

**CRIMINAL REFERENCE.**

*Before James and Agarwala, JJ.*

K. T. KESHAN

1933.

February,  
21.

v.

KING-EMPEROR.\*

*Code of Criminal Procedure, 1898 (Act V of 1898), sections 209, 253 and 446(1)—commitment, whether can be made without recording evidence for prosecution.*

Before the Magistrate makes a commitment under section 446(1), Code of Criminal Procedure, 1898, he must consider whether there are grounds for discharging the accused under section 209 or section 253 of the Code.

No one for or against the reference.

JAMES AND AGARWALA, JJ.—The Subdivisional Magistrate of Begusarai has in this case made a commitment to the Court of Sessions under section 446 of the Code of Criminal Procedure, without holding any preliminary inquiry under Chapter XVIII of the Code. Before the Magistrate makes a commitment under section 446(1), Code of Criminal Procedure, he must consider whether there are grounds for discharging the accused under section 209 or section 253 of the Criminal Procedure Code; and he cannot do this without taking the evidence for the prosecution.

The commitment is therefore quashed, and the case is remanded to the Subdivisional Magistrate for inquiry preliminary to commitment, on the completion of which he will be in a position to say whether the accused ought to be discharged or committed for trial.

*Reference accepted.*