

**(1886) 09 AHC CK 0002**

**Allahabad High Court**

**Case No:** None

In Re: Rajah of Kantit

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** Sept. 20, 1886

**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 216

**Citation:** (1886) ILR (All) 668

**Hon'ble Judges:** John Edge, C.J.; Straight, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

John Edge, C.J.

I am of opinion that this application must be dismissed. I am not satisfied that the Sessions Judge did not act within his powers in passing the order he did. u/s 216 of the Criminal Procedure Code, a Magistrate is not entitled to require an accused to satisfy him, the Magistrate, that there are reasonable grounds for believing that the evidence of a witness, whom the accused desires to be summoned and be included in the list, is material, unless the Magistrates think that such witness "is included in the list for the purpose of vexation or delay, or of defeating the ends of justice." When a Magistrate does refuse under this section to summon a witness included in the list of the accused, he must record his reasons for such refusal, and such reasons must show that the evidence of such witness is not material. The only ground stated by the Magistrate for refusing to summon the witness appears, from the uncertified copy of the Magistrate's order before me, to be that he thought the reasons assigned for the application to have the Rajah summoned as one of the defendant's witnesses were insufficient. This does not show that the Rajah's evidence was not material. Even if I thought the Sessions Judge had not jurisdiction to make the order complained of, which I do not, I should not interfere in this case. I think it desirable that it should be generally understood that these objections to

appearing to give evidence in a Criminal Court cannot be entertained. It is the duty--and it should be a cheerful duty--of every one to attend a Court of Justice when summoned to give evidence as a witness, particularly on behalf of an accused.

Straight, J.

2. I am of the same opinion. It appears that the Sessions Judge, having to try certain persons committed by the Magistrate, and having been satisfied that the Rajah of Kantit was a material witness for the defence, ordered the Magistrate to summon him as a witness, and a summons was issued to that distinguished personage. I think the order of the Judge was right. The suggestion of the learned Counsel for the applicant, that Section 540 alone confers powers on a Sessions Judge, appears to me an incorrect contention, and I am not prepared to adopt it; for to lay down any such rule might lead to great inconvenience and possible injustice to accused persons. It is clear to my mind, u/s 291 of the Criminal Procedure Code, that though the summoning of witnesses by an accused through the medium of the Sessions Judge is not a matter of "right," yet that the Judge has an inherent power, if he thinks proper to exercise it, to sanction the summoning of other witnesses than those named in the list delivered to the committing Magistrate. It is impossible for me to say, upon the affidavits before me, that the Rajah will not be a material witness to the defendant's case, and though it may be distasteful and unpleasant to him to appear as a witness in a Criminal Court, it is his duty, as one of Her Majesty's subjects, living under the protection of the law, to obey that law, and attend before the Judge in obedience to the summons. I have no doubt the Judge will make every arrangement to rank., such attendance as convenient and unobjectionable as is possible and consistent with the interests of the accused.