

1902
MARCH 5.

CRIMINAL
REVISION.

30 C. 121.

[121] CRIMINAL REVISION.

DAULAT SINGH v. BRINDA BELDER.* [5th March, 1902.]

Process—Process to compel attendance of witness, issue of—Refusal to compel attendance of such witness—Magistrate, discretionary power of—Summons, case—Criminal Procedure Code (Act V of 1898) s. 244.

There is no discretionary power given in summons-cases to a Magistrate by s. 244 of the Criminal Procedure Code to refuse to compel the attendance of a witness, upon whom the Court has already issued process.

THE petitioners, Daulat Singh and others, obtained a Rule calling upon the District Magistrate to show cause why the order of the Magistrate refusing to issue fresh processes for the attendance of the witnesses cited by the accused and served with summonses should not be set aside and the proceedings reopened.

The petitioners were charged and convicted under s. 143 of the Indian Penal Code by the Deputy Magistrate of Maldah, on the 1st November 1901, and sentenced to pay a fine each. On the same day before the case was called on, an application was filed on behalf of the accused, praying for the issue of warrants or fresh summonses for the attendance of eight of the material witnesses on behalf of the defence, who did not appear in Court, although duly served with summonses, but the Deputy Magistrate rejected their application and convicted them.

Babu *Samatul Chandra Dutt* for the petitioners. S. 244 of the Code of Criminal Procedure applies only to cases where the accused applies for the issue of processes to compel the attendance of witnesses, who have not been summoned before, and not to cases of this description. Here the Court has already issued processes, which have been served on the witnesses, and they have failed to appear. They are in contempt. The Court, I submit, is bound to enforce the carrying out of its own orders, and to compel these witnesses to attend, and has no discretion whatever in the matter.

[122] STEVENS AND HARRINGTON, JJ. This Rule was issued to show cause why the order of the Magistrate refusing to issue fresh processes for the attendance of the witnesses who had been cited by the accused and served with summonses should not be set aside and the proceedings reopened.

The Deputy Magistrate who tried the case, has submitted an explanation. He explains that as the case was a petty summons-case and had been pending for some time, it was not thought fit to allow any more processes under the discretionary power given in section 244 of the Criminal Procedure Code.

We think that there is no discretionary power given by section 244 of the Criminal Procedure Code to refuse to compel the attendance of a witness, upon whom the Court has already issued process.

The conviction is set aside, and the case will be reopened and decided afresh after compelling the attendance of the witnesses in question, and taking and considering their evidence. In the meantime the fines, if levied, or so much thereof as may have been levied, must be refunded.

* Criminal Revision No. 1901, against the order passed by Babu Suresh Chandra Chatterjee, Deputy Magistrate of Maldah, dated the 1st of November 1901.