

Emperor Vs. Bapoo Yellapa

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Court : Mumbai

Decided On : Jan-13-1907

Reported in : (1907)9BOMLR244

Judge : Batty and ;Pratt, JJ.

Appeal No. : Criminal Application for Revision No. 331 of 1906

Appellant : Emperor

Respondent : Bapoo Yellapa

Judgement :

Batty, J.

1. We are unable to accept the view taken by the Fourth Presidency Magistrate that the word 'residing' or 'resident' should be interpolated in Section 110, Criminal Procedure Code, between the words 'any person' and 'within.' It seems to us that the Legislature has advisedly adopted the particular phrase used, to exclude the necessity of proving anything approaching permanent residence and to leave it in the power of the Magistracy to deal with what are perhaps the most dangerous habitual criminals who wander from place to place and have no well-known residence where the police or the Magistracy could be sure at any time of finding them.

2. We also think that the Presidency Magistrate, not having disbelieved the evidence adduced before him, ought not to have discharged the persons brought before him on the ground that that evidence was insufficient or vague for the purposes of Section 110, Criminal Procedure Code. It is thoroughly established by the evidence, if credible, as the Magistrate appears to have held, that the accused was a notorious ferari : he is on the register of habitual criminals in his own village; on his arrival in Bombay he was observed feeling the pockets of travellers at the railway station. We think it would be difficult to conceive a stronger case of the return to the criminal practices alleged to be habitual in the accused in his own village.

3. We are therefore of opinion that this is a case which was within the jurisdiction of the Magistrate and in which he was bound, in view of the evidence unless he disbelieved that evidence, to take action under Chapter VIII of the Criminal Procedure Code.

4. We direct that accused Bapoo Yellappa do execute a bond for Rs. 100 and furnish one surety for a like amount for his good behaviour for one year. The accused is to furnish the bond and security within a fortnight from this date.

5. We would add that if it is found that the accused has already executed a bond elsewhere in the Presidency, under Chapter VIII, Criminal Procedure Code, the Chief Presidency Magistrate will, no doubt, under the discretionary power vested in him under Section 125, Criminal Procedure Code, cancel the bond the execution of which is now directed.