

Alayar Khan Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/447959

Court : Allahabad

Decided On : Aug-27-1929

Reported in : AIR1930All23

Appellant : Alayar Khan

Respondent : Emperor

Judgement :

Sen, J.

1. On 18th March 1929, Mr. Browne, the learned District Magistrate of Jalaun, directed that Alayar Khan, the applicant, should under Section 110, Criminal P.C. execute a bond for Rs. 2,000 with two sureties in Rs. 2,000 each to be of good behaviour for a term of one year. He appealed to the learned Sessions Judge who set aside the finding of the trial Court so far as it related to the charge under Section 110(d) but maintained the findings in other respects. The learned Sessions Judge observed that in view of the dangerous activities of the appellant in communal matters, he was not prepared to reduce the security. Alayar Khan has applied for revision to this Court.

2. Alayar Khan is a man of considerable influence at Konch and is a member of the Municipal Board. The township of Konch is torn by factions. The necessary consequence is political differences and communal dissensions.

3. Notice was issued to him to show cause as to why he should not be bound over inasmuch as:

(1) he habitually cheats, commits extortion and counterfeits coins and currency notes:

(2) he habitually commits and abets the commission of offences involving a breach of the peace:

(3) he is so desperate and dangerous as to render his being at large without security hazardous to the community.

4. Forty-eight witnesses were examined before the trial Court to prove these allegations. The applicant appears to have been convicted under Sections 147, 149 and 325, I.P.C. on 26th August 1915 and sentenced to term of imprisonment which was reduced in appeal by the High Court. He was also bound over under Section 107, Criminal P.C. On 9th March 1928, he was bound over for one year under Section 107, Criminal P.C. The trial Court in an elaborate judgment, consisting of 70 type-written pages arrived at the conclusion that Alayar Khan habitually commits cheating and extortion; habitually commits and attempts to commit, and abets the commission of offences involving a breach of the peace specially in connexion with religious riots and is so desperate and dangerous that his being at large without security is hazardous to the community. The learned Sessions Judge on appeal held that the evidence of general reputation was not sufficient to establish the charge relating to cheating and extortion as no specific acts had been proved. He maintained the finding and the order of the Court below on the other counts.

5. The learned Sessions Judge observed as follows:

My opinion, after carefully examining the evidence on the record, is that the evidence of general reputation given by the witnesses for the prosecution, taken in combination with the specific instances proved, establishes that Alayar Khan is a fomentor of communal discord and that he likes to excite trouble and create bad blood. The fomenting of communal trouble amounts to an abetment of offences

calculated to involve a breach of the peace. My impression from the evidence is that Alayar Khan is a firebrand of a dangerous type. A man who stirs up communal enmity and who does and says things which must inevitably create such enmity is clearly an instigator and thus an abettor of offences involving a breach of the peace. A man of this character is a danger to society and should undoubtedly be made to give security.

6. This Court has considerable hesitation in going into the merits of a case under Section 110, Criminal P. C, unless the Court below in dealing with the evidence has made a material departure from legal principles. I have been referred to the evidence on the record and have considered the criticisms of the learned Counsel for the applicant. I do not think that the Court below has erred in admitting evidence which ought to have been excluded or in ignoring evidence which might have told in favour of the accused. Where both the parties have tendered evidence, the question of weight is not a question of law.

7. The applicant has been carrying on his game amongst people whose passions and prejudices are easily roused and who are driven to lawlessness by his sinister influence. He is a menace to the community to which he belongs and to the social order generally.

8. Section 110, Criminal P. C, is intended to put a curb upon the activities of persons who set the ball of discord in motion and try to create or foment dissensions between man and man or between one community and another in matters which result in or have a tendency to result in breach of the peace. Alayar Khan deserved to be dealt with a strong hand; Accepting the finding of the Court below, I hold that the order passed against the applicant was fully justified. I reject the application.