

CRIMINAL REVISION.

Before Mr. Justice Rampini and Mr. Justice Sharfuddin.

1908

April 28.

RAM CHANDRA HALDAR

v.

EMPEROR.*

Security to keep the peace—Order passed on consent of a party to be bound down without evidence taken—Criminal Procedure Code (Act V of 1898) ss. 107, 117.

The proceeding under section 107 of the Criminal Procedure Code is a precautionary measure and not a trial for an offence, and in such a proceeding no one should be bound down, unless it is shown that he is about to commit a breach of the peace.

Where, therefore, a person, called upon to show cause why he should not be bound down under the section, appeared before the Magistrate and agreed to be bound down, whereupon the Magistrate directed him to execute a bond without taking any evidence at all.

Held, that the order was illegal.

UPON the receipt of the report of a Sub-Inspector of Police, dated the 20th August 1907, that there was a dispute likely to cause a breach of the peace between the petitioner and Korimuddee and others regarding certain land, the Sub-divisional officer of Perozpur drew up a proceeding under s. 145 of the Criminal Procedure Code, which he, however, ultimately dropped. He then instituted a proceeding under s. 107 of the Code against the parties. On the day of hearing the parties appeared before him, when he discharged the party of Korimuddee.

The petitioner thereupon intimated to the Court that he was a poor man and had very little hope of getting any benefit by fighting the case, and that he, therefore, agreed to be bound down.

The Magistrate then, without taking any evidence, bound him down by his order dated the 27th November 1907.

* Criminal Revision No. 255 of 1908, against the order of J. R. Blackwood, Additional Magistrate of Backergunge, dated the 23rd of December, 1907.

Against this order the petitioner filed a motion before the District Magistrate of Backergunge, who dismissed the application on the 23rd December 1907.

The petitioner then moved the High Court for a Rule to set aside the order binding him down, on the grounds; *first* that, inasmuch as there was no finding as to any apprehension of a breach of the peace on the part of the petitioner, the said order was unjustifiable, *secondly*, that the dispute being of a civil nature any interference by the Criminal Court was illegal, and *thirdly*, that the Magistrate acted without jurisdiction in passing the said order without taking any evidence whatsoever.

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Mr. Mahmoodul Haq (with him *Babu Monmotho Nath Mukerjee*) for the petitioner. The order of the Magistrate is illegal. He can pass an order under s. 107 of the Code only when there is a likelihood of a breach of the peace. He took no evidence on the point. The mere consent of a person to be bound down is not sufficient to justify an order under the section in the absence of evidence showing a likelihood of a breach of the peace.

RAMPINI AND SHARFUDDIN JJ. This is a Rule calling upon the District Magistrate to show cause why the order complained of should not be set aside on the first and third grounds mentioned in the petition. The order complained of is one binding down the petitioner under section 107 of the Criminal Procedure Code. When the proceedings were instituted against the petitioner, he appeared and, as the Magistrate records, agreed to be bound down. He said he was a poor man and he had very little expectation of getting any benefit by fighting the case. He, therefore, agreed to be bound down.

There was an appeal to the Additional Magistrate and he says "The learned pleader, who appeared for the petitioner before me, urged that, as no evidence was taken, the binding down is illegal. It seems to me, however, that the case is a clear one, and it is the duty of the Criminal Court, at least in my opinion, to come to a finding, which will be fair to the parties and maintain rights, which they really possess." It appears to us that the proceeding

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of the Magistrate was illegal, because no evidence was taken. There was no evidence to show that the petitioner was about to break the peace. It is true that the petitioner agreed to be bound down. But that does not make him guilty.

The proceeding under section 107 of the Criminal Procedure Code is a precautionary measure and not a trial for an offence, and in such a proceeding no one should be bound down, unless it is shewn that he is about to commit a breach of the peace.

We, therefore, make the Rule absolute.

Rule absolute.

E. H. M.