

Rahu and ors. Vs. Emperor

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Court : Allahabad

Decided On : Jul-23-1920

Reported in : AIR1921All278; 59Ind.Cas.547

Judge : Piggott, J.

Appellant : Rahu and ors.

Respondent : Emperor

Judgement :

Piggott, J.

1. This is an application in revision in connection with a proceeding under Section 110 of the Criminal Procedure Code in which ten persons were originally involved. All of them have been ordered to furnish security to be of good behaviour. Eight of these appealed to the District Magistrate, but without success. The application before me is on behalf of four of these persons. The record shows that the ten men concerned were first arrested on suspicion in connection with a particular case of dacoity. They were arrested, therefore, under Section 54 and not under Section 55 of the Code of Criminal Procedure. Action was then taken under Section 167 of the same Code and these men were lodged in the local jail under the warrant of a Magistrate. The investigation into the case continued for some time longer and before it was completed, and before any final report had been sent in under Section 173 of the Criminal Procedure Code, the investigating Police

Officer came to the conclusion that there was no sufficient evidence or reasonable cause of suspicion to justify further proceedings against these ten men on the dacoity charge. It does not seem to me that the Code of Criminal Procedure makes any express provision for a case like this in which an accused person, after having been arrested, forwarded to a Magistrate and confined under a Magistrate's warrant, is found by the investigating Police Officer to have been arrested upon insufficient evidence. I should have thought that, ordinarily, a person so arrested would remain in custody until the final report under Section 173 of the Code had been submitted and would then be released under the Magistrate's order, on the ground that the Police report disclosed no adequate ground for further proceedings. I am told, however, that the practice generally adopted is to stretch the provisions of Section 169 of the Criminal Procedure Code, although that section in terms applies only to the case of an accused who has never been forwarded to a Magistrate. Apparently, the common procedure is for the investigating Police Officer to report to the Magistrate under whose warrant the accused has been committed to jail that he desires to release him under Section 169 of the Criminal Procedure Code. The Magistrate then sends for the accused from the jail, discharges him from the custody of the jail authorities and hands him over to the investigating Police Officer when this has been done the Police Officer can exercise the authority given him by Section 169 aforesaid to release the accused.

2. The peculiar feature of the present case was that the investigating Police Officer or officers, although failing to find sufficient evidence to justify further proceedings against any of these ten men on the charge of dacoity, came to the conclusion that the ten persons arrested were members of a gang associated together for the purpose of habitually committing thefts and robberies. They desired in fact to institute proceedings against them under Section 110, Criminal Procedure Code. A report substantially to this effect was submitted to the Magistrate by whose warrant the accused had been committed to the jail. The order pasted on this report was, in my opinion irregular and not to be justified by anything in the Code of Criminal Procedure. Sufficient information had not been laid before the Magistrate to warrant his passing an order under Section 112 of the Criminal Procedure Code. Indeed, it would appear that he was not the Magistrate who had jurisdiction to

pass any such order. If, therefore, the ten accused persons were to be discharged from custody, go far as the dacoity case was concerned, no Magistrate had any authority to direct their further detention in custody on a different matter, unless and until they had been re-arrested by the Police under Section 55 of the Criminal Procedure Code. The Magistrate, however, seems to have treated this as a mere technical difficulty and to have assumed that there had been a purely formal discharge of the accused under Section 169 of the Criminal Procedure Code; but he caught to have allowed the Police to re arrest them under Section 55 of the same Code. The order he passed was that the ten accused persons should be further detained in jail unless they could furnish security for their appearance when required. It was not until 12 days after this that a formal, report was laid by a competent Police Officer before a Magistrate having jurisdiction in the matter under Section 110 of the Criminal Procedure Code, and, three days later, the said, Magistrate having caused the ten accused to be brought before him from the jail, drew up and communicated to them the necessary order under Section 112 of the Criminal Procedure Code initiating the prosecution for bad livelihood. It has been contended before me that on the principles laid down by a learned Judge of this Court in *Maiku v. Emperor* 60 Ind. Cas. 919 : 17 A.L.J. 458 : U.P.L.R. (A) 19 20 Cr. L.J. 38 : 41 A. 483, these irregularities attendant on the initiation of the proceedings would in themselves justify this Court in quashing the orders which have been passed against these accused persons, or, at any rate, against those eight out of the ten accused who contested the matter in the Trial Court and appealed to the District Magistrate. I think this contention is based on some misapprehension as to the meaning of the decision above referred to and the evils against which that decision was directed. This Court was dealing in that case with an accused person who had been tried and acquitted and ordered to be released by a competent Court, but who was then immediately re-arrested, not because of any fresh information received as to his character or repute, but in accordance with a standing order, most improperly issued in that particular district, directing that all accused persons acquitted on a charge of dacoity should be immediately arrested under Section 55 of the Criminal Procedure Code. I am of opinion that, although the proceedings prior to the passing of the order under Section 112 aforesaid were irregular, and though, I have thought it right to point out my

objections to those proceedings, the irregularity was cured when the accused persons came before the Magistrate on the 18th of February and the Magistrate, having jurisdiction to do so, proceeded upon proper materials to pass the formal order under Section 112 of the Criminal Procedure Code.

3. Having said this, however, I feel bound to add that the curious fashion in which this prosecution for bad livelihood was initiated has led me to examine the record with greater strictness than I would otherwise have thought necessary. The accused persons were a curiously miscellaneous lot to have formed a gang habitually associated for the purposes of committing thefts or dacoities. To take the case of the eight persons dealt with by the District Magistrate, they belonged to seven different castes and came from six different villages. Assuming it to be in no way impossible that such a miscellaneous assortment of accused persons might have been associated together for the habitual commission of thefts or dacoities, one would certainly feel inclined to presume that they would find it impossible to carry on such association without providing a competent investigating officer with overwhelming evidence of the fact. Another criticism which I have to make against the proceedings in the Court below is, that there seems to have been an attempt to combine the provisions of Clauses (a) and (f) of Section 110 of the Criminal Procedure Code, and that, as regards some of the accused persons at any rate, the judgments before me do not clearly show whether the Courts below were satisfied that these men were habitual thieves and robbers, or whether the action against them was based upon a general finding that they were desperate and dangerous persons within the scope of Section 110, Clause (f), of the Code. The point is not a purely formal one, because, under Section 117 of the Criminal Procedure Code, the fact that a person is a habitual offender may be proved by evidence of general reputation or otherwise, but there is no similar provision to relax the ordinary rules of evidence where the case is sought to be brought under Clause (f) of Section 110 of the Criminal Procedure Code. For these reasons, I have, as already stated, examined the record of this case with more particularity than would ordinarily be considered necessary upon an application in revision. I have come to the conclusion that the prosecution case against three, at any rate, of the applicants, Rane, Narpat and Kharga, is a bad one, and that the orders against them are liable to be set aside, not merely on the general merits of the

case, but on a specific ground which has been repeatedly held by this Court to be sufficient to warrant interference in revision. Rahu and Narpat are brothers, jats by caste. As against the allegations made by the prosecution witnesses they were able to produce an exceedingly voluminous body of evidence for the defence, no fewer than 46 witnesses coming forward to give them a good character. The defense witnesses, moreover, proved that these men are substantial cultivators, that their methods of life are such as to render it distinctly unlikely that they could find time to indulge in the habitual commission of theft or robbery. This large body of defence evidence has been brushed aside by the Courts below upon what seem to me a wholly inadequate grounds. The District Magistrate himself was satisfied that these two men were substantial cultivators, with a considerable amount of occupancy land. He thinks that the evidence produced by them in their defence is wholly discounted by the fact that 38 of their witnesses are their caste fellows, many of them coming from villages four miles or more distant from that in which Raha and Narpat reside, and that these witnesses came forward at their trial voluntarily, without being summoned. Some of the witnesses admitted frankly that they had come forward because they regarded these accused as sarpanch, or heads of their brotherhood, and looked upon it as a slur upon the brotherhood generally that these men should be treated as habitual thieves and robbers. I cannot see if this fact anything which should discredit the evidence for the defense. On the contrary, it impresses me with the good faith of the witnesses and their honest and emphatic belief that these two men have been prosecuted in consequence of some private feud, of which there are certainly traces on the record, and that they really are respectable persons enjoying the confidence of their community. I have examined the defence evidence for Kharga and Cheta on the same lines. I thought at first that the Trial Magistrate had given nothing which could be described as a reason for disregarding the evidence of the 13 witnesses produced by Kharga in his defence. I find, however, that, in a later passage of his judgment, where he is discussing the defence evidence produced by another of the accused persons, he makes, as it were, an incidental remark that, in his opinion, Kharga's defence witnesses, as well as those for the accused persons whose case was immediately under consideration, had no adequate opportunities of forming an opinion as to the character of the accused persons as to make their

evidence of any value. Upon this, I have been through the defence evidence of Kharga in detail, and I think it sufficient to say that it form', in my opinion, a (sic) and serious body of evidence which ought not to be brushed aside for the reasons given by the Magistrate. After careful consideration, I have decided that the case of the applicant Cheta, stands upon a different footing. His defence evidence was limped in with that of a Muhamtnadan accused of the name of Rahim, a circumstance which alone would corroborate the prosecution assertion that there must be some especial and peculiar association between these two men. The evidence itself strikes me unfavourably and I certainly cannot take it upon myself to say that the body of prosecution evidence, where it affects Cheta, is outweighed or any thing like outweighed by the evidence produced by him and by his co-accused, Rahim, jointly.

4. The result is, that I dismiss this application so far as Cheta is concerned. I allow the applications of Rahu, Narpal, and, Kharga and set aside the orders requiring them to furnish security to be of good behaviour. If these men are in custody they will be forthwith released; if they have furnished security, their own recognizanse bonds and those of their sureties will be discharged.