

they will humbly advise His Majesty that, subject to the recommendation below, the decree of the High Court of the 17th May 1897 ought to be affirmed and this appeal dismissed. And they will further humbly recommend His Majesty to make a declaration that the four mouzahs in question are self-acquired property and to remit the suit to the High Court with directions to try or cause to be tried any issues which may be raised by the parties to the suit or any one or more of them for the purpose of having determined any question consequent on the declaration, more especially as to the right to the four mouzahs or to maintenance out of the impartible estate.

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COUNCIL.
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29 C. 433.

The appellants will pay the first respondent (who alone appeared in England) three-fourth parts of his costs of the appeal.

Solicitors for the appellants: *T. L. Wilson & Co.*

Solicitors for the respondent: *Miller, Smith & Bell.*

29 C. 455.

[455] CRIMINAL REVISION.

Before Mr. Justice Harington and Mr. Justice Gupta.

PANCHOO GAZI v. EMPEROR.* [14th November, 1901.]

Security for good behaviour—Surety bond—Acceptance by Subordinate Magistrate of bond—Cancellation of such bond by District Magistrate—Jurisdiction—Criminal Procedure Code (Act V of 1898) ss. 110 and 125.

Where the security bond of the petitioner, who had been bound over to be of good behaviour, and the surety bonds of his sureties had been accepted by the Sub-divisional Magistrate, and the District Magistrate on receiving a police report, stating that one of the sureties "was not at all a man of substance to stand surety for Rs. 100, he cannot be entrusted to stand surety of a bad character," cancelled the security bond of the petitioner under s. 125 of the Code of Criminal Procedure.

Held, the order of the District Magistrate was made without jurisdiction.

THE petitioner Panchoo Gazi obtained a rule calling upon the District Magistrate of the 24 Pergunnahs to show cause why his order dated the 8th August 1901, made under s. 125 of the Code of Criminal Procedure, should not be set aside on the ground that it was made without jurisdiction.

By an order dated the 13th December 1900 the Sub-divisional Magistrate of Basirhat directed Panchoo Gazi and certain others to execute a bond for Rs. 100 each with one surety for the same amount for their good behaviour for one year; in default each to be rigorously imprisoned for one year or until the bonds were executed and the sureties found. Panchoo Gazi executed the necessary bond, and Hanip Gazi and another executed surety bonds for Panchoo Gazi.

On the report of the police the Sub-divisional Magistrate accepted them as sureties and also their surety bonds.

On the 10th July 1901 the Sub-Inspector of Police made the following report to the District Magistrate of the 24-Pergunnahs:—

"I have the honour to report that one Panchoo Gazi of Saistanagore was ordered to furnish surety to maintain good conduct for a year. He adduced [456] Hanip Gazi as his surety, who is his accomplice. This Hanip Gazi was once before prosecuted under s. 110 of the Criminal Procedure Code along

* Criminal Revision Nos. 877—881 of 1901, made against the order passed by F. F. Lyall, Esq., District Magistrate of 24, Pergunnahs, dated the 8th of August 1901.

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with the bad characters in question. He is not at all a man of substance to stand surety for Rs. 100. He cannot be entrusted to stand surety of a bad character. A good man of substance may be permitted to stand bail for him, who may exercise sufficient control over the bad character, and thereby the bad character may change his former character."

On the 8th August 1901 the District Magistrate passed the following order:—

"Under s. 125 I cancel the surety bond given by Hanip Gazi for the reasons given in this report with effect from the date on which the accused is arrested.

"Issue warrant of arrest against Panchoo Gazi to undergo rigorous imprisonment for the remainder of the term he was ordered to furnish security in the event of his failing to furnish a satisfactory surety."

Babu *Bepin Chandra Mullick* for the petitioner.

The Deputy Legal Remembrancer (Mr. Leith) for the Crown.

HARINGTON AND GUPTA, JJ. In this case a rule was granted calling upon the District Magistrate to show cause why an order made under s. 125 of the Code of Criminal Procedure should not be set aside on the ground that it was made without jurisdiction. It appears that the petitioner had been bound over in what is usually known as a bad livelihood case to be of good behaviour. The District Magistrate, purporting to act under s. 125 of the Code of Criminal Procedure, cancelled the security bond on a report which he received from the police, and ordered that the petitioner should be imprisoned, until a fresh security bond should be given. The Magistrate was not entitled to make that order under s. 125. Accordingly the rule must be made absolute and the Magistrate's order set aside.

The rules granted in cases Nos. 878, 879, 880 and 881 of 1901 are made absolute for the same reason.

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Rules made absolute.

29 C. 457.

[457] *Before Mr. Justice Prinsep and Mr. Justice Stephen.*

GIRISH CHUNDER GHOSE v. EMPEROR.* [31st January, 1902.]

Complaint—Complaint accusing several persons—Proceedings, institution of, against one—Conviction—Refusal by Magistrate to proceed against other persons accused—Dismissal of complaint—Further enquiry—Notice—Criminal Procedure Code (Act V of 1898) ss. 203 and 437.

A complaint was made to a Magistrate charging several persons with the commission of an offence. The Magistrate instituted proceedings only against one of them, and after his conviction refused to issue processes against the others. On application by the complainant the Sessions Judge under s. 437 of the Criminal Procedure Code directed a further inquiry into the matter without notice to the other persons accused.

Held, that the refusal by the Magistrate to issue processes was an order of dismissal of the complaint within the meaning of s. 203 of the Code in regard to which a further inquiry could be made.

Held, further, that it is not necessary that notice should issue to a person accused of an offence before an order can be properly passed under s. 437 of the Criminal Procedure Code directing a further inquiry into a matter which has terminated in the summary dismissal of a complaint under s. 203 of the Code in the absence of any person excepting the complainant.

Hari Dass Sanyal v. Saritulla (1) discussed.

* Criminal Revision No. 713 of 1901, made against the order passed by G. K. Deb, Esq., Sessions Judge of Burdwan, dated the 6th of July 1901.

(1) (1888) I. L. R. 15 Cal. 608.