

Before Mr. Justice E. Jackson and Mr. Justice Mitter.

IN THE CASE OF KALIKANT ROY CHOWDHRY, PETITIONER.*

1869
Sept. 21.

Forfeiture of Recognizance—Evidence to be taken in Presence of the Accused.

Before a Magistrate can declare that recognizances to keep the peace have been forfeited, he must record legal evidence in the presence of the accused, proving that he was about to do something which would cause a breach of the peace.

JACKSON, J.—This is an application to this Court to revise the proceedings of the Magistrate of Dacca, passed against the applicant Kalikant Roy Chowdhry. Both the orders passed by the Magistrate are dated 14th of June 1869. In one of them the applicant was ordered to forfeit his recognizances for Rupees 1,000, which he was ordered to pay, or, on failure, to suffer imprisonment for a period of six months. By the other, he was required to furnish security to the extent of rupees 5,000 to keep the peace for 20 months. The period of 20 months appears from a proceeding of the Sessions Judge to have been since changed to one year. The Magistrate has recorded in his decision the grounds upon which he has passed those orders.

It is enough to say that from that decision it is quite clear, that no evidence was recorded in the presence of the accused before those orders were passed upon him. The accused was called upon to show cause why his recognizances should not be forfeited. He appeared and did show cause. If the Magistrate still considered that the recognizances should have been forfeited, it was his duty to record the evidence upon which it was proved that the accused had acted in such a way that it became necessary to forfeit those recognizances for rupees 1,000. There must be a regular judicial trial and legal enquiry before such punishment can be inflicted. Similarly, it has been lately held by a Full Bench of this Court, that even before recognizances are required from any person from whom a breach of the peace is apprehended, there must be some evidence before the Magistrate that such breach of the peace is likely to occur.

It may be that a defendant may make certain admissions, upon which the Magistrate can assume that a breach of the peace is likely to occur, and in such case the Magistrate might act upon such admission. But where the accused denies the charge, it is incumbent upon the Magistrate to record the legal evidence, proving that he was about to do something which would cause a breach of the peace, before recognizances or security can be taken from him.

In this case the Magistrate has taken certain depositions out of another trial, and has placed those depositions on the record of this trial as evidence against the accused. But they are manifestly no legal evidence against him: they were not taken in his presence, or in the presence of any mookhtear duly autho-

* Revision of Proceedings under section 404 of the Code of Criminal Procedure.

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rized by him on this trial. The Magistrate states that they were taken in the presence of mookhtears employed by the defendant. But they were taken long before the defendant was called upon to answer the charge, and not taken upon this trial. Such depositions therefore cannot be any evidence whatever against the accused.

If the defendant has really forfeited his recognizances, the Magistrate must take evidence upon the point, and pass orders upon him. He must proceed in the same way if it is necessary to take further recognizances from the defendant.

The orders now passed by the Magistrate dated 14th June 1869 are reversed.

MITTER, J.—I concur.
