
(1880) 04 AHC CK 0008

Allahabad High Court

Case No: None

Empress of India

APPELLANT

Vs

Nawab and Another

RESPONDENT

Date of Decision: April 13, 1880

Citation: (1880) ILR (All) 835

Hon'ble Judges: Straight, J

Bench: Single Bench

Judgement

Straight, J.

In this case the applicants were charged u/s 323 of the Penal Code with voluntarily causing hurt. The Magistrate, upon a careful consideration of all the evidence, acquitted them, but being of opinion that they were persons of violent and dangerous character, u/s 506 of the Criminal Procedure Code, directed them each to furnish two sureties in the sum of Rs. 500 for their good behaviour for a period of three years, or in default to undergo rigorous imprisonment for a like term. I am of opinion that this order cannot be sustained. The Magistrate has misapprehended the terms of 506, which do not apply to a case like the present, where the original charge was one of injury to the person. That section solely relates to the calling upon persons of habitually dishonest lives, and in that sense "desperate and dangerous," to find security for good behaviour, as a protection to the public against a repetition of crimes by them in which the safety of property is menaced and not the security of the person alone is jeopardised. It is not pretended that either of the applicants has been an habitual robber, housebreaker or thief, or receiver of stolen property;" on the contrary, all the convictions standing against them are for acts of violence. Entertaining this view it does not appear to me necessary to discuss the sufficiency or insufficiency of any evidence before the Magistrate, though I would remark in passing, that the mere fact of a previous conviction or of previous convictions of offences involving dishonesty, is not sufficient to justify the putting in force the powers of s. 506, unless there is some additional evidence to show, that the person complained against has done some act

or resumed avocations, that indicate upon his part an intention to return to his former course of life and to pursue a career of preying on the community. The greatest thief is entitled to a locus poenitentiae, when he has served out his punishment; it is only when he outrages that grace which is extended to him and thereby shows he is unreformed, that the machinery of the Act should be brought into operation, in order to obtain a substantial guarantee for society that he will not commit further depredations upon it. The order of the Magistrate of the 7th February last must be quashed. But upon a consideration of all the circumstances of the case I think it right to direct that this record be forwarded to the Magistrate of the District for his consideration, in order that he may, should it appear to him proper to do so, himself take steps u/s 491 of the Criminal Procedure Code to call upon the applicants to find sureties of the peace in such amount as to him may appear adequate.