

Emperor Vs. Sukhdeo

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Court : Allahabad

Decided On : Jan-28-1916

Reported in : AIR1916All316; 33Ind.Cas.637

Judge : Piggott, J.

Appellant : Emperor

Respondent : Sukhdeo

Judgement :

Piggott, J.

1. In this case one Sukhdeo was ordered by a duly qualified Magistrate, under Section 112 of the Code of Criminal Procedure, to furnish security to be of good behaviour. This was an appealable order; but Sukhdeo acquiesced in it and filed no appeal in the Court of the District Magistrate. He offered a security bond, duly executed by two persons who were willing to stand surety for him; but these sureties the Magistrate refused to accept. Sukhdeo then went to the Sessions Judge, asking him to examine the record and, if necessary, to invoke the interference of the Court, with a view to setting aside the order rejecting the sureties. The learned Sessions Judge, on examining the record, found that the proceedings before the Magistrate had been altogether irregular and that Sukhdeo had been bound over without any such enquiry or record of evidence as is required by law. He has referred the matter to this Court, with a recommendation

that the Magistrate's proceedings should be quashed. Under Section 439, Clause (5), of the Code of Criminal Procedure, Sukhdeo would have been debarred from asking this Court to take up in revision the question of the propriety of the order requiring him to furnish security, because he could have appealed against that order but did not do so. The matter comes before me, not at the instance of Sukhdeo, but on a reference from the learned Sessions Judge, based upon an examination of the record which the learned Sessions Judge made in the course of dealing with an application which Sukhdeo was entitled to make. I think, therefore, that the learned Sessions Judge was right in referring the matter to this Court and that I have jurisdiction to deal with the entire question.. The procedure by the Magistrate in the present case was in contravention of the provisions of the law, and it is one which, if generally adopted, might lead to serious abuses. I set aside the order requiring Sukhdeo to furnish security. I need scarcely say that this order will be no bar to the institution of fresh proceedings, if the Magistrate responsible for the peace and order of the district should consider such proceedings against Sukhdeo still necessary.

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