

CRIMINAL REVISION.

Before Mr. Justice Rampini and Mr. Justice Sharfuddin.

1908
 Jan. 17.

ADAM SHEIKH

v.

EMPEROR.*

Surety, fitness of—Inability to control person bound down.

The test of the fitness of a surety is not whether he can supervise the person bound down, but whether he is a person of sufficient substance to warrant his being accepted.

Abinash Malakar v. Empress (1), *Ram Pershad v. King-Emperor* (2) followed. *Queen-Empress v. Toni* (3) and *Queen-Empress v. Rahim Bakhs* (4) dissented from.

THE petitioner was bound down on the 20th March 1907 by the Deputy Magistrate of Mymensingh, under s. 118 of the Criminal Procedure Code, to be of good behaviour in the sum of Rs. 200 with two sureties each in the like amount. Thereupon two persons, Babon Mandal of Birampur and Solim Sheikh of Chak Bistupur, offered themselves as sureties. The Magistrate directed the police to enquire into the circumstances of the proposed sureties, and, after receiving a report to the effect that they were men of substance, but that it was doubtful whether they would be able to keep the man under control, rejected them on this ground by his order dated the 16th May. An application was made against the said order to the Sessions Judge of Mymensingh, but he refused it on the 6th June.

Babu Havendra Narain Mitra, for the petitioner. The Magistrate has relied on the Allahabad rulings of *Queen-Empress v. Toni* (3) and *Queen-Empress v. Rahim Bakhs* (4). But they are

* Criminal Revision No. 1396 of 1907, against the order of A. J. Chotzuer, Sessions Judge of Mymensingh, dated June 4, 1907.


(1) (1900) 4 C. W. N. 797.

(3) (1895) All. W. N. 143.

(2) (1902) 6 C. W. N. 593.

(4) (1898) I. L. R. 20 All. 206.

opposed to the Calcutta decisions, *Abinash Malakar v. Empress* (1) and *Ram Pershad v. King-Emperor* (2), which lay down that in determining the fitness of a surety the Magistrate should look to his means, and not his ability or inability to control the action of the party bound down.

190

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No one appeared for the Crown.

RAMPINI AND SHARFUDDIN JJ. This is a Rule calling upon the District Magistrate of Mymensingh to show cause why the order of the Deputy Magistrate declining to accept the sureties offered by the petitioner should not be set aside.

The petitioner has been ordered to furnish security for good behaviour by entering into a bond for Rs 200 with two sureties for Rs. 200 each. The learned Deputy Magistrate has refused to accept the two persons who have offered themselves as sureties, namely, Babon Mandal of Birampur and Solim Sheikh of Chak Bistapur, because, in his opinion, they will not be able to control the petitioner. He has apparently relied on the spirit of two rulings of the Allahabad High Court, *Queen-Empress v. Tomi* (3) and *Queen-Empress v. Rahim Lakhsh* (4).

These are opposed to the rulings of this Court in the cases of *Abinash Malakar v. Empress* (1) and *Ram Pershad v. King-Emperor* (2). In this latter case it has been held that the question is not whether the surety can supervise the person for whom he stands surety, but whether he is a person of sufficient substance to warrant his being accepted.

We, therefore, make the Rule absolute, and setting aside the order of the Deputy Magistrate, dated the 16th May 1907, we direct that he do consider whether the two sureties named above are of sufficient substance to warrant their being accepted, and dispose of the case accordingly.

Rule absolute.

E. H. M.

(1) (1900) 4 C. W. N. 797.

(3) (1895) All. W. N. 143.

(2) (1902) 6 C. W. N. 593.

(4) (1898) I. L. R. 20 All. 302.