

**Hanwant Vs. Emperor**

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**Court :** Allahabad

**Decided On :** Sep-26-1947

**Reported in :** AIR1948All185

**Appellant :** Hanwant

**Respondent :** Emperor

**Judgement :**

ORDER

**Harish Chandra, J.**

1. The applicant, Hanwant has been bound over under Section 110, Criminal P.C., and required to execute a bond in a sum of Rs. 200 with two sureties each in like amounts to be of good behaviour for a period of one year on the ground that he is so desperate and dangerous as to render his being at large without security hazardous to the community.

2. Fifty-two witnesses were produced on behalf of the prosecution and 55 on behalf of the defence. The Courts below have accepted the evidence produced on behalf of the prosecution and have not relied upon the defence evidence, one of the grounds being that only one out of the 55 witnesses produced on behalf of the defence lives in Kuberpur. I am not prepared to go into the findings of fact arrived at by the Courts below. There is, however, an important question of law raised on behalf of the applicant in this application.

3. The applicant is no doubt a resident of village Kuberpur, police circle Kundaria, Tahsil Jalalabad, within the jurisdiction of the Sub-divisional Magistrate who tried the case. His father and other relations also live in Kuberpur. But it has been found by the Courts below that after a certain marpit in which the applicant was also injured he went to his father-in-law in village Rajpuri on 16th September 1945 and has been living there since then. The present proceedings were initiated on a police report which bears the date 17th November 1945. It is said that only a Sub-divisional Magistrate within whose jurisdiction the person complained against is living at the date on which the complaint is made to such Magistrate can proceed against him under Section 110, Criminal P.C. It is immaterial that the person against whom such complaint is made has in fact been carrying on his activities within the jurisdiction of such Magistrate. If he has left the jurisdiction of such Magistrate and is living outside the limits of such jurisdiction, the Magistrate, it is pointed out, has no jurisdiction to try him under Section 110, Criminal P.C. This appears to be the plain meaning of the section the relevant words of which are:

Whenever...a Sub-divisional Magistrate...receives information that any person within the local limits of his jurisdiction is by habit a robber, etc...such Magistrate may...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 three years, as the Magistrate thinks fit to fix.

If the person against whom the complaint is made has gone outside the jurisdiction of the Magistrate, he has on a plain reading of the section, no jurisdiction to take proceedings against him under that section.

4. The law has been very clearly laid down in a Bombay case reported in *In re Ramji Bhai Waghjibhai* ('12) 13 Cr. L.J. 796. The case was heard by a Division Bench of the Bombay High Court and the following is reproduced from the judgment delivered in that case:

It will be observed that Section 110 does not say a person 'residing' in his district whereby technical 'residence' on the lines of the Civil Procedure Code might give the Magistrate jurisdiction. But the person proceeded against must, I think, be actually and physically present at the district. I suppose the object of the Chapter

being to prevent commission of future crime and not to punish past crime, this object is equally subserved by the person who is hostile to public order voluntarily j banishing himself as by his being bound over. I think then the Magistrate could not legally issue a warrant under Section 114.

5. In another Bombay case, *In re Hanwantrao Annarao* ('40) 27 A.I.R. 1940 Bom. 204, it appeared from the evidence that on the date when the information was received the applicant was residing at a place which was not within the local limits of the jurisdiction of the Magistrate before whom the proceedings had been instituted. No doubt, the acts alleged to have been committed by the applicant had been committed within the local limits of the jurisdiction of the Magistrate. It was held that the Magistrate had no jurisdiction to try the case. The learned Judges say:

A Magistrate, in order to have jurisdiction, must receive information that the person to be dealt with is within the limits of his jurisdiction. The section cannot grammatically be read as referring to the place where the acts on which an order is to be based were committed. The words of the section do not refer to the place where the person proceeded against became a robber or a receiver of stolen property and so forth; it refers merely to the place where he was when the information was received.

No doubt, they point out that the section must be construed in a common sense manner and that the mere fact that, on the particular date on which the information was received the accused had gone temporarily out of the jurisdiction would not prevent the section from being applied. But obviously the observations cannot be applied to a case in which an accused person has temporarily changed his place of residence as in the present case.

6. In an Allahabad case, *Hamid hasan v. Emperor* : AIR1932 All162 , proceedings were started against the accused persons in a Ghazipur Court, The accused persons lived in Jaunpur although they used to go to visit Ghazipur for the purposes of a certain I case from time to time But on the date on which a complaint was made against them, they were in Jaunpur and the summons were also 4 served on them there. It was held that the Ghazipur Court had no

jurisdiction to try the case. No doubt, that case was under Section 107, Criminal P.C. But the words used in that section are very similar to the words used in Section 110 I and it is provided that proceedings shall not be taken under that section unless the person in formed against is within the local limits of the jurisdiction of the Magistrate.

7. There are certain observations in *Bhola v. Emperor* 9 A.I.R. 1922 All. 86, which are contrary to the above view. This case was decided by Stuart J., and he say:

The section has left the matter of permanent residence of the person proceeded against open. It is not a question of permanent residence but of where the man practices his career as a thief or a house breaker or whatever it may be... If a resident of Allahabad was carrying on a career of crime in Allahabad and then went temporarily to Benares, the Allahabad Magistrate would have a right to proceed against him.

But the facts of that case were slightly different. The accused was a resident of Boileauganj in Agra and was said to be by habit a thief in that Mohalla. Some months before the proceedings commenced, he worked as chaukidar of a Munsif a short distance away in Civil Lines apparently, beyond the jurisdiction of the Magistrate by whom the case against him was tried. He was no longer chaukidar to that Munsif and it appeared that even the service with him was not uninterrupted and he continued to return to Boileauganj and the evidence showed that he was carrying on a career of crime in that Mohalla. In the circumstances it was held that the Cantonment Magistrate within whose jurisdiction Boileauganj was situated had jurisdiction to try the case. Apparently the accused in that case could not be said to have changed his place of residence even temporarily and must be deemed to have been within the jurisdiction of the Cantonment Magistrate at the time when the complaint was made against him.

8. In *Sonardi Biswas v. Emperor* : AIR1931 Cal65 , the view taken was that the words 'within the local limits of his jurisdiction' did not mean merely residence but the actual physical presence of the persons proceeded against at the time when the Magistrate drew up the proceedings.

9. On behalf of the Crown, I am referred to the case in *Kasi Sunder Roy v. Emperor* ('04) 31 Cal. 419. In that case the accused was a zamindar and lived outside the jurisdiction of the Magistrate in whose Court a case under Section 110 was being tried against him. It, however, appeared upon the evidence that although he resided outside his jurisdiction he had a residential house at a place within his jurisdiction and that he occasionally if not often, went there for the purpose of his business as a zamindar in that part of the country. It also appeared that all the acts attributed to him were acts which were done by him while residing at his house at that place. It was held that the Magistrate had jurisdiction to try the case. It, however, does not appear on a perusal of the case that on the date on which the complaint was made against him the accused was living at his house within the Magistrate's jurisdiction or not and the case is not of much help.

10. On a consideration of the cases cited before me my opinion is that inasmuch as the applicant had changed his place of residence, even though temporarily, at the time when the complaint was made against him, the Magistrate had no jurisdiction to try him under Section 110, Criminal P.C. The object of Section 110 is preventive and if an accused person has gone outside the jurisdiction of a Magistrate, there is no ground left for any proceedings under that section being taken against him by such Magistrate. If he returns to the jurisdiction of the Magistrate and starts his activities afresh, there will be ample time for proceedings to be taken against him under that section.

11. For the reasons given above, I allow the application and set aside the order which has been passed against the applicant. The security bonds, if already furnished by him are discharged. He need not surrender to his bail and his bail bonds are also discharged.