

Lachman Vs. King-emperor

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Court : Allahabad

Decided On : Mar-25-1927

Reported in : AIR1927All473

Appellant : Lachman

Respondent : King-emperor

Judgement :

Iqbal Ahmad, J.

1. This is an application in revision by one Lachman who on failure to furnish security under Section 110, Criminal P. C, was originally ordered by a Sub-Divisional Magistrate to be detained in prison for period of three years under Section 123(1) of the Code. On a reference under Section 123(2) Criminal P.C. the order of the Magistrate was affirmed by the learned Sessions Judge with this modification that he reduced the period to two years from three years.

2. Lachman was challaned in two dacoity cases by the police but was discharged in one case on the 6th of July 1926 and in the other on the 15th of July, 1926. On the latter date viz., the 15th of July 1926, on a complaint being made by the police against the applicant to the effect that he was by habit a robber and a thief, and that his being at large without giving security was hazardous to the community, an order was passed by the very Magistrate who had discharged him in the dacoity case on the same day under Section 112, Criminal P.C. As already stated that

order was confirmed and the applicant was ordered to give security as detailed in the initial order or to be detained in jail.

3. The evidence against the applicant consisted of the statement of witnesses, who were examined in the dacoity case referred to above in Court, and of certain other witnesses who were examined by the police during the investigation of those cases and of four witnesses named Mangal, Mahabir, Bhuar and Chhedhi, all residents of different villages, who were at different dates robbed when passing through certain jungles and who identified Lachman as being one of the dacoits. Farther there was the evidence of the mukhia and of the chaukidar of the village in which the applicant resides, and of certain other persons of the neighbouring villages who stated that the applicant was by habit a thief and a robber. There was also the evidence of a boy named Jagdhar who was engaged by one Ram Narain to supply water to wayfarers at a well situated in a jungle. This boy used to reside in a hut near the well in the day time, and he stated that the applicant accompanied by certain other persons used to come there to take food and to sleep in the hut, and that the applicant and his associates asked him not to let anybody know their whereabouts. Ram Narain corroborated the testimony of Jagdhar.

4. The learned Sessions Judge has discarded the testimony of the witnesses examined in the dacoity cases but has held that, even after eliminating that evidence, there was enough material on the record to justify the order of the learned Magistrate.

5. In revision before me it is argued that the prosecution, of the applicant under Section 110, Criminal P.C., having been started soon after his discharge in the dacoity cases, it must be presumed that the prosecution was not a bona fide one, and that the evidence for the prosecution is hearsay and vague and partly inadmissible and partly inconclusive and as such the order passed against the applicant must be set aside. In support of the first contention reliance has been placed by the learned Counsel for the applicant on the case of Bhagwat Prasad v. Emperor A.I.R. 1922 Oudh 26. It is undoubtedly true that in cases where proceedings under Section 110, Criminal P.C., follow soon after a discharge or an

acquittal the Court, before passing an order binding over the person proceeded against, must be satisfied that the proceeding under Section 110, Criminal P.C. was not instituted with a view to get a man punished when the police had failed to secure his conviction for a substantive offence and as such in such cases the Courts are called upon to scrutinise the evidence with the greatest care. But if, notwithstanding such a scrutiny of evidence, the Court comes to the conclusion that there is sufficient evidence to warrant an order demanding security, the Court is bound to pass such an order though the proceeding under Section 110, Criminal P.C., was started soon after the discharge or acquittal of the person proceeded against from a charge for a substantive offence: vide *Shiam Lal v. King-Emperor* [1909] 6 A.L.J. 487.

6. It remains to consider the second point urged by the learned Counsel for the applicant, viz., whether or not there was ample material upon the record to justify the order passed by the Courts below. In this connexion it may be pointed out that the High Court is not a Court of appeal in cases under Section 110 of the Code of Criminal Procedure and if it is satisfied that the Courts below have approached the consideration of the evidence in a fair way having regard to the interests not only of the prosecution but also of the accused, it is not called upon in revisions against orders passed under Section 110 of the Code of Criminal Procedure to weigh the evidence given on behalf of one side or the other vide, *Maharban Singh v. Emperor* [1915] 13 A.L.J. 1046. But at the same time before affirming an order demanding security this Court is to be satisfied that the evidence in the case was of a character which made it imperative in the interests of public security to pass an order under Section 118 of the Code of Criminal Procedure: vide *Alimuddin v. Emperor* A.I.R. 1924 All. 569.

7. The learned Counsel for the applicant has argued that the evidence of the four witnesses mentioned above, who deposed that they were robbed of certain articles by the applicant, being evidence of the commission of substantive offence was inadmissible in proceedings under Section 110 of the Criminal P.C. He argues that if the evidence of those witnesses was true the applicant could be prosecuted on the basis of their evidence for a substantive offence, but such evidence could not be taken into consideration in the present case. In view of the recent decision

of this Court reported as Budhan v. Emperor : AIR1925 All691 , I cannot accept this contention of the learned Counsel. It has been held in that case that

It is impossible to accept the proposition that the evidence going to show that a substantive offence had been committed, or, which might form the basis of a charge of a substantive offence is necessarily to be excluded in proceedings under Section 110 and cannot form the basis of an order under Section 118 of the Code of Criminal Procedure.

8. I have gone through the entire evidence of all the witnesses examined by the prosecution and have come to the conclusion that, even after eliminating the evidence of the witnesses who were examined against the applicant in the dacoity cases in which he was discharged there remains a formidable body of evidence showing that the applicant is an habitual offender. The reasons assigned by the Courts below for rejecting the evidence of the defence witnesses appears convincing to me. I am satisfied that the Courts below have judicially considered the evidence and I must not, in the exercise of the revisional jurisdiction of this Court, interfere with the order of the learned Sessions Judge.

9. Accordingly I reject this application.