

Nihal and ors. Vs. King-emperor

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Court : Allahabad

Decided On : Jun-14-1926

Reported in : AIR1926All759

Appellant : Nihal and ors.

Respondent : King-emperor

Judgement :

Banerji, J.

1. This is an application in revision by six parsons named Nihal, Shama, Ghubbar, Mukhtar, Meda and Bhoja, who were bound over to be of good behaviour by a Magistrate of the First Class of Bijnor. The procedure adopted in this case was this. On the 2nd of December 1925, the Station Officer of Chandpur arrested under Section 55 of the Code of Criminal Procedures number of men. They were put up before a Magistrate on the 8th who directed a case to be registered and put up the next day. On the 9th of September, the Magistrate first recorded an order purporting to be one under Section 112 of the Code of Criminal Procedure, as follows:

Whereas It is brought to my notice that you the aforesaid are habitual thieves, burglars, cattle lifters, and you associate with bad characters, you are hereby directed to show cause why you should not be directed to enter into a bond of Rs. 100 each with two sureties of Rs. 200 each to be of good behaviour for one year.

2. Thereafter the case began and sixteen witnesses for the prosecution were examined then and there. The accused, fourteen in number, it appears, were represented by a mukhtar. Even then it seems to me undesirable that, where persons are arrested under Section 55 of the Code of Criminal Procedure, they should not be told the substance of the information against them. As observed by Mr. Justice Walsh in the case of *Emperor v. Rajbansi* AIR 1920 All 268

It is impossible to lay down any standard to which such notices (under Section 112) are to conform, but when the Legislature provided that a Magistrate should make an order in writing setting forth the substance of the information received, it certainly meant a great deal more than telling a man that he was a suspected thief, because, however substantial that expression may be as an offensive description of an individual, it gives, the person alleged to be of that character not the slightest intimation as to what are the grounds upon which it is based. If that notice is sufficient, all that would be necessary would be to call upon anybody in India to show cause on the mere statement that he was suspected by the police to be an habitual thief but the procedure clearly requires something in the nature of an indictment or charge containing substantial particulars indicating the grounds upon which the police have given information to the Magistrate.

3. It is, in my opinion, clear that merely setting out in a notice under Section 112 of the Code of Criminal Procedure that a man is an habitual thief or robber, and having the prosecution witnesses ready there and then to go on with the case is not what the Legislature contemplated. However guilty a man may be, he is entitled, in my opinion, to a trial which is not a sham but a real trial, where the accused knows something about what is happening to him. I am, therefore, of opinion that the action of the Magistrate in not recording the substance of the information he had received does not amount to a mere irregularity which would be covered by Section 537 of the Code of Criminal Procedure as argued by the learned Assistant Government Advocate. The learned Sessions Judge no doubt states that the notice was very vague, but he goes on to say that it was read and explained to the accused, and as there was a fuller police report, Exhibit A 1, on the record which must have come to the notice of the accused or their mukhtar, he did not think there was any force in the argument adduced on behalf of the

petitioners in the Court below.

4. For these reasons I am of opinion that the order passed against the accused binding them over is bad in law. I set aside the order of the Magistrate binding over the six applicants, dated the 12th of October 1925. If the District authorities are of opinion that action should be taken against them, proceedings must be taken according to law.

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