

**CRIMINAL REVISION.***Before Jenkins C.J., and Teunon J.*

1914

*Sept. 9.*

AKBAR ALI MAHOMED

v.

EMPEROR.\*

*Surety—Rejection of sureties only on police report without judicial enquiry into their fitness—Inquiry to be held by the Magistrate passing the order for security—Criminal Procedure Code (Act V of 1898), ss. 118, 122.*

Sureties tendered by a party bound down under s. 118 of the Criminal Procedure Code should not be rejected on a police report as to their fitness, but only after a judicial enquiry under s. 122, and by the Magistrate who has passed the order for security.

ON two reports submitted by the Sub-Inspectors of Boda and Paunchagara in the district of Jalpaiguri, respectively, proceedings under s. 110 of the Criminal Procedure Code were initiated against the petitioner before Babu Uma Prasanna Guha, a local Deputy Magistrate. After holding an enquiry, the Magistrate directed the petitioner, by his order dated 15th April 1914, to execute a bond for good behaviour for one year in the sum of Rs. 200 with two sureties each in the like amount, and in default to undergo rigorous imprisonment for the same period.

An appeal against the said order was dismissed on the 2nd June 1914 by Mr. D. H. Lees, Deputy Commissioner of Jalpaiguri. The petitioner thereafter produced two sureties, Mahabatulla Muhamad Prodhan and Ahmed Ali, and the question of their fitness was referred to the police for inquiry. On receipt of

\* Criminal Revision No. 1247 of 1914, against the order of C. W. Jacob, Deputy Commissioner of Jalpaiguri, dated July 6, 1914.

the police report, Mr. C. W. Jacob, the Deputy Commissioner, rejected the sureties on the 6th July 1914.

The petitioner thereupon moved the High Court and obtained the present Rule.

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*Mr. P. N. Dutt and Babu Nakuleshwar Mookerjee*, for the petitioners.

No one appeared for the Crown.

JENKINS C.J. AND TEUNON J. In this case the accused petitioner had been required to furnish security for good behaviour under section 118, read with section 110 of the Criminal Procedure Code. Thereupon he offered two sureties, and the matter was referred by the Magistrate to the police for enquiry. The police submitted a report to the effect that the sureties were not acceptable; and, proceeding upon that report, the Magistrate refused to accept the sureties. It has been repeatedly pointed out that sureties offered should not be refused except after judicial enquiry by the Magistrate who has made the order under section 118, such enquiry to be made under the provisions of section 122 of the Criminal Procedure Code. This Rule was, therefore, granted calling upon the Deputy Commissioner to show cause why the petitioner should not be given an opportunity of showing that the sureties offered were fit to be accepted. No cause has been shown and on the facts we have stated we make this Rule absolute, and direct that the Magistrate do now hold an enquiry in accordance with law, and upon the enquiry decide whether the sureties offered are or are not fit persons.

Pending this further enquiry the sureties offered will be provisionally accepted.

E. H. M.

*Rule absolute.*