

CRIMINAL REVISION.

Before Mr. Justice Stephen and Mr. Justice Carnduff.

1910

Feb. 2.

JAFAR ALLI PANJALIA

v.

EMPEROR.*

Surety for good behaviour—Fitness of surety—Pecuniary qualification, but not power of control—Grounds of rejection—Criminal Procedure Code (Act V of 1898) s. 122.

In determining the fitness of a surety under s. 122 of the Criminal Procedure Code, the first matter to be inquired into is his ability to pay the amount of the bond in case of default by the principal; but there may be other matters also to be considered as grounds of objection, which must be dealt with in each case as it arises.

Where a surety is competent in a pecuniary sense, the fact that he is not in a position to exercise control over the person bound down, so as to ensure his good behaviour in future, is not a sufficient ground for his rejection.

Ram Pershad v. King-Emperor (1), *Adam Sheikh v. Emperor* (2) and *Jalil v. Emperor* (3) referred to.

ON the 8th March 1909, the petitioner was bound down to be of good behaviour in the sum of Rs. 5,000, with five sureties in the amount of Rs. 1,000 each, for two years, by Babu Panchu Gopal Mukerjee, Deputy Magistrate of Barisal. The Sessions Judge of Backergunge, on reference of the case to him under section 123 of the Code, modified the order by reducing the amount of the petitioner's bond to Rs. 2,500, with sureties not exceeding five in number, in the like total sum. On the 3rd August the petitioner surrendered before the Additional District Magistrate of Barisal, the Deputy Magistrate who had passed the original order under section 118 of the Code having been transferred, and offered five sureties in the sum of Rs. 500 each. The District Magistrate referred the question of their fitness to the Sub-Divisional Officer of Bhola who, after holding an

* Criminal Revision No. 1174 of 1909, against the order of J. N. Roy, District Magistrate of Backergunge, dated Aug. 23, 1909.

1) (1902) 6 C. W. N. 593.

(2) (1908) L. L. R. 35 Cal. 400.

(3) (1890) 13 C. W. N. 80.

inquiry in the matter and examining witnesses, submitted a report to the effect that the sureties were men of substance, from each of whom the sum of Rs. 2,500 was recoverable, that there was nothing against the character of four of them, though he had some doubt as to the fifth, as he was named by a witness during his inquiry as an associate of the petitioner in a criminal case, and as the petitioner had taken a settlement of a pound in his name, but that the petitioner was a rich and influential man in the locality, and the sureties would not be able to control him in his future conduct. On the receipt of the report the District Magistrate rejected the sureties, on the 23rd August, mainly on the ground of their inability to control the petitioner. An application against this order was made to, and refused by, the Sessions Judge of Backergunge by his order dated the 30th August. The petitioner then obtained the present rule from the High Court on the ground that there was no sufficient reason shown for refusing to accept the sureties. No objection was taken to the competency of the District Magistrate to determine the question of their fitness on the report of a Subordinate Magistrate instead of holding an inquiry himself in the matter.

Babu Gunada Charan Sen, for the petitioner. The District Magistrate was wrong in refusing to accept the sureties on the ground of their want of control over the petitioner when they were men of substance: see *Abinash Malakar v. Empress* (1), *Ram Pershad v. King-Emperor* (2) and *Adam Sheikh v. Emperor* (3). The ruling in *Jalil v. Emperor* (4) is distinguishable, as one of the sureties tendered was a member of the same gang.

The Deputy Legal Remembrancer (Mr. Orr), for the Crown, relied on *Jalil v. Emperor* (4). Section 122 of the Code does not refer only to pecuniary fitness, as section 513 shows that a person bound to be of good behaviour is not allowed to deposit the amount of the bond in lieu of the recognizance.

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

(3) (1908) I. L. R. 35 Cal. 400.

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

(4) (1890) 13 C. W. N. 89.

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STEPHEN AND CARNDUFF JJ. This is a rule calling on the District Magistrate to show cause why the securities offered by the petitioner should not be accepted. The petitioner has been ordered to be bound down under section 118 of the Criminal Procedure Code, and to find sureties for Rs. 2,500, the sureties being of such number, not exceeding five, as he may see fit. He has found five sureties, all of whom are of sufficient substance to be able to pay Rs. 2,500, but who are not, in the opinion of the Magistrate, in a position to control the petitioner sufficiently to ensure his good behaviour in future.

The question is whether the grounds on which these sureties have been refused by the Magistrate are sufficient. In our opinion they are not. In view of the judgments of this Court in the cases of *Ram Pershad v. King-Emperor* (1) and *Adam Sheikh v. Emperor* (2), it seems to be plain that the first matter to be enquired into is the ability of the sureties to pay the sums for which they become bound in case of default of the persons who are bound down. Beyond this, as is shown in the judgment in *Jalil v. Emperor* (3), there may be other matters to be considered which would be taken as objections to the sureties; as, for example, if one of a gang of thieves is offered as a surety for another. There may also be other objections to a man becoming a surety although he is pecuniarily fit for the position, but these it is not possible to specify, and such an objection must be dealt with in each case as it arises. In the present case the sureties being competent from the pecuniary point of view and no other cause of unfitness being shown, we think that they ought to be accepted. Under these circumstances, the rule is made absolute, and we order that the securities originally offered by the petitioner be accepted.

E. H. M.

Rule absolute.

(1) (1902) 6 C. W. N. 59?

(2) (1908) I. L. R. 35 Calc. 400.

(3) (1908) 13 C. W. N. 80.