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29 C. 389.

district. We have examined the *Calcutta Gazette* in which the appointment of this Magistrate was notified, and we can find no such restriction. Under such circumstances the Deputy Magistrate had jurisdiction over the entire district and had jurisdiction to institute this proceeding, if it were necessary to consider this as a fresh proceeding, which is doubtful. At all events, the objection fails and the Rule must be discharged.

*Rule discharged.*

29 C. 392.

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

ALIMUDDIN HOWLADAR v. EMPEROR.\* [5th February, 1902.]

*Security for good behaviour from habitual offenders—Proceedings instituted by Magistrate on his own knowledge or suspicion—Transfer, right of accused to a—Criminal Procedure Code (Act V of 1898) ss. 110, 117 and 191.*

Where a Magistrate has framed a proceeding under s. 110 of the Criminal Procedure Code against a party and has proceeded in some measure, if not mainly, on his own knowledge of the character of that party, such Magistrate is not a proper person to proceed with the trial under s. 117 of the Code and inquire into the truth of the information upon which action has been taken.

IN this case the Sub-Inspector of Police at Bhandaria submitted a report to the Sub-divisional Officer of Pirojpur, wherein he suggested that the present petitioners, Alimuddin Howladar and another, might be bound down to keep the peace under s. 107 of the Criminal Procedure Code. The Sub-divisional Officer, however, knowing the petitioners' antecedents, of his own accord on the 7th July 1901 framed proceedings against them under s. 110 of the Code in the following words:—

"Whereas it appears from the report of the Sub-Inspector of Police, Bhandaria, and also from my knowledge of previous cases that the above mentioned persons have been habitually committing offences involving a breach of the peace, and they are so desperate and dangerous as to render their being at large without security hazardous to the community, they are called upon to appear before the District Magistrate to show cause why they should not be ordered to execute a bond for Rs. 800 each with two sureties each for the same amount, for their good behaviour for three years."

The petitioners thereupon applied under s. 191 of the Code to be tried by another Magistrate. The case was then submitted to the District Magistrate, who on the 16th August 1901 passed the following order:—

"S. 191 of the Criminal Procedure Code has no application; it relates to offences. The Sub-divisional Officer is quite competent to dispose of the present case."

Babu *Dasarathi Sanyal* for the petitioners.

[393] PRINSEP and STEPHEN, JJ. This Rule must be made absolute.

Although the law does not expressly provide for a case such as the present, which is under s. 110, Chapter VIII of the Criminal Procedure Code, in the same manner as s. 191 declares the course to be taken when a Magistrate has taken cognizance of an offence upon his own knowledge or suspicion, still the principle holds good that no man ought to be a Judge in his own cause. In the proceeding in which action was taken under s. 110 the Magistrate records:—

"Whereas it appears from the report of Babu Kristo Chandra Chandra, Sub-Inspector, Bhandaria, also from my knowledge of previous cases, that the above-mentioned persons have been habitually committing offences involving a breach of

\* Criminal Revision No. 921 of 1901, made against the order passed by C. C. Chatterjee, Esq., Deputy Magistrate of Pirojpur, dated the 21st of July 1901.

the peace, etc., and they are so desperate and dangerous as to render their being at large without security hazardous to the community, they are called upon to show cause why they should not be bound over for their good behaviour."

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The Magistrate therefore has proceeded in some measure, if not mainly, on his own knowledge of the character of the petitioner, and he was in our opinion therefore not a proper person to proceed with this trial by, to use the words of s. 117, inquiring "into the truth of the information upon which action has been taken." The case therefore must be transferred to some other Magistrate. We accordingly direct that the proceedings be transferred to the District Magistrate to be dealt with by himself or to be transferred to some other competent Magistrate in the district.

*Rule made absolute.*

29 C. 393.

*Before Mr. Justice Prinsep and Mr. Justice Stephen.*

KINOO SHEIKH v. DARASTULLAH MOLLAH.\* [5th February, 1902.]

*Security for keeping the peace—Order—Omission of express finding as to commission of offence within the section—Illegality—Jurisdiction—Criminal Procedure Code (Act V of 1898) ss. 106 and 423—Penal Code (Act XLV of 1860) s. 379.*

Where a Subordinate Magistrate convicted the prisoner under s. 379 of the Penal Code of theft and the District Magistrate on appeal merely [394] affirmed the conviction and added to his judgment an order under s. 106 of the Criminal Procedure Code binding over the petitioner to keep the peace—

*Held*, that he was not competent to pass such an order except on an express finding that the petitioner had committed an offence within the terms of s. 106.

THE petitioner Kinoo Sheikh obtained a Rule calling upon the District Magistrate of Jessore to show cause why the order passed on the 30th July 1901 binding over the petitioner to keep the peace should not be set aside on the ground that it was made without jurisdiction.

The accused was convicted by a Subordinate Magistrate of theft under s. 379 of the Penal Code for having cut and carried away certain crops belonging to the complainant.

On appeal to the District Magistrate the conviction was affirmed in the following words:—

"The Lower Court decides rightly on the oral evidence that the complainant was in possession. I agree with his finding and support the conviction. The appeal is dismissed."

And the District Magistrate added to his judgment an order under s. 106 of the Criminal Procedure Code binding over the petitioner to keep the peace.

Mr. K. N. Sen Gupta and Babu Monmotho Nath Mukerjee for the petitioner.

PRINSEP and STEPHEN, JJ. The Subordinate Magistrate convicted the petitioner of theft in cutting and carrying away crops belonging to the complainant. The District Magistrate, on appeal, expresses himself thus—

"The Lower Court decides rightly on the oral evidence that the complainant was in possession. I agree with his finding and support the conviction. The appeal is dismissed."

\* Criminal Revision No. 864 of 1901, made against the order passed by A. G. Hallifax, Esq., District Magistrate of Jessore, dated the 30th of July 1901.