

Ram Rup Bhar Vs. Emperor

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Court : Allahabad

Decided On : Jun-05-1929

Reported in : AIR1929All813

Appellant : Ram Rup Bhar

Respondent : Emperor

Judgement :

Young, J.

1. This an application in revision from the judgment of the learned Sessions Judge of Ghazipur, in which he confirmed the order against one Ram Rup Bhar under Section 110, Criminal P.C. Originally four men were charged under Section 110 before the Magistrate. The Magistrate acquitted one of the four. The learned Sessions Judge acquitted two more, and confirmed the sentence only as regards Ram Rup Bhar. There are many difficult points in this case, but I think that the application must be allowed on a preliminary point. The notice under Section 110 charges the four accused with:

that they formed one gang and have been habitually committing theft and burglaries since 1927.

2. This ground is clearly bad. In a decision of this High Court reported in Ram Prasad v. Emperor : AIR1925 All250 , Mukerji, J., laid it down that where:

a man may be by habit a robber and so long as he is not charged with a definite act of robbery, he may be bound over under Section 110, Criminal P.C. But when it is said that he, along with several others, habitually commits robbery, the man becomes at once a member of the gang of dacoits and, therefore, commits a definite and specific offence punishable under Section 400, I.P.C. and cannot be bound over under the preventive sections.

3. The learned Assistant Government Advocate has drawn my attention to the case of Budhan v. Emperor : AIR1925 All694 , which is a Bench case. But in my opinion, the decision in this case in no way overrules Mukerji's decision in the earlier case on the particular point on which I am deciding this application. In this case the particular charge that I have alluded to is a definite and specific offence punishable under Section 401, I.P.C. and, therefore, it seems to me to be clear that the preventive sections of the Code cannot be used in this particular case. The second ground in the notice is that:

you (the four men) possess a bad reputation in the vicinity of your village.

4. That is not a proper notice under Section 110 and cannot be said to be the basis of an order under this preventive section. Ground 3 says:

Have only nominal means of livelihood except the proceeds of theft and burglary.

5. This again is not a proper notice under Section 110. Ground 4 is: 'Have been strongly suspected to have committed the following burglaries.' This too cannot be the ground of proceedings under Section 110. In the case of Emperor v. Kurva : AIR1928 All357 it has been held by a Bench of this Court that:

in a case under Section 112, Criminal P.C., evidence cannot be led under Section 110 that an accused person has been suspected of committing such and such offences.

6. There is nothing, therefore, in the notice which can possibly, in my opinion, be the basis of proceedings under Section 110.

7. Several other points have been taken before me, but, taking the view which I do of the notice, it is unnecessary to discuss them. The application must be granted and the order passed set aside.

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