

**Muhammad Ismail Vs. Emperor**

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**Court :** Allahabad

**Decided On :** Aug-15-1923

**Reported in :** 81Ind.Cas.600

**Judge :** Sulaiman, J.

**Appellant :** Muhammad Ismail

**Respondent :** Emperor

**Judgement :**

**Sulaiman, J.**

1. This is an application on behalf of Muhammad Ismail from an order passed against him under Section 110 of the Code of Criminal Procedure.

2. Proceedings were taken against the applicant along with three other persons tinder the above section by means of a Police report. So far as the Police report is concerned it is conceded that there, was no suggestion whatever in it which would show that all the persons against whom the proceedings were started were members of a gang. It also does appear from the judgment of the learned Magistrate that an objection was raised on behalf of the accused as to the impropriety, not to say illegality, of a joint trial.

3. The learned Magistrate, in his judgment, observed that although it was true that Ismail was not specifically named in the initial report and that the Police report is silent on the point of the accused belonging to a gang, he thought that inasmuch as the evidence had been led on behalf of the prosecution that the four accused were members of a gang, the objection could not be taken at that stage. He came to the conclusion that the accused along with the other persons should be bound over. This order was affirmed on appeal.

4. The judgments of the Trying Magistrate as well as that of the Appellate Court have, been read over to me, and I have perused them carefully. I regret to say that it is impossible to discover from either of the judgments what the exact case against the applicant was, that is to say, what was the purport of the evidence given against him specifically by the prosecution witnesses.

5. It is true that in the Criminal Procedure Code there is no direct prohibition against trying a number of persons under Section 110 jointly. But at the same time the impropriety of such a proceeding is obvious. Unless it is apparent that the various persons-against whom proceedings are taken form a gang, it is highly unfair and unjust that they should be proceeded against jointly. The effect of such a proceeding is that it is unnecessarily protracted and the parties thereby prejudiced. Furthermore, if by any chance such a proceeding is conducted jointly, it is essential that the case of each accused should be considered separately and individually. As observed by Walsh, J., in the case reported as Angnoo Singh v. Emperor 71 Ind. Cas. 865 : 20 A.L.J. 881; (1922) A.I.R. (A.) 35 : 45 A. 109 : 24 Cr. L.J. 257 such proceedings should be confined to each person alone unless the case were that he was a confederate or partner with other persons to whom all the evidence is equally applicable.

6. The mere fact of their having been a joint proceeding would not have induced me to interfere in this case if I were not satisfied that there has been a consequent failure of justice.

7. The learned Assistant Government Advocate concedes that by reading the judgments of the two Courts, it is impossible for him even to sift the evidence against the accused and point out what is the prosecution case as against him:

The learned Magistrate remarked in his judgment that 19 witnesses were examined for the prosecution. Out of these he only named five. He went on to add that all these witnesses unanimously declared that the accused were of one gang. This statement is certainly not accurate. I have had the statements of Lala Har Prasad, Thakur Prithi Singh and Syed Ali Husain, the first three witnesses named by him, read over to me, and they do not say that the accused are members of a gang. Fakir Chand, another witness named, does say so. The learned Magistrate, however, did not consider the case against each of the accused separately. By perusal of his judgment one is led to imagine that all the witnesses necessarily deposed against all the accused in respect of all the offences of which they were charged. This obviously was not so

8. The learned Sessions Judge in appeal has fallen into the same error. He remarked that 'the accused, or some of them, have been suspected in connection with the following crimes which took place recently.' This is followed by a list of the offences. But it is impossible to discover which of the offences in that list are attributable to the accused or are those in which the applicant was suspected. The evidence for the prosecution has been lumped together and no discrimination has been made as regards the different accused persons. I have had the statement of three Police Officers read to me and from their statements which are mentioned in the lower Appellate Court's judgment, it appears that so far as the present applicant was concerned, there had never been any search of his house; he had not been suspected on any specific occasion other than the kidnapping of one Mussamat Janmata or Musamat Jamo. In fact one Police Officer, Ali Hasan' says that he did not know anything against the accused. As to the case of Musamat Janmati, it appears that she had been kidnapped and disappeared. It was suspected that her ornaments were stolen and that she had been done away with. The applicant, Ismail, was suspected in that action and was in Jail but ultimately as there was no sufficient evidence against him he was discharged. On the very day when he came out of Jail, he was arrested under Section 110 of the Code of Criminal Procedure. This is the only instance in which suspicion fell on him as mentioned by the Police Officers. There are of course general statements of his being a man of bad character and certain suspicions which are not specific in their nature. In a case of this kind when an objection as to the impropriety of the joint

proceeding was taken in the first Court and when the evidence has not been taken separately against each accused, but has been lumped together, and when it is impossible to discover from the judgments of either Courts how much of the evidence was believed and how much rejected, I am bound to hold that the accused has; been gravely prejudiced by the proceeding taken against him in conjunction with the other accused persons.

9. I accordingly allow this application, set aside the order under Section 110 passed against him, and cancel the security demanded.

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