

CRIMINAL REVISION.

Before Holmwood and Sharfuddin JJ.

KERAMUDDIN SARKAR

v.

EMPEROR.*

1914

Jan. 23.

Security for good behaviour—Proceedings taken and enquiry completed in one day—Production of party called upon for security under arrest before the Magistrate in camp—Right of party to examine his own defence witnesses—Right of opportunity to examine or summon witnesses selected by such party—Fair trial—Criminal Procedure Code (Act V of 1898) ss. 110 (d), 112, 117—Practice.

Under s. 117 (2) of the Criminal Procedure Code a person called upon to furnish security for good behaviour must be given time, as in warrant cases, to bring his witnesses and have their evidence recorded.

Where a person was produced in custody before a Magistrate in camp while on tour, when only a single mukhtear was available, and a proceeding under s. 110 (d) was drawn up immediately, read and explained to him, after which prosecution witnesses were examined and cross-examined, and he was called upon for his defence, and some of the spectators who happened to be present were examined on his behalf, and the enquiry was completed and the order for security passed on the same day :—

Held, that the order was bad, as the person directed to execute a bond had not been given the opportunity of selecting his own witnesses and of producing them or having them summoned; and that he did not, therefore, have a fair trial.

THE petitioner was arrested on the 4th November 1913 by an Inspector of Police, kept all night in custody, and produced next morning, at 10 A.M. before the Sub-divisional Magistrate of Thakurgaon who was then in camp at Joymandhat. A proceeding was immediately drawn up against him under s. 110(d)

* Criminal Revision, No. 1987 of 1913, against the order of J. A. Ezechiel, District Magistrate of Dinajpur, dated Dec. 8, 1913.

of the Criminal Procedure Code and embodied in an order under s. 112, alleging that he was a professional tout, locally known as a *diwani*, who habitually extorted money from people under threats of having false suits and criminal prosecutions brought against them. The order was read over and explained to the petitioner at 10-30 A.M. It appeared that a mukhtear had followed the Magistrate on his tour, and the petitioner engaged him as no other legal assistance was then available. The enquiry was taken up at 2 P.M., and 22 witnesses were examined for the prosecution and cross-examined by the mukhtear. The petitioner was then called upon for his defence, and examined eight persons present as spectators. The final order was passed at 6 P.M., and the petitioner was directed to execute a bond for Rs. 500 to be of good behaviour for one year with two sureties, each in the like sum, and in default to be rigorously imprisoned for the same period.

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The petitioner appealed against this order of the Sub-divisional Officer to the District Magistrate of Dinajpur who dismissed the appeal on the 8th December 1913. The petitioner thereupon moved the High Court and obtained the present Rule.

Mr. C. R. Das, Dr. Suhrawardy and Babu Atulya Charan Bose, for the petitioners.

No one appeared for the Crown.

HOLMWOOD AND SHARFUDDIN JJ. This was a Rule calling upon the District Magistrate of Dinajpur to show case why the order under section 110 of the Criminal Procedure Code passed against the petitioner should not be set aside, *first*, on the ground that the provisions of section 112 have not been complied with, inasmuch as the substance of the information

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received from the police has not been recorded and the accused person had no notice thereof; and, *secondly*, that the case is triable as a warrant case, and the accused had a right to have the witnesses properly cross-examined, and to have processes issued on any witnesses he desired to call in defence. The rule could have been stated more shortly by saying that it had not been heard, *first*, with reference to the provisions of section 112; and, *secondly*, with reference to the provisions of section 117.

As regards the alleged breach of the provisions of section 112, the learned Magistrate points out in his explanation that he has followed the letter of sections 112 and 113. There was a proceeding drawn up. The person in respect of whom it was drawn was present in Court, and it was read over to him and the substance explained to him. But the conditions in which he was present in Court are rather different to what is the ordinary practice. He was only present in Court because he had been brought there by a policeman after being locked up all night. He, therefore, certainly had no opportunity of producing his defence witnesses; and even if we were inclined to discharge the Rule as regards section 112, the disregard of the provisions of section 117 is quite fatal to the case. That section provides that in proceedings under section 110, the procedure for warrant cases shall, as far as possible, be adopted, and that means, as it obviously must mean, that a person who has such a serious charge alleged against him must have time to bring his witnesses and have their evidence recorded. In the present case it appears that the accused had no opportunity of choosing and producing his own evidence or having them produced by summons. He had no chance of choosing his own legal adviser, the learned Magistrate having come out

from the station accompanied by a single mukhtear who, as it happened, was able to appear on behalf of the accused, although, of course, he knew nothing about his case. The only witnesses he could have examined were the by-standers who happened to have gathered round the catchery out of curiosity, and it cannot be said that those were the witnesses whom he voluntarily chose in his defence.

The proceedings clearly show that the man had not anything like a fair trial, and the order under section 110 must, therefore, be set aside, and if it is necessary to take further proceedings, these proceedings must be taken with due regard to the spirit as well as to the letter of the law. The petitioner will be discharged from the security bond.

E. H. M.

Rule absolute.

CIVIL RULE.

Before Coxe J.

RAJANI KANTA DAS

v.

KALI PRASANNA MUKHERJEE.

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 Jan. 27.

Review—Dismissal of application for admission of second appeal—Application for review based on alleged discovery of new and important evidence—High Court, jurisdiction of—Civil Procedure Code (Act V of 1908) O. XLI, r. 11 and O. XLVII, r. 1.

The High Court has no authority merely on the ground of alleged discovery of new and important evidence to review an order dismissing an application for the admission of a second appeal under O. XLI, r. 11 of the Code of Civil Procedure.

*REVIEW in Civil Rule No. 1474 of 1913, against the order of Lalit Mohan Das, Subordinate Judge of Khulna, dated Dec. 23, 1912.