

Bhola Vs. Emperor

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Court : Allahabad

Decided On : Dec-02-1921

Reported in : AIR1922All86; 65Ind.Cas.438

Judge : Stuart, J.

Appellant : Bhola

Respondent : Emperor

Judgement :

Stuart, J.

1. The Sessions Judge of Agra has referred to this Court the case of a certain Bhola sweeper, who has been bound over by the Cantonment Magistrate of Agra under Section 110, Criminal Procedure Code He has been asked to furnish two sureties of Rs. 100 each and to execute a bond himself for Rs. 200 to be of good behaviour for one year. The proceedings were perfectly regular. An appeal was filed to the District Magistrate, who dismissed it by a considered order. The Judge suggests that the proceedings were without jurisdiction and that the evidence did not justify the passing of the order, Bhola has been represented in this Court by competent Counsel who has argued on the merits, I take first the question of jurisdiction. It is proved that Bhola is a resident of Boileauganj which is in the Agra Cantonments. The Cantonment Magistrate had clearly jurisdiction under Section 110, Criminal Procedure Code, if Bhola was a person within the local limits of his

jurisdiction, The section has left the matter of permanent residence open. It is not a question of permanent residence, but of where the man practises his career as a thief or a housebreaker or whatever it may be. If a resident of Allahabad went to Benares and there carried on a career of crime for several months, the Benares Magistrate would have the power to take action against him under Section 110, Criminal Procedure Code. If, on the other hand, a resident of Allahabad was carrying on a career of crime in Allahabad and then went temporarily to Benares for a few months, the Allahabad Magistrate would have a right to proceed against him. The case here is that the man is usually a resident of Boileauganj. The evidence shows that he was by habit a thief in Boileauganj. Some months before the proceedings commenced, he worked as a Chaukidar of a Munsif a short distance away in civil lines. He is no longer Chaukidar to that Munsif. His service with him was not uninterrupted. He continued to return to Boileauganj and the evidence shows that he is carrying on a career of crime in Boileauganj. The Cantonment Magistrate certainly had jurisdiction. With regard to the merits, a Court of Revision should not usually go behind the facts as found by the Trial Court and the Court of Appeal. Unless on the face of it the decisions are perverse, it is most inadvisable to go behind their findings. The Cantonment Magistrate tried the case very carefully. He has written a reasoned and well thought out judgment. He had before him a mass of evidence on behalf of the prosecution, which showed that in Boileauganj there is, a gang of thieves the members of which are sweepers; that Bholu is closely connected with certain men who have already been convicted, and that he is a member of the gang. The evidence of repute is very strong. Against this was the evidence of perfectly respectable witnesses who state that they know nothing against him, but these witnesses were not in a position to know very much about the matter one way or another. Instances could be multiplied in which men working as domestic servants for respectable gentlemen who have no reason to suspect them in any way have carried on, unknown to their employers, a career of crime. That is a phenomenon common to all countries. The learned Sessions Judge appears to think that if a man works as a Chaukidar, it would be impossible for him to get away at night to commit crime without the knowledge of his master. So far from being impossible, in most cases it is comparatively easy for him to do so. Apart from any other method of escaping

observation, it is very simple, if a man be a criminal, for him to provide a substitute for the hours when he is otherwise engaged. That there was a mass of evidence which proved that Bhola was a habitual thief. That evidence was believed by the Cantonment Magistrate and by the District Magistrate who heard the appeal. There is no reason for me to disbelieve it. On the face of it reads true. The evidence for the defence was of no value. The learned Sessions Judge notes that it appears that the Cantonment Magistrate rejected the security tendered by Bhola without taking any evidence. I have been unable to discover anything on the record to show that the Cantonment Magistrate rejected any security without making proper enquiries. I refuse to interfere and direct that the record be returned.

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