

**Emperor Vs. Surath and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/878050](http://sooperkanoon.com/878050)

**Court :** Kolkata

**Decided On :** Sep-09-1914

**Reported in :** 28Ind.Cas.799

**Judge :** Lawrence Jenkins, C.J. and; Teunon, J.

**Appellant :** Emperor

**Respondent :** Surath and ors.

**Judgement :**

Lawrence Jenkins, C.J.

1. This is a reference to the High Court by the Sessions Judge of Purnea under Section 438 of the Criminal Procedure Code, and the suggestion is that the law as prescribed in Section 208 of the Criminal Procedure Code has not been observed. That view has been supported before us by Mr. Chowdhuri, who has cited in support of it a decision in Emperor v. Muhammad Hadi 26 A. 177 : A.W.N. (1903) 215 : 1 Cr. L.J. 357. That case does not purport to go beyond the decision on which it is based, that is to say, the decision in Queen-Empress v. Ahmadi 20 A. 264 : A.W.N. (1898) 52. But in fact it does enlarge the rule laid down in that case in so far as it applies the rule in the earlier case, which was limited to witnesses produced, to witnesses whom the accused might be prepared to produce, and this enlargement is in conflict with the express terms of Section 208. I cannot myself see that the Magistrate has in any way failed to observe the provisions of that

section. It is not suggested that he did not hear all the evidence produced before him, and that is all that is required by the first paragraph. The fact that an application was made on the date on which the accused was committed to the Sessions for the summoning of further witnesses, appears to me to introduce no conditions which show that the provisions of that section had not been observed. It is important to notice that what was sought was that the Magistrate should allow reasonable time for filing documents and summoning witnesses. On that the Magistrate made the order 'that the accused are committed to the Court of Session to-day, no further adjournment can be allowed.' The application, therefore, was obviously too late, for the commitment had been made. More than that, I think, in the circumstances of this case, that the accused is not deserving of any great sympathy because an application could have been made at once to the Court under Section 215 for the quashing of the commitment if the circumstances permitted it. But instead of doing that the accused waited until the case was called on at the Sessions and took this point a month after the event. In my opinion we ought not to uphold this reference and we direct the Sessions Judge to proceed with the trial of the accused.

**Teunon, J.**

2. I agree.

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