

(1868) 09 CAL CK 0019

Calcutta High Court

Case No: None

Maghan Misra

APPELLANT

Vs

Chamman Teli

RESPONDENT

Date of Decision: Sept. 14, 1868

Judgement

1. I can find nothing in the Criminal Procedure Code which makes it necessary to take evidence as to the likelihood of a breach of the peace, after the accused has been summoned and is present either in person or by agent. Section 282 gives a Magistrate power, on receiving "credible information," that such and such a person is likely to commit a breach of the peace, to call upon that person to show cause why he should not be required to enter into a bond to keep the peace. An order of this description cannot be issued until the Magistrate has satisfied himself in the way laid down in the Procedure Code of the necessity for issuing it, but being issued, and the accused appearing to show cause against it, there would be no necessity, it seems to me, for recording, de novo, the evidence of any witnesses, merely because their depositions had not been taken in the presence of the accused. The law supposes that the Magistrate has acted prudently, and with due consideration, and has received information upon which he believes that it is necessary to prevent a breach of the peace by calling for a security bond. The words of Section 282 appear to me to suppose that a good prima facie case has already been established against the party accused, which case he is called upon to rebut, if he would escape the necessity of having to give security, and I cannot find either in Sections 282, 287, or 288 any thing which makes it incumbent on a Magistrate to adjudicate judicially as to the necessity for taking security in evidence given before him, on the appearance of the person summoned. It appears to me that if a Magistrate is once satisfied, on what he considers to be credible information, that it is necessary to take security for the preservation of the peace, he has full authority to call upon the party charged, and to take such security from him, without recording in his presence the evidence or information on which he himself acted.

2. This case has been referred to the High Court by the Judge of Gya, u/s 434, Code of Criminal Procedure, with an opinion that as a certain party against whom proceedings had been taken u/s 282 had not had the opportunity of hearing the evidence, on which the Magistrate acted, in calling upon him to show cause, the order for security was illegal, in accordance with the ruling of a Divisional Bench of this Court, in the case of Narsing Narayan (Ante, p. 7, note). With great deference to the learned Judges who passed that decision I think, for the reasons above given, that the Magistrate's order in this case was not illegal, and that there was no necessity for taking the evidence of witnesses in the accused's presence.

3. The point is an important one, and I should wish it referred to a Full Bench.

Loch, J.

I think that the course laid down in the ruling of the Court referred to should be followed, though the law does not distinctly prescribe what is to be done after the accused appears. He is, however, in the position of a person charged with an offence, against whom evidence has been taken, and he has been summoned to answer to the charge. Now in ordinary cases, though witnesses in support of the charge have been examined before the accused appear, yet when he appears, they are required to attend to be again examined before the accused, and to give him an opportunity of cross-examining them. This appears to me the course which should be taken in cases of the kind which has been referred to. A criminal charge is preferred, and the accused should have the opportunity, as in other cases, of showing, by the cross examination of the witnesses for the prosecution, that no charge is made out against him. I would, therefore, set aside the order of the Magistrate, as recommended by the Sessions Judge.