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of the Criminal Procedure Code, of Tilak Chand Borad and of Tilak Chand, were sent for but no order was passed stating that the Court did not think it expedient in the interests of justice to furnish him with a copy, we think that the learned Sessions Judge should himself send for and consider the statements of these two witnesses and, if he finds that there is anything in them upon which the petitioner would be advantaged by being allowed to cross-examine thereon, he should also re-summon those witnesses and submit them for cross-examination after supplying copies of their statements to the petitioner.

We, therefore, make the Rule absolute in these terms, and remit the case to the same learned Sessions Judge of Alipore for re-hearing the appeal.

The petitioner will remain on the same bail.

Rule absolute.

E. H. M.

CRIMINAL REFERENCE.

Before Mr. Justice Carnduff and Mr. Justice Doss.

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Feb. 12.

SALIGRAM SINGH

v.

EMPEROR.*

Surety bond—Liability of Surety on forfeiture of bond by Principal—Recovery of amounts of the bonds from both Principal and Surety—Criminal Procedure Code (Act V of 1908), s. 514 and Sch. V, Form XI.

Upon the forfeiture of a bond by a person to keep the peace for a term, the surety is liable to pay the amount specified in his bond in addition to the penalty paid by the principal.

Emperor v. Nga Kaung (1) dissented from.

The object of requiring a surety to such a bond is not to ensure the recovery of the amount of the bond from the principal, but to serve as an additional security for his keeping the peace.

Queen-Empress v. Rahim Bakhsh (2) referred to.

*Criminal Reference No. 234 of 1908, by C. W. E. Pittar, Sessions Judge of Patna, dated Nov. 27, 1908.

(1) (1905) U. B. R. 31;

(2) (1898) I. L. R. 20 All. 206.

2 Cr. L. J. Ind. 463.

IN a proceeding under section 107 of the Code of Criminal Procedure, 1898, one Saligram Singh was bound down, in the sum of Rs. 100, to keep the peace for one year, and the petitioner, Kuldip Singh, bound himself as surety, in the sum of Rs. 50, that the former would not commit a breach of the peace or do any act that might probably occasion a breach of the peace during the term of the bond, and that, in case of his (Saligram's) making default therein, he (Kuldip) would forfeit to His Majesty the sum of Rs. 50. Saligram's bond was declared to be forfeited by the Sub-divisional Officer of Dinapore, on the 9th September, 1908, and both the petitioners were ordered to pay the amounts of their respective bonds. They appealed against the order to the District Magistrate who summarily rejected the appeal, on the 24th September, under section 515 of the Criminal Procedure Code, without considering the objection of the petitioner, Kuldip, that the lower Court was wrong in requiring a double penalty, Saligram having paid the amount of his bond.

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The Sessions Judge of Patna, by his letter dated the 27th November, referred the case to the High Court under section 438 of the Code, recommending the reversal of the order of the District Magistrate on the ground that the point raised by Kuldip was worthy of consideration, and had not been dealt with by the Appellate Court. He referred to *Emperor v. Nga Kaung* (1).

No one appeared in the case.

CARNDUFF AND DOSS JJ. This is a reference made by the Sessions Judge of Patna which raises the question of the extent of the liability of a person who has stood surety for another bound down to keep the peace. It appears that one Saligram Singh was required by the Sub-divisional Magistrate of Dinapore to execute a bond for Rs. 100 under section 107 of the Code of Criminal Procedure, and that the petitioner, Kuldip, stood as his surety in the sum of Rs. 50. The bond was declared forfeit by the Sub-divisional Magistrate, who

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ordered the principal and the surety to pay the sums of Rs. 100 and Rs. 50 respectively. Against this order an appeal was preferred before the District Magistrate under section 515 of the Code, and was summarily rejected. One of the grounds taken on the appeal was that the Sub-divisional Magistrate was wrong in inflicting a "double penalty," the contention being that, as the principal had paid, there ought to have been no realisation from the surety. The learned Sessions Judge has recommended that the District Magistrate's order be set aside on the ground that he has not considered the point above stated. He has himself refrained from expressing any opinion upon it, but has referred to the decision in the case of *Emperor v. Nga Kaung* (1) which appears to have been decided in Upper Burma in 1905.

Primâ facie, no doubt, a surety merely agrees to pay the creditor failing the debtor, and his liability is, as a rule, co-extensive with that of the principal. But this is not a case of ordinary suretyship for the payment of money. As pointed out by Edge, C.J., in *Queen-Empress v. Rahim Bakhsh* (2), the object of these provisions of the Code is to prevent crime, and not to obtain money for the Crown. It is not, as in the case of, for example, an administration bond with sureties, the object to secure the payment of money or the avoidance of pecuniary loss. Hence it is provided in section 118 of the Code that the amount of every bond demanded under these provisions shall be fixed with due regard to the circumstances of the case and shall not be excessive, while in section 106 it is expressly directed that the amount of the principal bond shall be proportionate to the means of the person bound down. That being so, it is obvious that the power to require sureties must have been given with some object other than that of ensuring the recovery of the amount of the bond; in other words, an additional security for the principal's keeping the peace, not a surety for his paying forfeit, is demandable.

(1) (1905) U. B. R. 31 ;

(2) (1898) L. L. R. 20 All. 206;

2 Cr. L. J. Ind. 463.

This view is supported by the form of the bond actually executed in this instance. Saligram Singh "bound himself not to commit a breach of the peace or do any act that might probably occasion a breach of the peace during the term of one year," and, "in case of his making default therein," to "forfeit to His Majesty the sum of Rs. 100." The petitioner, Kuldip, next "bound himself surety for Saligram Singh that he (Saligram) should not commit a breach of the peace or do any act that might probably occasion a breach of the peace during the said term, and, in case of his (Saligram's) making default therein, to forfeit to His Majesty the sum of Rs. 50." This is the form set forth as Form XI in the Fifth Schedule to the Code, and from its terms it seems to us to be clear that Kuldip bound himself to forfeit Rs. 50 in the event of Saligram's failing to keep the peace during the period fixed.

The conclusion at which we have arrived, therefore, is that the Sub-divisional Magistrate was right; and, in these circumstances, we think it unnecessary to send the case back for disposal by the District Magistrate as the first appellate authority. In the result, then, we decline to interfere.

E. H. M.

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