

I have explained why I am inclined to hold that this Court has no jurisdiction in a matter of this character, under section 491 of the Criminal Procedure Code. Upon the facts, however, it is not necessary to base my decision upon that view of the law.

1916  
 BOMMALLY  
 GUPTA,  
*In re.*  
 CHAUDHURI  
 J.

NEWBOULD J. I agree with my Lord the Chief Justice.

G. S.

*Application refused.*

Solicitors for the petitioner : *Bonnerjee & Bonnerjee.*

## CRIMINAL REVISION.

*Before Teunon and Beachcroft JJ.*

ABDUL KARIM

*v.*

EMPEROR.\*

1916  
 Nov. 29.

*Surety—Grounds of fitness—Pecuniary sufficiency—Inability of control—Discretionary power of the Court on the facts of each case—Propriety of the order—Criminal Procedure Code (Act V of 1898), s. 122.*

The question as to the fitness of a surety is one of discretion in each case, and the High Court has only to consider whether the order of the Magistrate is reasonable and proper in the circumstances of the particular case.

*Jalil v. Emperor* (1), *Jafar Ali Panjalia v. Emperor* (2) and *Emperor v. Asiraddi Mandal* (3) approved.

*Ram Pershad v. King-Emperor* (4), *Adam Sheikh v. Emperor* (5) and *Rayan Khan v. Emperor* (6) not followed.

\* Criminal Revision, No. 1062 of 1916, against the order of K. B. Das Gupta, Fourth Presidency Magistrate of Calcutta, dated June 12, 1916.

(1) (1908) 13 C. W. N. 80.

(4) (1902) 6 C. W. N. 593.

(2) (1910) I. L. R. 37 Calc. 446.

(5) (1908) I. L. R. 35 Calc. 400.

(3) (1914) I. L. R. 41 Calc. 764.

(6) (1916) I. L. R. 43 Calc. 1024

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THE petitioner, who was alleged to be the ring-leader of a gang of dacoits operating in Calcutta and other parts of India, was bound down under s. 110 of the Criminal Procedure Code, by the Fourth Presidency Magistrate, to be of good behaviour for three years with two sureties each in the sum of Rs. 750. The order was confirmed by the High Court.

The petitioner offered several sureties who were rejected by the Magistrate. He thereupon entered into a contract of service with Mr. Ahmad, a Police Court pleader, for three years, agreeing to keep him company constantly during such period. The Magistrate refused the surety by the following order, on the 12th June 1916.

The petitioner is examined. He is a pleader of this Court and a resident of Calcutta, and has known the prisoner, Abdul Karim, only as a hawker of shawls, and a client in one case. He has no other connection with him, and I do not see how he will be able to control him. Abdul Karim comes from up-country, and is a dangerous criminal, so I find the petitioner will not be able to control him. His petition is rejected.

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

*Moulvie A. K. Fazlul Huq* (with him *Babu Sasadhar Roy*), for the petitioner. The only point for the Magistrate to consider was the pecuniary qualification of the surety. Want of ability to control the accused is not a ground of rejection of the surety: *Ram Pershad v. King-Emperor* (1), *Adam Sheikh v. Emperor* (2), *Rayan Khan v. Emperor* (3).

*The Offg. Deputy Legal Remembrancer (Mr. J. Camell)*, for the Crown. In the case last cited, no reference was made to the rulings in *Jalil v. Emperor* (4) and *Emperor v. Asiraddi Mandal* (5).

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TEUNON J. This Rule is directed against the order of the Fourth Presidency Magistrate, Calcutta, declining to accept as surety for the good behaviour of the present petitioner a certain Mr. Ahmad. Mr. Ahmad, we are informed, is a pleader practising in the Police Court in Calcutta. It appears that under the provisions of section 118 and section 123 of the Criminal Procedure Code the petitioner has been required to give security for his good behaviour for a period of three years. From the proceedings taken against him we learn that it has been found that he is a member of a large gang of swindlers carrying on operations on a large scale in Chitpore, Cossipore and other parts of Calcutta. It also appears that he is an up-country man. The reason for refusing the proffered security has been said by the Presidency Magistrate in his order to be the inability of the proposed surety to control the petitioner.

Before us it has been contended that inability to control the person required to furnish security is not a sufficient reason for an order rejecting the proffered surety, and that the only matter to be considered is the said surety's pecuniary sufficiency. In support of this proposition we have been referred to a certain number of decisions of this Court, namely, *Ram Pershad v. King-Emperor* (1), *Adam Sheikh v. Emperor* (2), *Rayan Khan v. Emperor* (3). No doubt in those cases support for the contention that has been urged before us is to be found. But in another series of cases decided in this Court, for instance, in the cases of *Jalil v. Emperor* (4), *Jafar Ali Panjalia v. Emperor* (5) and *Emperor v. Asiraddi Mandal* (6), it has been laid down, as indeed the law itself seems

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to say, that the question in every case is one of discretion, and what the Court has to look to is whether, under the circumstances of each particular case, the order rejecting the surety is a reasonable and proper order. In the case of *Rayan Khan v. Emperor* (1), which was one not argued at the Bar, we observe that no reference has been made either to the case of *Jalil v. Emperor* (2), or to the case of *Emperor v. Asiraddi Mandal* (3). With the series of cases beginning with *Jalil v. Emperor* (2), we are in entire agreement, and, therefore, the only thing we have to consider is whether, in the circumstances of this particular case, the order rejecting the proffered surety, Mr. Ahmad, a pleader practising in the Calcutta Police Court, is a reasonable and proper order and, without going further into the matter, we are of opinion that the order rejecting the proffered surety was in this case reasonable and proper. True it has been argued before us that the petitioner has entered into an agreement by which he undertakes to serve the proffered surety in a personal capacity for a period of three years. But that obviously is a contract which cannot be specifically enforced, and we are unable to say how the petitioner is to serve at the surety's house, which we are informed is near College Square, and also be in attendance upon him at the Police Court where he practises. This Rule is, therefore, discharged.

BEACHCROFT J I agree.

*Rule discharged.*

E. H. M.

(1) (1916) I. L. R. 43 Calc. 1024. (2) (1908) 13 C. W. N. 80.

(3) (1914) I. L. R. 41 Calc. 764.