

1914
September, 7.

Before Mr. Justice Piggott.

EMPEROR v. MUL CHAND*.

Criminal Procedure Code, sections 107 and 117—Security for keeping the peace—Evidence—Record of previous trial—Inquiry.

It is not competent to a Magistrate in proceedings under sections 107 *et seqg.* of the Code of Criminal Procedure to dispense with the inquiry provided for by section 117 of the Code and to base his order merely on the results of a riot case recently tried by him

THE facts of this case appear from the judgement of the lower court, which was as follows :—

“Purna, Bachchu, Beni and Mulchand have been called on to show cause why they should not execute a personal bond for Rs. 100 each for keeping the peace for one year. All except Mulchand, Patwari, are ready to give the security asked for on condition the others also give it. I have just passed orders in a riot case, *King-Emperor v. Man Singh and others*, under sections 147 and 325 of the Indian Penal Code in which Purna was the virtual complainant. In that case, it became quite clear that the patwari and Purna were bitter enemies. The written statement filed by the patwari only goes to confirm the view that the enmity exists. The patwari would have it that Purna is entirely to blame, but it takes two to make a quarrel and there is no reason suggested why the Sub-Inspector should have included his name groundlessly.”

Mul Chand applied to the High Court in revision

Pandit *Kailas Nath Katju*, for the applicant.

The Assistant Government Advocate (Mr. R. Malcomson), for the Crown.

PIGGOTT, J.—The order in this case requiring the applicant Mul Chand to furnish security to keep the peace was passed without any “inquiry as to the truth of the information upon which action had been taken,” within the meaning of section 117 of the Code of Criminal Procedure. The Magistrate referred to the result of a case tried by him in which certain persons were put on their trial on charges under sections 147 and 325 of the Indian Penal Code, as justifying the order passed by him in the present case against Mul Chand. I do not know whether Mul Chand was or was not an accused person in the riot case above referred to,

* Criminal Revision No. 658 of 1914 from an order of G. R. Dampier, District Magistrate of Muttra, dated the 18th of April, 1914.

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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