

indar and ors. Vs. Emperor

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Court : Allahabad

Decided On : Feb-02-1918

Reported in : 44Ind.Cas.463

Judge : Piggott, J.

Appellant : indar and ors.

Respondent : Emperor

Judgement :

Piggott, J.

1. In this case Indar, Jhabbu Lal and Bhopal, a father and two sons, have been required by a Sub-Divisional Magistrate to give security to be of good behaviour for a period of one year under the provisions of Section 110 of the Code of Criminal Procedure. An appeal against that order has been dismissed by the District Magistrate. The case is before me on an application for revision in respect of these two orders. I have been through the record and I am quite satisfied that the orders complained of are illegal, on more than one ground, and cannot be affirmed. The order of the District Magistrate is perfectly clear and straightforward and shows beyond possible doubt the grounds upon which the prosecution of these men for bad livelihood has proceeded and the order against them passed. There was a dacoity at the house of one Ram Dayal, in the course of which the said Ram Dayal was murdered. Information was forthcoming to the effect that this

dacoity had been organised by Indar, and that he and his sons, Jhabbu Lal and Bhopal, had taken part in it. The three men were placed on their trial along with others, charged with having taken part in this dacoity and in the murder of Ram Dayal. They were acquitted ' by the Sessions Court. The present proceedings are an attempt to prove by hearsay evidence what the prosecution were unable to prove by direct evidence at the Sessions trial. The learned District Magistrate says quite frankly that he is satisfied by the evidence on the record that Indar, Bhopal and Jhabbu Lal had got up the dacoity at the house of Ram Dayal. There is practically no legal evidence to this effect on the record. If it is alleged against a person, even in a proceeding under Section 110 of the Code of Criminal Procedure, that he on a certain occasion committed a particular offence, that fact must be proved by relevant evidence. It is not at all the same thing as proving by evidence of general repute that a man is a habitual offender. Moreover, in the present case the preliminary order drawn up by the Magistrate shows clearly that the prosecution were not prepared to undertake to prove, by evidence of general repute or otherwise, that these men were habitual robbers or habitual receivers of stolen property. The case against them was that they were so desperate and dangerous as to render their being allowed without security hazardous to the community. This is not a fact which under Section 117 of the Code of Criminal Procedure can be proved by evidence of general repute. I do not say that in a proceeding of this sort evidence of general repute may not be offered in support of an allegation that a person against whom proceedings have been taken is habitually a robber or habitually commits extortion, and that the Court may not be asked at the same time to consider whether this evidence of the man's general repute, read in connection with direct evidence establishing definite facts against him, may not justify a conclusion that he is a desperate and dangerous character and within the scope of Clause (f) of Section 110 of the Code of Criminal Procedure. If, however, it is intended to conduct a prosecution on these lines, the accused should have fair notice of the fact in the preliminary order drawn up against him. The form of the preliminary order passed in this case clearly shows that those responsible for the conduct of the prosecution were not prepared to ask the Court to find that these men were habitual robbers or habitual receivers of stolen property. For all these, reasons I am quite satisfied that the orders

complained of cannot be sustained. I set aside the order of the Sub-Divisional Magistrate and discharge Indar, Bhopal and Jhabbu Lal. If they have furnished the securities required, their sureties will be discharged and their own recognizances cancelled. If they are in custody for failure to furnish security, they must be at once released.

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