

(1926) 07 CAL CK 0023

Calcutta High Court

Case No: None

Moslem Mandal and Another

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: July 23, 1926**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 512

Citation: AIR 1926 Cal 1224**Hon'ble Judges:** Rankin, J; Mukherji, J**Bench:** Full Bench

Judgement

Rankin, J.

In this case I am of opinion that the Rule must be made absolute. The applicants before us entered into a bond as sureties for one Maniraddi and that bond was that Maniraddi should be of good behaviour to the King-Emperor for three years. Now that being so in a proceeding u/s 512, Criminal P.C., it was open to the Magistrate to hold an enquiry, to take evidence and to come to a conclusion that Maniraddi had during those three years committed an offence. He was obliged to hold enquiry upon notice to the sureties. What in fact the Magistrate did was this: He heard certain evidence, namely, the evidence of five witnesses on the 24th February of this year. The evidence of those witnesses taking them all together was not such as could possibly ground a finding against Maniraddi that he had in fact committed any offence whatsoever. One cannot convict a person of burglary on the ground that he has been reasonably suspected by the police in connexion with the offence. Having taken that evidence the Magistrate issued notice on the sureties to show cause why the bond for good behaviour should not be forfeited, and on the returnable date of the notice to show cause the sureties did not appear. Whereupon without recording any evidence at all beyond what he had previously recorded the Magistrate made an order purporting to forfeit their bail bond. That is wrong for two reasons, first because the only evidence recorded was not recorded upon notice to the sureties,

and secondly because the evidence recorded was not such as would ground a finding of fact against the sureties or against Maniraddi that he had in fact been guilty of an offence.

2. For these reasons this Rule must be made absolute and the order complained of must be set aside. The amounts if realized will be refunded.

Mukherji, J.

3. I agree.