

Emperor Vs. Himayatullah

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Court : Allahabad

Decided On : Apr-14-1927

Reported in : AIR1927All592; 102Ind.Cas.503

Judge : Cecil Henry Walsh and ;Banerji, JJ.

Appellant : Emperor

Respondent : Himayatullah

Judgement :

1. This is an application in revision on behalf of the Local Government against an order of the Sessions Judge of Moradabad, setting aside an order of a Magistrate of the First Class directing the opposite party to execute a personal bond with two sureties to be of good behaviour under Section 109 of the Code of Criminal Procedure.

2. Three points have been urged by the learned Government Advocate in support of this revision. The first point urged is that the words 'to conceal his presence within the local limits of such Magistrate's jurisdiction' in Section 109 of the Code of Criminal Procedure are words defining the tribunal which has jurisdiction to try the case. In the case of Emperor v. Bhairon. : AIR1927 All59 it is laid down that the words 'within the local limits of such Magistrate's jurisdiction' are part of the predicate 'to conceal his presence.' We have no doubt whatever that the meaning of those words was rightly given in that case. It is clear from the provisions of

Section 5 in Chaps. II and III and Sch, III, Part (5), that these words cannot have any other meaning,

3. It may be that a person living within the territorial jurisdiction of a Magistrate trying the case, who takes steps to conceal that he is there namely, by removing himself from one part to another, such as from Allahabad to Naini, or from one village of a Tahsil to another, and when he gets to the new place disguising his identity or hiding his person, is within the section, and we do not think that the case of *Emperor v. Bhairon* : AIR1927 All59 can be read as having negatived that, and as having laid down that a person must go into the district from a place quite outside.

4. The second point urged is that when a burglar starts out to commit a burglary and lurks behind, it amounts to taking precaution to conceal his presence. A man who is deliberately preparing to commit a burglary and when caught by the police admits his intention, cannot be dealt with under the provisions of Section 109. If a man preparing to commit a crime announces his intention to the police at the time when he prepares to carry out his intention, the action of the police is all the preventive that is required in the public interest.

5. The third point urged was that the opposite party had upon the facts found in this case failed to give a satisfactory explanation of his presence. The opposite party, according to the findings, was a man known to the police. On him were found a jemmy, a bunch of keys, a box of matches and a stick of lac. He was also said to be scantily dressed. We do not think that it could be said that the opposite party failed to give a satisfactory account of his presence at a particular locality at a precise time. We think that the words 'satisfactory account' as used in Section 109 mean satisfactory in accordance with the known facts that are consistent with the surrounding circumstances.

6. We, therefore, dismiss this application.