In Re: Shamasankar Mazumdar

Court: Calcutta High Court

Date of Decision: Nov. 19, 1872

Judgement

Kemp, J.
The first point taken in this case is that the proceeding of the Magistrate under s. 318 of the Criminal Procedure Code is based

upon the report of the Police officer alone, and such report not being legal evidence, all the proceedings subsequently taken by the Magistrate are

without jurisdiction. On referring to the record, we find that the Magistrate did not proceed upon the report of the Police officer alone, in which

case, perhaps, under the rulings of this Court, the objection might avail1; but we find that the Magistrate refers to evidence taken in other cases,

which we most assume he inspected, and he goes on to say that he is satisfied upon that evidence that there was a likelihood of a breach of the

peace. This objection is therefore overruled. The next objection is, that the petitioner has not had a proper hearing inasmuch as the Magistrate held

that the law did not confer upon him the power to summon witnesses, in cases of this description, and when the petitioner prayed the Magistrate to

summon his witnesses, no order beyond placing his petition on the record was passed. On referring to the judgment of the Magistrate, we find that

he states that he can find no provisions in Chapter xxii for the summoning of witnesses. No doubt there is no mention in that Chapter of any

particular provisions under which witnesses are to be summoned; but in cases coming under s. 318, oral evidence as to the fact of possession is

always adduced; and it is the duty of the Court, if the parties cannot produce their witnesses, to issue summonses for their attendance, Now, in this

case, it is clear that the petitioner petitioned the Magistrate, urging his inability to produce his witnesses, and asking for the assistance of the Court

to summon these witnesses. It does not appear that any proper order was passed upon this application, and therefore it amounts to this that the

petitioner has not had a proper hearing.

2. We therefore send back the case. The Magistrate will summon the witnesses for the petitioner, and, after hearing and considering their evidence,

pass a fresh decision.

1 See In the matter of the Petition of J.D. Sutherland ante, p. 229.