

and if he was or was not convicted in that case. However this may be, though the proceeding in the riot case might justify an order under section 106 of the Code of Criminal Procedure against any person who may have been convicted at that trial, it had nothing to do with the proceeding now before me. The law required the Magistrate to hold an inquiry, and even though this requirement would have been substantially complied with by an inquiry such as is prescribed in chapter XX of the Code of Criminal Procedure for the trial of summons cases, still I am unable to find on the record before me anything that shows that an inquiry was held at all. Mul Chand was apparently asked what cause he had to show why he should not be bound over to keep the peace, and in so far the procedure observed was correct and in accordance with the provisions of section 117, clause 2, read with section 242 of the Code of Criminal Procedure. Inasmuch, however, as Mul Chand did not admit that he was a person likely to commit a breach of the peace, or was otherwise a proper subject for a proceeding under section 107 of the Code, the Magistrate was too hasty in binding him over without further inquiry, on the strength of his own statement. I must set aside the order complained of and I do so accordingly. If security has been furnished by Mul Chand in accordance with the order, the security bonds in question are hereby discharged.

Order set aside.

Before Mr. Justice Piggott.

EMPEROR v. GHASITE.*

Criminal Procedure Code, sections 439 and 562—Revision—Powers of High Court.

Inasmuch as action taken under section 562 of the Code of Criminal Procedure takes the place of a sentence on an accused person, the High Court cannot in revision substitute for an order under that section a definite sentence of whipping or imprisonment.

THIS was a reference made by the Sessions Judge of Jhansi under section 438 of the Code of Criminal Procedure. The facts which gave rise to the reference are thus set out in the Judge's order:—

"I have the honour to forward for favour of submission to the Hon'ble High Court the record of King-Emperor *versus* Ghasite,

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section 379 of the Indian Penal Code. The findings of the court are that Ghasite was found in the Railway goods-shed with three bags of *gun* in his possession. The evidence shows that he had two companions. The court believing the evidence of Mr. Norton, a mail-engine driver and master of the accused, was of opinion that Ghasite had been sent by his master on an errand to the Loco-sheds to find if Mr. Norton would be wanted to drive an engine that night and being accosted by two thieves gave way to the sudden temptation to join them. He therefore ordered the accused to give security for good behaviour for six months by executing a bond for Rs. 30, with one surety in the same sum.

“Mr. Norton’s evidence appears to me most unconvincing. As a mail driver he could only be put in charge of a mail train and all mail trains leave Jhansi between 1:50 p.m. and 4 p.m. The necessity for inquiries at 10 p.m. is not apparent.

“It is notorious that in Jhansi, as elsewhere, railway thieves are chiefly recruited from the lowest grades of railway employés and the servants of superior employés. The accused in this case appears to be a typical railway thief working in concert with two others. Thefts in railway goods-sheds are so persistent and shameless that deterrent sentences should always be passed on conviction. It is not right that the accused should get off practically scot free because his previous good character is vouched for by his master, whose evidence does not appear to be worthy of credit.

“I, therefore, submit this case with the recommendation that the order under section 562 of the Code of Criminal Procedure should be cancelled and a more suitable sentence either of whipping or imprisonment should be awarded.”

The parties were not represented.

PIGGOTT, J.—I think there is good deal to be said for the view taken of this case by the District Magistrate, but I am inclined to doubt whether it is worth this Court’s while to interfere. The District Magistrate seems to think that this Court in revision can set aside an order under section 562 of the Code of Criminal Procedure and of its own authority substitute for that order a sentence of whipping or of imprisonment. Under sections 439/423 of the Code of Criminal Procedure, this Court certainly could not take

the action suggested. The provisions of section 439 itself empower the High Court in revision to enhance a sentence, but it is clear that no sentence has been passed in the present case. The court *instead of sentencing* the accused has ordered him to enter into a bond to appear and receive sentence when called upon. The point of law thus taken may appear a technical one, but it is closely connected with another question of considerable importance, viz., the question whether an appeal lies against an order under section 562 of the Code of Criminal Procedure. I have recently followed the Punjab Chief Court in holding that an appeal does lie, and that question necessarily depends upon the soundness of the contention that in a case like the present no sentence has been passed. It follows, therefore, that if this Court interferes at all in this matter it can only order the case to be re-tried. Under all the circumstances of the case I do not think it worth while to take this step. Let the record be returned.

Record returned.

Before Mr. Justice Piggott.

EMPEROR v. BRIJNANDAN PRASAD AND OTHERS.*

Criminal Procedure Code, section 107—Security for keeping the peace—Evidence—Nature of findings required to justify a Magistrate in passing an order under section 107.

In proceedings under section 107 of the Code of Criminal Procedure, it is not enough for the Magistrate to find that unless the persons before him are bound over to keep the peace, there is likely to be a breach of the peace or disturbance of the public tranquillity. He has to find in respect of each and all of such persons that they are likely to commit a breach of the peace or disturb the public tranquillity, or that they are likely to do some wrongful act which may occasion such a disturbance. *Queen Empress v. Abdul Qadir (1)* and *Jagat Narain v. King-Emperor (2)* referred to.

THE facts of this case were, briefly, as follows :—

There was a controversy between the Hindu and the Muhammadan inhabitants of Najibabad concerning the route of the Dasehra procession. The Hindus were desirous of taking it by a particular route which was objectionable to the Muhammadans, and had been combining to induce the local authorities to sanction the particular route which they wanted; but the

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* Criminal Revision No. 843 of 1914 from an order of L. M. Stubbs, District Magistrate of Bijnor, dated the 8th of September, 1914.

(1) (1886) L. L. R., 9 All., 452. (2) (1910) 7 A. L. J., 1161.