

The Queen Vs. Kadar Khan

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Court : Chennai

Decided On : Aug-05-1882

Reported in : (1882)ILR5Mad380

Judge : Muttusami Ayyar and ;Tarrant, JJ.

Appellant : The Queen

Respondent : Kadar Khan

Judgement :

1. Kadar Khan was a witness for the defence of one Shaik Hyder, then on his trial for rioting, and, on the conclusion of the trial, was required by the Magistrate to give security to keep the peace for a year, the reasons given by the presiding Magistrate for this order being that the evidence given by Kadar Khan in the trial left no doubt on his mind but that he was one of the rioters in the case then being tried, and that it was probable he might at some future time encourage a breach of the peace.

2. The Sessions Judge, however, points out that Kadar Khan's evidence in the trial as recorded contains nothing equivalent to an information that he was likely to commit a breach of the peace or to do any act calculated to occasion a breach of the peace; and, moreover, that, presuming any such information was contained therein, such evidence, which is the only evidence recorded at all in the proceedings, was not of the nature on which the Joint Magistrate was at liberty to

adjudicate as required by Explanation I, Section 491*, Criminal Procedure Code.

3. For the reasons given by the Sessions Judge, in which we concur, we set aside the order.

* Summons to any person to show cause why he should not give bond to keep peace.

[Section 491: Whenever a Magistrate of a Division of a District, or a Magistrate of the I class, receives information that any person is likely to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace, he may summon such person to attend at a time and place mentioned in the summons, to show cause why he should not be required to enter into a bond to keep the peace, with or without sureties, as such Magistrate thinks fit.

Explanation 1. A summons, calling on a person to show cause why he should not be bound over to keep the peace, may be issued on any report or other information, which appears credible and which the Magistrate believes; but the Magistrate cannot bind over a person until he has adjudicated on evidence before him.]

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