

APPELLATE CRIMINAL.

*Before Mr. Justice Wallace.*1927,
July 20.IBRAYA ROWTHEN AND MUHAMAD IBRAHIM
ROWTHAN (PETITIONERS), ACCUSED.*

Criminal Procedure Code, sec. 123—Order under—Accused directed to furnish security or in default to undergo imprisonment, if valid—Imprisonment, in default, for definite term—Right of accused to be released on furnishing security.

Section 123 of the Code of Criminal Procedure contemplates that the accused shall be separately brought up if security is not furnished and an order under that section directing an accused to furnish security and in default to suffer imprisonment is illegal.

An accused is entitled to be released from custody the moment he furnishes security and a Court has no power to sentence an accused who has failed to furnish security to a definite term of imprisonment absolutely, but has only power to sentence him to a term of imprisonment or until such date within that term as on which the required security may be furnished.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the First Class Bench of Magistrates, Palghat, in Summary Trial No. 1389 of 1926.

The relevant portion of the order of the Court of the First Class Bench of Magistrates is as follows:—

“ . . . We are further of opinion that it is necessary to require the first accused to execute a bond for keeping the peace. So we order the first accused to execute a bond for a sum of one hundred rupees with two sureties for fifty rupees each for keeping the peace for a period of one year (section 106, Criminal Procedure Code). The period of one year shall commence from the 2nd December 1926. He is granted time

* Criminal Revision Case No. 76 of 1927.

till the 2nd December to enable him to produce sureties (section 120, clause (2), Criminal Procedure Code). If he fails to give the security he will be committed to the prison to undergo simple imprisonment for a period of one year (section 123, clauses (1) and (5), Criminal Procedure Code)".

In re
IBRAV
ROWTHEN

A. V. Narayanaswami Ayyar for *C. S. Swaminathan*,
for petitioners.

K. N. Ganpati for *Public Prosecutor*, for the Crown.

JUDGMENT.

The order of the lower Court directing that petitioner should, in default of giving security, suffer simple imprisonment for one year, cannot be upheld on two grounds, (1) section 123 contemplates that the accused shall be separately brought up for sentence if security is not furnished, that is, the Court should in its judgment fix a date for the furnishing of security, without any order for alternative imprisonment, and then if, by that date, accused has not furnished the security, he is to appear and receive sentence under section 123; (2) it was wrong to fix a period of one year, since accused is entitled to be released from custody the moment he furnishes the security; the sentence ought to run "For one year or until such date within that year as the required security be furnished". As security appears to have been furnished in this case, no further action is called for. I do not, as at present advised, subscribe to the contention that a summary Court has no power to award under section 123 more than three months' imprisonment.

B.C.S.
