

**Dasappa Vs. State of Karnataka**

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**Court :** Karnataka

**Decided On :** Jan-25-1974

**Reported in :** 1975CriLJ1613

**Judge :** C. Honniah, J.

**Appellant :** Dasappa

**Respondent :** State of Karnataka

**Judgement :**

ORDER

**C. Honniah, J.**

1. On the night of 10-9-1973 at about -3 A. M. the petitioner was accosted by a Police Officer in front of a shop in V. V. Pura. It was alleged that he was unable to give satisfactory account of himself at that place and at that hour and that he had no ostensible means of subsistence, He was arrested and was produced before the Sub-Divisional Magistrate, Chitradurga to take action against him under Section 109 Criminal P. C. The petitioner stated that he was a resident of Kasavanahally; he had no permanent source of income, but he was eking out his livelihood by doing Cooley work and that he was taken into custody when he was in his house. The teamed Magistrate passed the following order:

Hiriyur Police placed a charge sheet against the respondent under Section 109 Criminal P. C. Accused is in judicial custody and produced before Court. Property, i. e. iron rod is produced before court,

Respondent present. He states that he is living on Cooley. He further states he was in his house at Kasavanahalli and police took him to custody. He however pleads to be excused. He has no permanent source of income. He is bound over for a day, i. e. till rising of the Court today. Property may be destroyed.

Section 109 Criminal P. C. reads thus:

When ever a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or Magistrate of the first Class receives information - (a) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, or (b) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself.

Such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

Clause (a) of Section 109 lays down two prerequisites before an order under that section can be made against a person, viz : (i) that the person concerned must be taking precaution to conceal his presence and (ii) that there is reason to believe that such person is taking such precaution with a view to committing an offence. Clause (b) is divided into two parts : want of ostensible means of subsistence and inability to give satisfactory account of one's self. Either of these, if proved, justifies an order under Section 109.

2. In this case the accusation against the petitioner was both, under Clause (a) and Clause (b) of Section 109. If the Sub-Divisional Magistrate wanted to proceed against the petitioner under this section, he was bound to pass an order in writing

setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sure-ties required, as provided under Section 112, Criminal P. C. After passing an order under Section 112 Criminal P. C. the Magistrate should read and explain the substance of the order as provided under Section 113 to the person present in court or when any person appears or is brought before him and thereafter shall proceed to inquire into the truth of the information upon which action was taken and to take such further evidence as may appear necessary as provided in Section 117 Criminal P. C.

3. In this case the procedure prescribed has not been followed by the Sub-Divisional Magistrate. The petitioner did not plead guilty to the charge levelled against him. As a matter of fact, no charge was read over to the petitioner, as could be seen from the records. Therefore, it was incumbent on the Sub-Divisional Magistrate to have inquired into the truth of the allegation and even if there was any truth he should have proceeded to pass an order under Section 118,

4. The provisions of Section 109, Criminal P. C. are so stringent that it may be made an engine of oppression unless care is taken by Magistrates to prevent its abuse. The object of the section is to enable Magistrates to take action against suspicious strangers lurking within their jurisdiction. Merely to be penniless or out of work is no offence. Nor is it an offence if a person has no permanent house. Many an honest man may find himself in either predicament. In our country where there are workless people and casual labourers, if it were the law that such persons are to be exposed to proceedings under Section 109(b) merely because they cannot give satisfactory account of the manner in which they are eking out their precarious existence, the courts would be full indeed and much injustice might be done to innocent persons. If a person is unable to prove the source of his livelihood he ought not to be ordered to execute a bond under Sections 109 and 118 unless there is reasonable ground for suspecting that he is sustaining himself by some dishonest means : for such an order can only be made where it is necessary for keeping the peace or maintaining good behaviour.

5. In so far as the allegation against the petitioner that he was found at an odd hour in front of a shop is concerned, except the allegation, there is nothing in this case to show that he was concealing himself in a suspicious manner in order to commit an offence. When the accused pleaded not guilty to the accusation against him, it was incumbent on the Magistrate to have followed the procedure laid down under Sections 109, 112, 113 and 117. That having not been followed, the order passed by him under Section 118 is wholly illegal.

6. I, therefore, allow this revision petition and set aside the order in question.

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