

CALCUTTA HIGH COURT

Mahmudi Sheikh

Vs

Aji Sheikh

(Prinsep and Hill ,JJ.)

30.03.1894

JUDGMENT

Prinsep and Hill, JJ.

1. A Magistrate exercising powers of the third class convicted Aji Sheikh of criminal trespass under Section 447, Indian Penal Code, and sentenced him to a fine of Rs. 10, or, in default, to rigorous imprisonment for seven days. He further submitted the case to the District Magistrate, with a recommendation that the accused should, under Section 106 of the Code of Criminal Procedure, be bound over to keep the peace. The District Magistrate has required Aji Sheikh to furnish security to keep the peace, and the matter is now before us in revision on a reference by the Sessions Judge.

2. We are of opinion that the order of the District Magistrate is illegal and must be set aside. The order of the District Magistrate professes to have been made under Section 349 of the Code of Criminal Procedure. That section, however, contemplates that when the Magistrate having jurisdiction over the offence under trial finds the accused guilty of that offence, but considers that he is not competent to pass punishment of an appropriate description or sufficiently severe to meet the ends of justice, he should submit the entire proceedings for the orders of the District Magistrate or the Sub-Divisional Magistrate to whom he may be subordinate; and the section is further extended so as to enable him to deal in the same way with a case in which he is of opinion that the accused ought to be required to execute a bond under Section 106. But we observe that in such a case the order directing the particular punishment to be awarded, that is to say, the conviction and sentence, should be passed by a superior Magistrate. In this particular instance, the sentence was passed by an inferior Magistrate, that is, by a Magistrate of the third class, and the proceedings were then submitted to the District Magistrate to be dealt with under Section 106. Consequently the case is not within the terms of Section 349. If we next consider the terms of Section 106 they contemplate that, before an order requiring security to keep the peace can be passed under it, the accused shall have been convicted by some Court or Magistrate specified, not being of a class inferior to that of a Magistrate of the first class. Reading these two

sections together, therefore, we have no doubt that it was the intention of the Legislature that, before an order under Section 106 can be properly passed, the conviction of the accused shall have been by an order made by a Magistrate of a superior class, and not, as in the present case, by a Magistrate of the third class. The terms of Section 106, which enable any of the Courts or Magistrates specified to require the execution of a bond to keep the peace, direct that such an order may be passed at the time of passing sentence on such person. This also shows that the intention of the Legislature was that the conviction and order under Section 106 shall be passed by one and the same officer. For these reasons we are of opinion that the order under Section 106 must be set aside. There are other objections taken to the proceedings in this case which it is unnecessary to mention.