

## REVISIONAL CRIMINAL.

1911  
May 7.

*Before Mr. Justice Tudball.*

EMPEROR *v.* FAKHR-UD-DIN KHAN.\*

*Criminal Procedure Code, section 125—Security to keep the peace—  
Cancellation of bond—Power of Magistrate to send accused to jail.*

Under section 125 of the Code of Criminal Procedure a District Magistrate may cancel a bond for good behaviour, but he is not competent to send the person whose bond is so cancelled to jail.

ONE Fakhr-ud-din Khan was called upon by a Magistrate of the first class to show cause under section 107 of the Code of Criminal Procedure. After due inquiry the Magistrate ordered him to file a bond with one surety to keep the peace for a certain period. He filed the bond required, and it was accepted by the Magistrate. Subsequently the District Magistrate, being of opinion that the person who stood as surety was unfit, in that he could exercise no effective supervision over Fakhr-ud-din Khan, proceeded to cancel the bond and remitted Fakhr-ud-din to jail until such time as he should furnish a bond with a satisfactory surety. Against this order Fakhr-ud-din applied in revision to the High Court.

Babu *Sital Prasad Ghosh*, for the applicant.

Section 125 of the Code of Criminal Procedure does not warrant an order like that passed by the District Magistrate. His power was confined to the mere cancelling of the bond. He should not have passed such an order. Applicant had to remain in jail for a fortnight as he was not supplied with a copy of the order earlier and could not file a revision before.

The Government Advocate (*Mr. A. E. Ryves*), for the Crown, was heard in reply.

TUDBALL, J.—The applicant, Fakhr-ud-din Khan, was called upon by a Magistrate of the first class to show cause under section 107 of the Criminal Procedure Code. After due inquiry the Magistrate ordered him to file a bond with one surety to keep the peace for a certain period. He filed his bond together with his surety and this was accepted by the Magistrate. The District Magistrate, subsequently, being of opinion that the

\* Criminal Revision No. 160 of 1911 from an order of P. U. Allen, District Magistrate of Bareilly, dated the 20th of March 1911.

person who stood as surety was apparently unfit, in that he could exercise no influence over Fakhr-ud-din Khan, passed an order to the following effect:—"Accordingly I cancel the bond of the surety and direct that Fakhr-ud-din be detained in jail, until he is able to furnish such a surety as shall exercise proper control over him. Fakhr-ud-din Khan has accordingly been put in jail." The only section in the Code which enables a District Magistrate to cancel such a bond is section 125, but reading this section together with sections 118 and 121, it is quite clear that the bond contemplated by section 125 is the bond which has been given by the person against whom the order has been passed under section 118. Schedule V of the Code contains the form of the bond which is usually taken in such cases: form 11 is that which is taken in cases in which sureties also have to be provided. It was open to the District Magistrate to cancel the bond which was given by Fakhr-ud-din Khan, in the present case, under this section. But there is no section in the chapter, under which he is empowered to take the step which he has taken. It would no doubt have been open to him, if he had thought fit, to send the information and also the evidence relating to it, to the Magistrate who had passed the original order, and it might possibly have been open to the Magistrate to reject the surety. But the District Magistrate is not authorized to pass the order that he has done, nor is he empowered to send the accused to jail in this manner. I admit the application, set aside the order of the District Magistrate. The applicant will be released at once.

*Order set aside.*

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BALDEO  
SINGH  
v.  
JUGAL  
KISHORE.