

from this very district, in which it was definitely stated that applicants in cases of this kind should come to court fortified with a valid medical certificate of insanity. In Cawnpore there are always competent lady doctors and we cannot see why the applicant was unable to have this lady put under observation by a lady doctor who could have given a valuable opinion as to her mental state.

We do not, therefore, see our way to interfere with the finding of the lower court, but, having regard to the somewhat peculiar circumstances of this case, we consider that the parties should pay their own costs, and we also, in dismissing this appeal, do so without prejudice to any further application that the applicant may choose to make, supported by a certificate from a lady doctor, based on a sufficient period of observation.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Banerji.

EMPEROR v. NIHAL AND OTHERS.*

Criminal Procedure Code, sections 55 and 112—Security for good behaviour—Order not setting forth the substance of the information received by the Magistrate—Illegality.

Merely setting out in a notice under section 112 of the Code of Criminal Procedure that a man is an habitual thief or robber and having the prosecution witnesses ready there and then to go on with the case is not the procedure contemplated by the law. In such cases where the Magistrate does not record the substance of the information received, this is more than an irregularity and will vitiate any subsequent order that may be passed. *Emperor v. Rajbansi* (1), followed.

*Criminal Revision No. 196 of 1926, from an order of H. Beatty, Additional Sessions Judge of Moradabad, dated the 22nd of February, 1926.

(1) (1920) I.L.R., 42 All., 646.

1926

TAWASSUL
HUSAIN
v.
ABRAR
HUSAIN

1926
June, 14

1926

EMPEROR
v.
NIHAL.

THE facts of the case, so far as they are necessary for the purposes of this report, appear sufficiently from the judgement of the Court.

Mr. *S. C. Goyle*, for the applicants.

The Assistant Government Advocate (*Dr. M. Waliullah*), for the Crown.

BANERJI, J. :—This is an application in revision by six persons named Nihal, Shama, Ghubbar, Mukhtar, Meda and Bhoja, who were bound over to be of good behaviour by a Magistrate of the first class of Bijnor. The procedure adopted in this case was this. On the 2nd of September, 1925, the Station Officer of Chandpur arrested under section 55 of the Code of Criminal Procedure a number of men. They were put up before a Magistrate on the 8th who directed a case to be registered and put up the next day. On the 9th of September the Magistrate first recorded an order purporting to be one under section 112 of the Code of Criminal Procedure, as follows :—

“Whereas it is brought to my notice that you the aforesaid are habitual thieves, burglars, cattle-lifters, and you associate with bad characters, you are hereby directed to show cause why you should not be directed to enter into a bond of Rs. 100 each with two sureties of Rs. 200 each to be of good behaviour for one year.”

Thereafter the case began and sixteen witnesses for the prosecution were examined then and there. The accused, fourteen in number, it appears, were represented by a mukhtar. Even then it seems to me undesirable that, where persons are arrested under section 55 of the Code of Criminal Procedure they should not be told the substance of the information against them. As observed by Mr. Justice WALSH in the case of *Emperor v. Rajbansi* (1)—

“It is impossible to lay down any standard to which such notices (under section 112) are to conform, but when the

(1) (1920) I.L.R., 42 All., 646 (648).

Legislature provided that a Magistrate should make an order in writing setting forth the substance of the information received, it certainly meant a great deal more than telling a man that he was a suspected thief, because, however substantial that expression may be as an offensive description of an individual, it gives the person alleged to be that character not the slightest intimation as to what are the grounds upon which it is based. If that notice is sufficient, all that would be necessary would be to call upon anybody in India to show cause on the mere statement that he was suspected by the police to be an habitual thief, but the procedure clearly requires something in the nature of an indictment or charge containing substantial particulars indicating the grounds upon which the police have given information to the Magistrate."

It is, in my opinion, clear that merely setting out in a notice under section 112 of the Code of Criminal Procedure that a man is an habitual thief or robber, and having the prosecution witnesses ready there and then to go on with the case is not what the Legislature contemplated. However guilty a man may be, he is entitled, in my opinion, to a trial which is not a sham but a real trial, where the accused knows something about what is happening to him. I am, therefore, of opinion that the action of the Magistrate in not recording the substance of the information he had received does not amount to a mere irregularity which would be covered by section 537 of the Code of Criminal Procedure as argued by the learned Assistant Government Advocate. The learned Sessions Judge, no doubt, states that the notice was very vague, but he goes on to say that it was read and explained to the accused, and as there was a fuller police report on the record, which must have come to the notice of the accused or their mukhtar, he did not think there was any force in the argument adduced on behalf of the petitioners in the court below.

For these reasons I am of opinion that the order passed against the accused binding them over is bad

1926

 EMPEROR
 v.
 NATHAL.

1926
EMPEROR
v.
NETHAL.

in law. I set aside the order of the Magistrate binding over the six applicants, dated the 12th of October, 1925. If the district authorities are of opinion that action should be taken against them, proceedings must be taken according to law.

Order set aside.

FULL BENCH.

*Before Mr. Justice Walsh, Mr. Justice Daniels and
Mr. Justice Boys.*

1926
June, 3,
15.

RAM SAHAI SINGH (APPLICANT) v. DEBI DIN (OPPOSITE PARTY).*

Act (Local) No. II of 1903 (Bundelkhand Alienation of Land Act), sections 9 and 16—Mortgage—Simple mortgage between members of same agricultural tribe—Validity of mortgage—Remedy of mortgage.

A simple mortgage of land to which the Bundelkhand Alienation of Land Act, 1903, applies is not illegal if made between members of the same agricultural tribe, although, by reason of section 16 of the Act the security cannot be sold.

So held by WALSH and DANIELS, JJ., BOYS, J., dissenting.

Bishnath v. Bharosa (1), *Jaswant Rao v. Kashinath Rao* (2) and *Bishnath Singh v. Basdeo Singh* (3), referred to.

THIS was a reference to the High Court under section 113 of the Code of Civil Procedure made by the Additional Subordinate Judge of Banda. The case was sent to a Bench of three Judges by order of the CHIEF JUSTICE. The facts of the case and the

* Civil Miscellaneous No. 297 of 1926.

(1) Miscellaneous Case No. 634 of (2) (1925) A.I.R., All., 253; 86 1925, decided on the 26th of Indian Cases, 208. November, 1925.

(3) (1925) I.L.R., 48 All., 67.