

CRIMINAL REVISION.

Before Mr. Justice O'Keenly and Mr. Justice Jenkins.

IN THE MATTER OF JHOJHA SINGH (PETITIONER) *v.* QUEEN-EMPRESS
(OPPOSITE PARTY).*

1896
October 2.

Security for good behaviour—Criminal Procedure Code (Act X of 1882), sections 110 and 123—Power of Sessions Judge to remand—Taking further evidence—Conditions and limitations imposed upon persons required to give security.

Under section 123 of the Criminal Procedure Code a Sessions Judge is not competent to remand a case for further inquiry. Such evidence as he may require he must take himself.

No conditions and limitations can be imposed upon persons ordered to give security under section 118 of the Code.

IN this case the petitioner was ordered by the Deputy Magistrate of Gya to execute a bond with sureties for his good behaviour for a period of three years. By his order the Magistrate required the sureties to be persons of adequate means, position, and respectability residing in the neighbourhood of the petitioner and able to exercise a control over his behaviour. The records of the case were submitted to the Sessions Judge for confirmation of the above order under section 123 of the Criminal Procedure Code, and the Sessions Judge refused to confirm the order upon the materials on the record, and remanded the case to the Deputy Magistrate for further inquiry. The Deputy Magistrate having examined additional witnesses and otherwise carried out the directions of the Sessions Judge re-submitted the records of the case to him, and he thereupon confirmed the order of the Deputy Magistrate. The petitioner moved the High Court and obtained a rule upon the ground that under section 123 of the Criminal Procedure Code the Sessions Judge was not empowered to remand the case to the Deputy Magistrate to take additional evidence, and that the conditions and limitations imposed upon persons who might become sureties were not recognized by the law.

Babu *Dasarathi Sanyal* appeared on behalf of the petitioner.

* Criminal Revision No. 542 of 1896 against the order of Mr. H. Holmwood, Sessions Judge of Gya, dated 16th April 1896.

1896

IN THE
MATTER OF
JHOJAH
SINGH
v.
QUEEN-
EMPRESS.

The judgment of the High Court (O'KINEALY and JENKINS, JJ.) was as follows :—

This is a rule calling upon the Magistrate of the District of Gya to show cause why the order of the Sessions Judge of that district under section 123 of the Code of Criminal Procedure remanding a case under that section for further inquiry by the Deputy Magistrate should not be set aside, on the grounds, *first*, that under section 123 the Judge was not competent to remand the case to the Deputy Magistrate to take evidence ; and, *secondly*, that the conditions and limitations imposed upon persons who may have to give security are not recognized by the law.

Under section 123 the Judge, if he thinks it proper, after examining the proceedings sent to him by the Magistrate, may require any further evidence that he thinks necessary, before passing orders on the case. Ordinarily where a Court requires further evidence, that evidence must be taken by the Court itself. Under the Code where a higher Court has power to direct an inferior Court to take evidence, specific powers are given. This may be seen by comparing sections 123, 375 and 428 of the Code. In this case no such specific powers are given, and we think that the Judge has no power to remand such a case to the Deputy Magistrate.

The second point on which the rule was granted is answered by the Magistrate of Gya himself in the following words : The limitations imposed by the Deputy Magistrate with respect to sureties do not prevent the petitioner from offering any person as surety, but simply convey to him an intimation as to the class of persons, who in the opinion of the Deputy Magistrate should be offered as sureties.

We are not now deciding whether the applicant in this case was prevented by the order of the Deputy Magistrate from offering any person he thought fit as surety. What we are deciding is whether the order of the Deputy Magistrate is right or wrong ; and we think that if the Magistrate had directed his attention to that part of the rule and not changed it into one regarding the powers of the applicant, he would have done well.

We think that the order of the Sessions Judge is wrong on both points. We make the rule absolute, and direct that the case be taken up by the Sessions Judge and re-tried. Such evidence as he may require he must take himself.

S. C. B.

1896
 IN THE
 MATTER OF
 HOJAH
 SINGH
 v.
 QUEEN-
 EMPRESS.

Before Mr. Justice Macpherson and Mr. Justice Banerjee.

GONESH CHUNDER SIKDAR (PETITIONER) v. QUEEN-EMPRESS ON
 THE PROSECUTION OF KAMINI MOHUN SEN, SUB-INSPECTOR OF
 EXCISE (OPPOSITE PARTY.)^a

1896
 Sept. 8.

*Bengal Excise Act (Bengal Act VII of 1878), section 53—Spirituous Liquor—
 Medicinal preparation containing alcohol.*

The term "spirituous liquor" in section 53 of the Excise Act (Bengal Act VII of 1878) is not intended to include a medicinal preparation merely because it is a liquid substance containing alcohol in its composition. The case would be different if alcohol were manufactured separately for the purpose of being used in the preparation of a medicine.

THE petitioner, who was a *kobiraj* by profession, was convicted by the Deputy Magistrate of Goalundo under section 53 of the Excise Act (Bengal Act VII of 1878) for manufacturing, by the process of fermentation, a medicinal preparation called *sanjivani sura*, without a license, and was sentenced to pay a fine of Rs. 15. He moved the High Court to set aside the conviction and sentence on the ground that his act did not constitute any offence under section 53 of the Excise Act.

Babu *Sarat Chundra Khan* for the petitioner argued that the object of the accused was to prepare a medicinal preparation, to be used for medicinal purposes, and not to be consumed as a spirituous liquor.

The *Deputy Legal Remembrancer* (Mr. *Gordon Leith*) for the Crown.—The object of the preparation is immaterial; the process resorted to by the accused was the usual process employed for extracting alcohol, and the result showed the presence of a considerable quantity of alcohol. A spirituous liquor has been manufactured, and that is sufficient to make out an offence under section 53 of the Excise Act.

^a Criminal Revision No. 335 of 1896 against the order of Babu *Rajoni Nath Chatterjee*, Deputy Magistrate of Goalundo, dated the 8th May 1896.