

1900.
 IMPERATRIX
 &
 RUDRA.

the witnesses Nos. 2 and 3, who were spectators or victims of the dacoity and who also knew the accused No. 1 before, say that they did not see him at it. Very little weight seems to have been attached to the evidence at the time, because we find that the house of the accused was not searched till the 18th, and he was not arrested till the 19th.

We reverse the conviction and sentence passed upon the appellant, acquit him of the offence charged, and direct that he be set at liberty.

Conviction and sentence reversed.

CRIMINAL REFERENCE.

Before Mr. Justice Parsons and Mr. Justice Ranade.

*IN RE GOVIND HANMANT.**

1900,
 April 17.

Criminal Procedure Code (Act V of 1898), Sec. 250—Application for an order that a person should give security to keep the peace—Refusal of application—Compensation under Section 250 of Criminal Procedure Code (V of 1898).

To justify the application of section 250, a person must be accused before a Magistrate of an offence triable by a Magistrate.

A applied to a Magistrate of the First Class to order B to give security to keep the peace (section 107, Criminal Procedure Code, 1898). The Magistrate after inquiring into the matter discharged B under section 119 of the Criminal Procedure Code and directed A to pay B Rs. 50 as compensation under section 250 of the Code.

Held, that the award of compensation was illegal. The institution of proceedings under section 107 of the Criminal Procedure Code was not an accusation of an offence triable by a Magistrate within the meaning of section 250 of the Code.

Queen-Empress v. Lakhpat⁽¹⁾ followed.

REFERENCE under section 438 of the Criminal Procedure Code (Act V of 1898) by F. C. O. Beaman, Sessions Judge of Belgaum.

One Govind Hanmant Kulkarni applied under section 107 of the Criminal Procedure Code (Act V of 1898) to the First Class

* Criminal Reference, No. 5 of 1900.

(1) (1893) 15 All., 365.

Magistrate of Belgaum to order Rachaya bin Chenbasaya to give security for keeping the peace.

The Magistrate after inquiring into the matter discharged Rachaya under section 119 of the Code and at the same time passed an order under section 250, directing the applicant to pay Rs. 50 as compensation to Rachaya.

The Sessions Judge being of opinion that this order for compensation was illegal, referred the case to the High Court under section 438 of the Code.

The reference was argued before Parsons and Ranade, JJ.
N. P. Patankar for applicant.

There was no appearance for the opponent.

PARSONS, J.:—The applicant moved the Magistrate to take security from the opponent to keep the peace. The Magistrate issued the necessary notices and enquired into the matter under section 117, and discharged the opponent under section 119 of the Criminal Procedure Code. He further directed the applicant to pay the opponent the sum of Rs. 50 under section 250 of the said Code.

It is objected that this latter order is illegal. The objection seems good. To justify the application of section 250 a person must be accused before a Magistrate of an offence triable by a Magistrate. Here the opponent was not accused of having committed any offence. The only charge heard against him was that he was likely to do some act that would probably occasion a breach of the peace, and that it was necessary, therefore, that he should give security for keeping the peace. This is not a case that falls within the purview of section 250. We agree on this point with the Allahabad High Court in *Queen-Empress v. Lakhpat* ⁽¹⁾.

We reverse the order of compensation.

Order reversed.

(1) (1893) 15 All., 365.