

**Jhabbu Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/478243](http://sooperkanoon.com/478243)

**Court :** Allahabad

**Decided On :** Feb-27-1920

**Reported in :** AIR1920All354; 55Ind.Cas.993

**Judge :** Piggott, J.

**Appellant :** Jhabbu

**Respondent :** Emperor

**Judgement :**

**Piggott, J.**

1. The applicant Jhabboo was one of the accused persons in a case under Section 160 of the Indian Penal Code. This was a summons case and was properly tried under Chapter XX of the Code of Criminal Procedure. It so happened that Jhabboo was also one of the accused in another case of a more serious nature, which was being tried as a warrant case in the Court of the same Magistrate at about the same time. Jhabboo undertook to prove an alibi in his defence, in both cases, and asked the Court to issue process for the attendance of a certain witness. The Magistrate allowed his application and repeatedly postponed the trial of the summons case in order that the witness in question might be examined for the defence on one and the same date in both cases. Finally he refused to adjourn either of the cases any further and proceeded to deliver judgment in both of them without having examined this particular witness for the defence. In a connected

application I have held that the procedure of the Magistrate in the warrant case was not justified by the provisions of Section 257 of the Code of Criminal Procedure and I have found it possible to pass orders which should meet the ends of justice. The difference between the two applications now before me is this: Under Section 244, Clause 2, of the Code of Criminal Procedure the Magistrate was under no obligation to issue process to compel the attendance of any witness, either on the application of the complainant or on that of the accused. He would have been within his jurisdiction, and probably within his discretion so far as this particular case is concerned, if he had said that in a small matter of this sort he did not feel himself justified in issuing process to compel the attendance of a public servant from a distant district. There are also practical difficulties about interference in this case, as any attempt to procure the evidence of this particular witness would involve the re-trial of the summons case before another Magistrate, in my opinion the present application ought to be rejected on the ground that Jhabboo had no right in law to require the issue of process for the attendance of this witness in this particular case and that the Magistrate might in his discretion have refused to issue such process in the first instance. If the result of the order passed by me on the connected revision should be that, in the opinion of a competent Court, Jhabboo is able to establish a conclusive alibi from Banares on the date in question, and he feels disposed to carry this matter further for the purpose of clearing his own character, it would be open to him to present a fresh application against the same order after the connected case has been disposed of by the Appellate Court.