
(1896) 02 CAL CK 0016
In the Calcutta High Court

Upendra Nath Bhattacharjee

APPELLANT

Vs

Khitish Chandra Bhattacharjee and Another

RESPONDENT

Date of Decision : 06-02-1896

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 133, 138

Citation : (1896) ILR (Cal) 499

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

Bench : Division Bench

Judgement

Hill and Rampini, JJ.—This rule was granted in relation to certain proceedings taken by the District Magistrate of Nuddea under Chapter X of the Code of Criminal Procedure.

2. The order of the Magistrate of the 13th November 1895 made in these proceedings has been called in question here on several grounds, but we think that for the present purpose it is enough for us to say that it is bad, on the ground that the jury appointed by the Magistrate u/s 138 of the Code was not legally constituted. Two of the jurors were the nominees of the party opposed to the petitioner in the proceedings before the Magistrate; two were the nominees of the petitioner; the foreman being the nominee of the Magistrate. The section requires the Magistrate to nominate the foreman and one-half of the remaining members of the jury, which it is his duty under that section to appoint when the occasion arises. In the nomination of those members of the jury, the nomination of whom devolves upon the Magistrate, it is his duty, as has been laid down in the case of *Shatyanundo Ghosal v. Camperdown Pressing Co.* 21 W.R. Cr. 43 decided in this Court, to exercise his own independent discretion, and not merely to accept persons, who may be put forward by the party opposed to the applicant. In the case to which we have referred it was held that a jury constituted in the manner in which the jury was constituted in the present case was not constituted legally, and was incapable of making a legally binding award. In the case of *Dino Nath Chiticker butty v. Hur Gobind Pal* 16 W.R. Cr. 23 the

same view was taken" under similar circumstances, the order of the Magistrate in that case being set aside.

3. Upon the authority of those cases, we think the order now complained of must be set aside.

4. We think it desirable to direct the attention of the Magistrate to the cases of Luckhee Narain Banerjee v. Ram Kumar Mukerjee ILR 15 Cal. 564 and Queen-Empress v. Bissessur Sahu ILR 17 Cal. 562 which prescribe the procedure which ought to be adopted by a Magistrate before he takes action u/s 133 and the following sections of the Code. Here it would seem that the petitioner raised a claim of right to the land in respect of which these proceedings were taken; and the cases to which we have now referred show that it was the duty of the Magistrate to satisfy himself as to the bona fides of that claim, before he went further.