

Jafar Husaln and anr. Vs. Emperor

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Court : Allahabad

Decided On : Mar-22-1933

Reported in : AIR1933All859; 147Ind.Cas.551

Appellant : Jafar Husaln and anr.

Respondent : Emperor

Judgement :

ORDER

Kendall, J.

1. The application made by the two applicants is that the proceedings instituted against them under Section 110, Criminal P.C., may be quashed. On 10th December 1932 the Sub-Divisional Magistrate of Khurja issued a notice to the two applicants in the following terms:

Whereas report has been received from Sub-Inspector in charge, Police Station, Khurja, that you, Sayad Jafar Husain, son of Mr. Abbas, caste Saved, Mohalla Kot, and Lokman Das, son of Kishori Lal, Vaish, Mohalla Pirzadgan Khurja, are the owners of a flour mill run with electricity in which both of you are partners. There is general reputation that you in collusion with Mr. Charter, former Electric Engineer, habitually steal electric current and use such stolen current, whereby loss is sustained by the public; that you associate with Nathi Mal, &c., owners of other firm (flour mills) who have been convicted for theft of electricity, and with Abdul

Rahman, a suspect and a thief. Whereas your remaining at liberty is dangerous to the public, notice is hereby given to you to show cause why both of you be not ordered to execute personal bond in Rs. 1,000 and two reliable sureties of zamindars and income-tax payers of Rs. 1,000 each to remain of good behaviour for a period of one year.

2. The application is supported by an affidavit showing that the applicants are men of some status, one of them being a Government pensioner and both of them owners of flour mills, and that they had had one of their mills, supplied with electric power since 7th July 1931, but that finding that the meter supplied by the electric company apparently showed an excessive consumption they applied to have the meter tested, whereupon another meter was supplied which showed a still higher consumption, and that the applicants applied several times after that to have the meter tested and later applied to the District Magistrate for early refund of excess charges and finally closed their mill on October 1932. There are other statements in the affidavit to suggest why these unusual proceedings have been taken, but with these I am not at present concerned since the point has been taken on behalf of the applicants that the proceedings are not in accordance with law.

3. Under Section 110, Criminal P.C., a competent Magistrate who receives information that any person within the local limits of his jurisdiction 'is by habit a robber, house breaker or thief' may call on such person to provide security in the manner set forth in the subsequent sections. In the present case, according to the notice, the Magistrate received from the Sub-Inspector a report to the effect that the applicants 'in collusion with Mr. Charter, former electric engineer, habitually steal electric current and use such stolen current.' Section 110 is one of the sections of Ch. 8, which comes under Part 4, Criminal Procedure Code, i.e., the part devoted to the 'prevention of offences,' and it is clear enough for this reason alone, if it had not been held in many decisions of this and other High Courts, that these preventive sections are not intended to be used to punish accused persons for offences that have been committed, but to prevent them from committing offences which they are by their nature or habit likely to commit. If the applicants could be shown to be in the habit of stealing electric current the way to prevent

them from committing such offence would appear to be very simple, viz., to disconnect their supply, instead of going through the cumbersome proceedings of a law Court which, in this case would, according to the affidavit, involve the examination of the Collector of Bulandshar and a number of other officials and a long list of witnesses for the prosecution. The question before me however is not whether the procedure is cumbersome and unnecessary but whether it is legal. If a competent Magistrate receives information that a person is by habit a thief he may undoubtedly proceed under the section, and no doubt it would be argued (and in fact it has been argued by Dr. Walli Ullah on behalf of the Crown) that a person who habitually steals electric current is by habit a thief. I am not however able to conceive how it would be possible to prove that a person is habitually a stealer of electric current, without first proving that he has actually stolen electric current, and if the applicants have stolen electric current they should obviously have been prosecuted for that offence. No doubt it has been provided in Clause (4), Section 117', Criminal P.C., that the fact that a person is a habitual offender may be proved by evidence of general reputation, and this is probably what the Magistrate had in mind when issuing his notice to the effect that 'there is a general reputation' that the applicants steal electric current. But how such a matter could possibly be proved by general reputation has not been complained. A man who is by habit a thief in the ordinarily accepted sense of that term, a person for instance who picks pockets, steals grain from the fields or picks up trifles from shops and is generally dishonest, bears that reputation because it is within the personal knowledge of witnesses that such thefts have been committed and that the person concerned was in the neighborhood when the theft was committed, and thus a reputation for dishonesty is acquired. It is based on knowledge, though not necessarily on the personal knowledge, of the person who gives evidence. The knowledge however that electric current has been stolen must be derived from some special and definite experience, and if anyone possesses that special and definite experience, it must relate to some definite act of theft for which the applicants could have been or could still be prosecuted. I have therefore examined the police report on which the notice of the Magistrate was based and it is to the following effect:

Syed Jafar Husain, son of Mir Abbas Syed resident, of Mohalla Kot, and Lokman Das Vaish are residents of Khurja and own an electricity flour grinding mill. Both of

them are partners in the mill and are reputed to have habitually committed theft of electricity current for the above mill with the connivance of Mr. Charter, the then Resident Engineer. They are habitual thieves of electric current; and have been habitually receiving stolen current knowing it as such; and associate with Nathi Mal and other mill owners, who have been convicted of electric theft as well as with Mr. Charters, and Abdul Rahman, a bad character and thief. They are hazardous to the public of Khurja.

4. But, as I have already said, if the applicants have stolen electric current they should be prosecuted for a definite offence. When the police report speaks of their being 'reputed' to have been habitually committing theft of electric, current, and when the Magistrate repeats the phrase in his notice, what is really meant is that they are. 'suspected' of stealing the current, and the only reason for not prosecuting them for a definite offence appears to be that the evidence is not sufficient. It is true that the notice goes on to say that it is issued among other reasons because the applicants associate 'with the owners of the other flour mills who have been convicted for theft of electricity,' but that in itself could not conceivably be held to justify proceedings under Section 110. There is the addition that the applicants associate with Abdul Rahman, a suspect and a thief, but if Abdul Rahman is really a habitual thief and a person of such a kind as those against whom proceedings under Section 110 are ordinarily taken, it is scarcely credible that he should have been thrown in at the end of the notice in this way among these alleged stealers of electric current, and the applicants may well complain that if they are really being asked to defend themselves against the charge of being intimate with Abdul Rahman, that should have been a matter for a separate proceeding altogether, and should not have been mixed up with the case in which the main charge undoubtedly is that the applicants are in the habit of stealing electric current.

5. The report that the applicants are hazardous to the public appears from the report to be based entirely on their alleged theft of electric current, and if they have been stealing electric current that no doubt is wrongful loss to the electric company, but to describe it as hazardous to the community is a misuse of language.

6. I am forced to the conclusion therefore that the proceedings in the form they have taken are quite illegal, and that Section 110 cannot be used on the information referred to in the report of the police and the notice of the Magistrate. I cannot of course say anything as to the merits of the case beyond what these documents disclose, but the Magistrate is advised to consider whether there is any definite evidence for the actual theft of electric current, and if so to take proceedings according to law to prosecute the applicants for that offence. In any case the present application must be allowed, and I therefore direct that the proceedings be quashed and that the notice under Section 110, Criminal P.C., issued to the applicants, be cancelled.

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