

Emperor Vs. Gyan Singh

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Court : Allahabad

Decided On : May-22-1933

Reported in : AIR1934All24

Appellant : Emperor

Respondent : Gyan Singh

Judgement :

ORDER

Kendall, J.

1. This is a reference made by the District Magistrate of Cawnpore asking the Court to set aside an order passed by a Sub-Divisional Officer of that district by which he discharged certain persons who had been brought before him under Section 109, Criminal P.C. The circumstances were briefly that the persons who were prosecuted before the Magistrate had been discovered by the Police travelling together by night in a motor lorry, and certain arms are said to have been in their possession at that time. The first information report was made on 10th May 1932 at midnight under Section 399, Penal Code; but a second report was made on 4th July in which the case under Section 399 appears to have been dropped and it was alleged against the persons arrested that they had been hiding themselves inside the lorry and had been in possession of arms in order to commit some offence. The Magistrate found that all these persons had given their correct

names and addresses to the police and that some of them were in possession of cultivatory holdings or zamindari. He considered that he could not call on them to provide bonds under Section 109, Cr.P.C. The District Magistrate has agreed with him that Section 109 Clause (a) will not cover the case, but he has made the reference on the ground that the sub-divisional officer should have proceeded under Clause (b) of Section 109, and he has quoted the Full Bench ruling of this Court reported in *Emperor v. Phuchai* A.I.R. 1929 All. 113 to show that Clause (b) will cover the circumstances, in that the persons proceeded against did not give a satisfactory account of themselves in the sense in which those words have been interpreted by two at least of the Judges who formed the Full Bench on that occasion.

2. The question before the Full Bench was rather of the interpretation of Clause (a) than Clause (b) of Section 109, Cr. P.C. but the District Magistrate is right in saying that the opinion of two at least of the Judges was that failure to give a satisfactory account of himself in suspicious circumstances brings the case of the person proceeded against within the scope of Section 109(b). In the present case however the Magistrate does not appear to have considered that the circumstances were suspicious, I do not think that I am called upon to decide whether, if he had held that the circumstances were suspicious, he could have relied for support on the decision of the Full Bench quoted above. The question of whether the circumstances are suspicious is mainly a question of fact, and if a Magistrate is satisfied that the circumstances in which a person who is brought before him under Section 109, Cr.P.C. was found are not suspicious and that there is no need for him to call upon that person to provide security it is not the part of the High Court to reverse his order and to demand security a year later on the ground that the circumstances had been suspicious. Section 109, Cr.P.C. is one of the preventive sections which are to be employed by Magistrate for the prevention of crimes, and it must be rarely, if ever, that a High Court will feel called upon to reverse an order of a Magistrate refusing to demand security under any of those sections. It sometimes happens that a Magistrate demands security when he is not entitled to do so by law, and then no doubt there is occasion for the High Court to interfere on the ground that the Magistrate has exceeded his power. In the case which was before the Full Bench the question before the Court was one of

interpretation of the section, and the Court pointed out that the Sessions Judges had been wrong in law in interfering with the order of the Magistrate. In the present case the Magistrate has not dealt at length with Clause (b) of Section 109, but as he clearly did not consider the circumstances which justified him in demanding security under Clause (b) it is quite unnecessary to go into the matter further. The result is that the reference must be and is refused, and the papers may be returned.

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