

KeramuddIn Sarkar Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/862060

Court : Kolkata

Decided On : Jan-23-1914

Reported in : AIR1914Cal357,(1914)ILR41Cal806

Judge : Holmwood and ;Sharfuddin, JJ.

Appellant : KeramuddIn Sarkar

Respondent : Emperor

Judgement :

Holmwood and Sharfuddin, JJ.

1. This was a Rule calling upon the District Magistrate of Dinajpur to show cause why the order under Section 110 of the Criminal Procedure Code passed against the petitioner should not be set aside, first, on the ground that the provisions of Section 112 have not been complied with, inasmuch as the substance of the information received from the police has not been recorded and the accused person had no notice thereof; and, secondly, that the case is triable as a warrant case, and the accused had a right to have the witnesses properly cross-examined, and to have processes issued on any witnesses he desired to call in defence. The rule could have been stated more shortly by saying that it had not been heard, first, with reference to the provisions of Section 112; and, secondly, with reference to the provisions of Section 117.

2. As regards the alleged breach of the provisions of Section 112, the learned Magistrate points out in his explanation that he has followed the letter of sections 112 and 113. There was a proceeding drawn up. The person in respect of whom it was drawn was present in Court, and it was read over to him and the substance explained to him. But the conditions in which he was present in Court are rather different to what is the ordinary practice. He was only present in Court because he had been brought there by a policeman after being locked up all night. He, therefore, certainly had no opportunity of producing his defence witnesses; and even if we were inclined to discharge the Rule as regards Section 112, the disregard of the provisions of Section 117 is quite fatal to the case. That section provides that in proceedings under Section 110, the procedure for warrant cases shall, as far as possible, be adopted, and that means, as it obviously must mean, that a person who has such a serious charge alleged against him must have time to bring his witnesses and have their evidence recorded. In the present case it appears that the accused had no opportunity, of choosing and producing his own evidence or having them produced by summons. He had no chance of choosing his own legal adviser, the learned Magistrate having come out from the station accompanied by a single mukhtear who, as it happened, was able to appear on behalf of the accused, although, of course, he knew nothing about his case. The only witnesses he could have examined were the by-standers who happened to have gathered round the cutchery out of curiosity, and it cannot be said that those were the witnesses whom he voluntarily chose in his defence.

3. The proceedings clearly show that the man had not anything like a fair trial, and the order under Section 110 must, therefore, be set aside, and if it is necessary to take further proceedings, these proceedings must be taken with due regard to the spirit as well as to the letter of the law. The petitioner will be discharged from the security bond.