

(1892) 10 CAL CK 0001
In the Calcutta High Court

The Queen-Empress

APPELLANT

Vs

Sita Nath Mitra

RESPONDENT

Date of Decision : 24-10-1892

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 386, 6
Penal Code, 1860 (IPC) — Section 70

Citation : (1893) ILR (Cal) 478

Hon'ble Judges : Pigot, J; Hill, J

Bench : Division Bench

Judgement

Pigot and Hill, JJ.—We do not understand the Criminal Letter of the High Court, dated the 19th September 1865 W.R. 6 to lay down, that the liability of the Immovable property which is exacted by Section 70 of the Penal Code can be enforced by distress under the Criminal Procedure Code. That question was not before the Court when the Letter was written, so far as can be judged.

2. The Letter is on a question as to the scope of the Criminal Procedure Code Act XXV of 1861), Section 6, and states that under that section only moveable property within the jurisdiction of the Magistrate is, in the life time of the offender, liable. This recognises the fact of the liability of Immovable property after the offender's death u/s 70, Penal Code, but it does not say expressly nor, we think, even by implication, how that liability is to be enforced.

3. We think we are free to follow the authority of Reg. v. Lallu Karwar 5 Bom H.C. 63 so far, at any rate, as that it cannot be enforced by distress. If no special form of remedy is provided for such a case, it follows that the normal remedy, that by suit, must be the only one. Section 386 does not of course apply to such a case as this.

4. The order of the District Magistrate must therefore be set aside and all proceedings under it, if any, set aside also.