

Emperor Vs. Jiva Natha

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Court : Mumbai

Decided On : Feb-06-1914

Reported in : (1914)16BOMLR138

Judge : Heaton and ;Shah, JJ.

Appeal No. : Criminal Application for Revision No. 396 of 1913

Appellant : Emperor

Respondent : Jiva Natha

Judgement :

Heaton, J.

1. The applicants were called on to give security under Section 112 of the Criminal Procedure Code and afterwards an order was made under Section 118. We are not now concerned with the order so far as it requires security beyond this that we see no ground to interfere in that matter. But the sureties were required to fulfil two conditions: first, that they should be of the land holding class, and' to that we see no objection secondly, that they should be able to control the persons for whom they were sureties. To that condition I do see objection-not a theoretical objection, because it is true that underlying the idea of a surety is the idea that he should be able in some way to control the person for whom he stands surety. The objection is a practical one. If this condition is expressly described in such terms as were

adopted in this case, it is likely to lead to very serious hardship, e. g., those persons, who prima facie would most probably be able to control another, are his relatives, his caste fellows, and those who are closely associated with him. Yet we find the fact of being of the same caste and of being a relative is regarded as a disqualification for a surety. So that in practice this condition seems to me not only to be likely to lead to undesirable results but almost certain to do so. In this very case, for instance, though several sureties were offered, they were at first, all of them, refused and the result was that these men were in jail for upwards of six months. After that they offered sureties who were accepted and the applicants were released from jail.

2. Now, this is undoubtedly an unfortunate result, especially as the intention of the law in the matter of sureties, for good behaviour and so forth, is not that the person called on to give sureties should be sent to jail but that, if possible, he should be kept out of jail. I do not think the materials on the record enable me to criticize in detail the cases of the sureties who were rejected. The inquiry in such a matter is necessarily summary and its results are very briefly recorded. But I do think that this case appears to illustrate the inadvisability of Emperor prescribing such a condition as that under consideration. As I have said, on general grounds such a condition is undesirable and I do not think that it is a condition of the kind which is contemplated by the words of Section 112.

3. I, therefore, think that this particular condition that sureties must be capable of controlling the applicants should be deleted.

Shah, J.

4. I agree that the condition requiring the sureties to be able to control the petitioners should be deleted. In this case several sureties were offered by the petitioners but they were all rejected by the trial Magistrate. Some were rejected on the ground that they were caste-fellows or relatives of the petitioners. The result was that the petitioners were sentenced to one year's rigorous imprisonment and had to remain in jail for over six months until their sureties were accepted on the 24th November 1913. The record shows that the petitioners apparently were

men who were not unable to furnish sureties. It does not appear from the record that the sureties offered were not men of substance or that they did not belong to the land-holding class. In my opinion the Magistrate was not justified in refusing to accept certain persons as sureties merely on the ground that they were caste fellows or relatives of the petitioners. It is not necessary to examine in detail the grounds upon which other sureties were rejected. I feel satisfied on a careful examination of the record that the condition in question is onerous and has been enforced with undue severity. This case illustrates that such a condition, if not enforced with due-care and caution, is apt to operate harshly against the parties concerned. It may lead as it has done in this case to the rejection of any number of sureties with the result that the provisions, which are designed to be preventive, are easily turned to punitive purposes.

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