

Before Mr. Justice Prinsep and Mr. Justice Stephen.

1902
Feb. 6.

ALIMUDDIN HOWLADAR

v.

EMPEROR.*

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 Subdivisional 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 Subdivisional 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 abovementioned 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. 300 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 Subdivisional Officer is quite competent to dispose of the present case."

Babu Dasarathi Sanyal for the petitioners.

* 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.

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 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.”

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.

D. S.

Rule made absolute.

Before Mr. Justice Prinsep and Mr. Justice Stephen.

KINOO SHEIKH

v.

DARASTULLAH MOLLAH.*

1902
Feb. 5.

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 affirmed the conviction

* 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.