

CALCUTTA HIGH COURT

Nibaran Chandra Bhattacharyya

Vs

Emperor

(Mukerji ,J.)

29.01. 1929

ORDER

Mukerji, J.

1. The petitioners have been convicted under Section 120.B, I.P.C. Petitioner 1 has also been convicted under Section 384, I.P.C. and No. 2 under Section 384/114, I.P.C. The ground upon which this rule has been issued is that the trial was vitiated as the sanction contemplated by Section 196-A, Criminal P.C. had not been accorded by the Local Government to the prosecution of the petitioners under Section 120-B, I.P.C. Now the object of the conspiracy having been to commit an offence under Section 384, I.P.C. which is a non-cognizable offence the Court could not take cognizance of the said offence without the sanction of the Local Government or of the District Magistrate empowered in that behalf. In the explanation which the learned Magistrate has submitted in answer to the rule he has suggested that the convictions under Sections 384 and 384/114, I.P.C. as against petitioners 1 and 2 respectively may be maintained and that the sentence passed on them may be treated as having been passed under the said sections. Apart from anything else, this course, in my opinion, is likely to result in prejudice to the petitioners. They had been put on their trial in respect of offences under Sections 384 and 384/114 along with a charge under Section 120-B. It is just possible and indeed it is not unlikely that a good deal of evidence that was adduced on behalf of the prosecution in this case in order to establish the charge of conspiracy would not be relevant as against the petitioners on the substantive charges under Sections 384 and 384/114, I.P.C. The trial held on charges which do not require sanction along with such as are not cognizable without sanction under Section 196-A, Criminal P.C., cannot be separated in this way

2. I am accordingly of opinion that this rule should be made absolute and the convictions and sentences passed on the petitioners should be set aside and the fines if paid by them should be refunded. It will be open to the prosecution to proceed afresh against the petitioners in respect of the charges under Sections 384 and 384/114, I.P.C. or even as regards the charge under Section 120-B, I.P.C. provided that the requisite sanction under Section 196-A, Criminal P.C. has been duly obtained. Such retrial, if it is to take place, will be held before some Magistrate other than the learned Magistrate who has already dealt with this case.

