

Abdul Latif Vs. Emperor

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Court : Allahabad

Decided On : Sep-15-1943

Reported in : AIR1943All368

Appellant : Abdul Latif

Respondent : Emperor

Judgement :

ORDER

Plowden, J.

1. This is an application in revision from the appellate judgment of the Sessions Judge of Cawnpore, dated 25th February 1943. The Magistrate's order under Section 109(b), Criminal P. C., was passed on 16th December 1942. The case against the applicant, Abdul Latif is that on 22nd June 1942 the Circle Inspector of Cawnpore was informed that an armed gang of dacoits had purchased railway tickets Nos. 817 to 825 and would be likely to alight at Pokhrayan railway station. The Circle Inspector reached the station between 8 and 9 P.M. and the S. P., A. S. P. and D. S. P. with two lorry loads of police arrived shortly afterwards and surrounded the station. The train arrived about 10 P.M. and the passengers proceeded towards the exit of the platform. Five or six men gathered close to the exit. After the train left the station the police arrived on the platform and surrounded all the passengers who had alighted from the train. Abdul Latif was

found to be in possession of railway ticket No. 824 and when he was searched a country-made revolver loaded with three cartridges was also found in his possession. Abdul Ghafoor was found in possession of railway ticket NO. 823 and a big knife and two cartridges were also found. Lachhman was in possession of railway ticket No. 825 and of cartridges. Bhagwan Din had no railway ticket but two cartridges were found in his possession. A case was, therefore, started against these four men.

2. The Magistrate issued a notice under Section 112 on 8th September 1942 that they were concealing their presence at the railway station which is within the local limits of his jurisdiction and there were reasons to believe that they were taking precautions with a view to committing an offence and also that they had no ostensible means of subsistence and could not give a satisfactory account of themselves. In other words, the Magistrate called upon them to give security under Section 109(a) or (b) or both. The Magistrate found, however, that they were not concealing their presence and consequently he could not take security from them under Section 109(a), Criminal P. C., even if it was suspected with good reason that they had alighted at this platform in order to commit an offence. It is indeed obvious that these men who had just left the railway platform and who were wearing ordinary clothes had not either concealed or disguised their presence. The charge under Section 109(a), therefore, was quite rightly dismissed by the learned Magistrate. He also found that they had been earning their livelihood before their arrest and consequently were not without ostensible means of subsistence. He was of opinion, however, that three of them were unable to give satisfactory account of themselves and he bound them down under the last words of Section 109(b). This interpretation of these words is altogether erroneous. Section 109(b) does not refer to the conduct of the accused on a particular occasion. Either the accused had committed on the night of 22nd June 1942, a substantive offence under the Penal Code, the Arms Act or some other law or they had not. If they had, they should have been arrested and charged with the offence. If they had not, it is not within the power of the police to call upon them to give a satisfactory account of their conduct on that specific occasion.

3. The last words of Section 109(b) refer to the general conduct or livelihood of a man. If the prosecution had wished to prove that the applicant, who says he lives in Bombay and has produced witnesses from there, was unable to give a satisfactory account of himself they should have produced evidence that his general course of life was unsatisfactory, e.g., that he lived on the proceeds of dacoity, prostitution of women and offences against the Excise Act, etc. No such evidence has been produced. The prosecution witnesses are only three, and they know nothing about the applicant except his conduct on that occasion and that he is said to have no ostensible means of subsistence which has not been found to be correct by the Magistrate and that he had nine previous convictions. These previous convictions do not, by themselves, prove that he is now leading a life of crime or is dependent on the proceeds of crimes committed by others. There is absolutely no other evidence that the applicant's general conduct is unsatisfactory. If he has committed an offence for being in possession of a revolver without a licence he should be charged with it. It is quite possible that the prosecution could have found evidence about his general conduct and livelihood and if that had been unsatisfactory, the fact that he was arrested at the station in possession of a revolver for which he had no licence could have been taken into consideration to support the evidence that he is leading an unsatisfactory life, but without that general evidence his arrest on a particular occasion cannot render him liable to give security under Section 109(b), Criminal P. C. His arrest under these suspicious circumstances might have been sufficient to render him liable to give security under Section 109(a), Criminal P. C., if he had been found concealing his presence in a grove or hut etc., near the railway station but the police arrested him before it was possible for him to take precautions to conceal his presence. Consequently, as the Magistrate quite rightly said, the charge under Section 109(a) must fail.

4. I repeat that no action can be taken by the police under the words of Section 109(b) 'or who cannot give a satisfactory account of himself' on the strength of suspicious conduct on a particular occasion. Either the man has committed a substantive offence or he has not. If he has not, no action can be taken against him. He can only be ordered to give security under these words of Section 109(b) if he is unable to give a satisfactory account of himself which is entirely different

from being unable to give a satisfactory explanation of his conduct on a particular occasion. Such unsatisfactory conduct can only be taken into consideration along with evidence about general unsatisfactory conduct or livelihood. There is no such evidence in this case. The application is allowed and the order binding down Abdul Latif under Criminal P. C., Section 109(b), is set aside.

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