in respect of parties under trial under the 15th Chapter.

3. It is not easy to say, owing to the mode in which the examination of the accused has been recorded, to what extent this examination was carried, nor, perhaps, is it easy to say how far he has been prejudiced by such examination. But I think it unnecessary to give any positive opinion upon this point, inasmuch as the next ground on which the application proceeds is in my opinion sufficient to enable us to dispose of this case. That ground is that set forth in the petition to the Court of Session, namely, that when the petitioner was under trial, the Magistrate, upon a witness of his, named Tiluck Singh, being tendered for examination, refused to examine that witness, or put him upon his oath, but merely put certain questions in an informal way to the witness, and deciding that the evidence he was likely to give was not material, refused to proceed further, or to examine him as a witness. It is quite manifest that such a refusal on the part of the Magistrate was altogether irregular, and was likely to prejudice the prisoner in a very serious degree. That the Magistrate did so, we are assured not

merely by the affidavit annexed to a previous petition presented to this Court which came before the Chief Justice and Mr. Justice Mitter upon an application to remove the case daring trial to another Magistrate's Court, but is also further stated by the vakeel himself, who is before us to-day, and who was present in Court during the proceedings before the Magistrate.

4. I attach the greatest importance to this statement made to us by the vakeel, because I consider that it is made under a sense of the responsibility which that gentleman must feel in making such a statement to us, knowing that we should feel bound to accept that statement on the guarantee of his character and of his responsibility to the Court; and, therefore, although we might hesitate in fully accepting such a statement made merely on the affidavit of an interested party, when that affidavit is corroborated by the statement of a gentleman practising in this Court, I think we are bound to act upon it. His statement is most clear and unequivocal. What he says is nearly in these words I myself was a witness to the fact, namely of the Magistrate's refusal to examine that witness. On the 17th November the case for the prosecution closed. Next morning the Magistrate asked what was the defence, and the Magistrate proceeded to examine the defendant though I protested against his doing so. He then called upon the Court Inspector to produce the list of witnesses filed by the defendant, and then said he was not going to waste his time by examining some 10 witnesses. I said I must exercise my right of examining such witnesses as I think proper; but, of course, I would not call "witnesses I did not consider material. Tiluck Singh was the first witness produced. The Magistrate said, let us see what this man knows. He (the witness) said something I do not recollect. I asked the Magistrate to put the witness on his oath. The Magistrate said that was not material. I then said the Court has a question of fact to consider "and a grain might turn the scales. The Magistrate still refused to examine the witness."

5. It appears to me that this is an irregularity which is quite fatal to the conviction had upon the trial. It would be most unsafe for a Magistrate or Judge to attempt to ascertain by such a mode as this, what the nature of a witness's testimony was likely to be, and it would also be impossible for a Magistrate to determine in this rough way, before-hand, what the effect of such testimony a witness was giving might be, when he came to consider the evidence on both sides, and to determine whether the prisoner was or was not guilty. The Magistrate was clearly bound, as provided in section 266 of the Code of Criminal Procedure in such a case, to proceed to hear the accused person, and such witnesses as he might produce in his defence, and I think the refusal in this case was the less justifiable, inasmuch as the accused had the benefit of the advice of a pleader of this Court, who must be supposed to have understood what was necessary and right to be done for his client's defence, and also to act under a sense of his responsibility as such pleader. I think, therefore, that upon this ground, and without entering into the further questions which might be raised upon this application, we are bound to set aside the conviction, and to order the petitioner immediately to be discharged. Markby, J.

I also think that this conviction must be quashed. It appears to me that the course taken by the Magistrate in refusing to examine a witness who was formally tendered on behalf of the accused, was absolutely illegal, and that no conviction, after such a course taken by the Magistrate, can be supported. I observe that the Magistrate suggests as a ground for taking the course he did, that the time of the Court would thereby be wasted. It is quite needless, I think, to point out that that would be no ground whatever for violating the law. It also seems to me that the ground does not exist, for, as has been already pointed out, the vakeel who was present pledged himself not to waste the time of the Court. Under any circumstances the Court ought to have accepted that undertaking. I also think that any Judge who conducts business with tact and patience will find little difficulty in preventing time being wasted by the examination of useless witnesses, without violating the established rules of Procedure.