1926

PRAN KUMAR PAL CHAUDHURY v. DARPAHARI PAL CHAUDHURY.

Daulatram (1). It is only material to notice that the point, which had been taken before the learned Judge (Mr. Justice C. C. Ghose) on the Original Side was not raised at the hearing of the appeal in this Court.

For these reasons, in my judgment, this appeal should be dismissed with costs.

PANTON J. I agree.

Attorneys for the appellant: *Dutt & Sen.*

Attorney for the respondent: *T. B. Roy.*

N. G. *Appeal dismissed.*

(1) (1920) I. L. R. 47 Calc. 1104.

CRIMINAL REVISION.

Before Rankin and Mukerji JJ.

1926

July 23.

MOSLEM MANDAL

v.

EMPEROR.*

Surety Bonds—Forfeiture on evidence recorded without notice to the sureties, and to the effect that the principal was suspected by the police of complicity in certain offences—Criminal Procedure Code, (Act V of 1898) s. 514.

The Magistrate can hold an enquiry into the question of the forfeiture of surety bonds (ensuring the good behaviour of the principal), by reason of the latter having committed an offence, only after notice to the sureties.

An order of forfeiture of the bonds on evidence recorded without such notice, and to the effect that he was reasonably suspected by the police to have been concerned in certain cases of house-breaking and dacoity, is illegal

* Criminal Revision No. 508 of 1926, against the order of H. C. Bose, Subdivisional Officer of Jessore, dated April 20, 1926.

1926

MOSLEM MANDAL v. EMPEROR.

ONE Maniraddi Fakir was bound down, on the 27th September 1924, to be of good behaviour for three years. The petitioners, Moslem Mandal and Hatem Biswas, stood sureties for him, and executed bonds in the sum of Rs. 200 each on the 19th January 1925. On the 26th August of that year they applied to the Magistrate for the surrender of their bonds and for warrants against Maniraddi, who absconded thereafter. He was suspected by the police of having committed house-breaking on the 18th and 26th May 1925, and a dacoity on the 17th September 1925. On the 24th February 1926, the Magistrate, without notice to the petitioners, recorded the evidence of five witnesses to the effect that Maniraddi was suspected by the police of complicity in the cases mentioned above. He then issued notices on the petitioners to show cause why their bonds should not be forfeited, but they did not appear on the fixed date; and he thereupon passed an order directing the forfeiture of the bonds on the evidence recorded previously.

Babu Birbhusan Dutt and *Babu Bhudar Halder* for the petitioners. Before forfeiting the bonds the Magistrate should have had before him evidence of the commission of offences by Maniraddi, such as a judgment of conviction, or evidence recorded under section 512. Police suspicion of his complicity is not sufficient.

Mr. G. Gupta Bhaya, for the Crown. There was evidence before the police of the commission of house-breaking and dacoity by Maniraddi, and such evidence is sufficient to support the order of forfeiture.

RANKIN J. In this case I am of opinion that the Rule must be made absolute. The applicants before us entered into a bond as sureties for one Maniraddi, and that bond was that Maniraddi should be of good

1926

MOSLEM MANDAL v. EMPEROR

RANKIN J.

behaviour to the King-Emperor for three years. Now that being so, in a proceeding under section 512 of the Criminal Procedure Code, it was open to the Magistrate to hold an enquiry, to take evidence and to come to a conclusion that Maniraddi had during those three years committed an offence. He was obliged to hold that enquiry upon notice to the sureties. What in fact the Magistrate did was this He heard certain evidence, namely, the evidence of five witnesses, on the 24th February of this year. The evidence of those witnesses, taking them all together, was not such as could possibly ground a finding against Maniraddi that he had in fact committed any offence whatsoever. One cannot convict a person of burglary on the ground that he has been reasonably suspected by the police in connection with the offence. Having taken that evidence, the Magistrate issued notice on the sureties to show cause why the bond for good behaviour should not be forfeited, and on the returnable date of the notice to show cause the sureties did not appear. Whereupon, without recording any evidence at all beyond what he had previously recorded, the Magistrate made an order purporting to forfeit their bail bond. That is wrong for two reasons, first, because the only evidence recorded was not recorded upon notice to the sureties, and, secondly, because the evidence recorded was not such as would ground a finding of fact against the sureties, or against Maniraddi, that he had in fact been guilty of an offence.

For these reasons this Rule must be made absolute, and the order complained of must be set aside. The amounts, if realized, will be refunded.

MUKERJI J. I agree.

E H. M.