Jagannath Vs. the State

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Court : Madhya Pradesh

Decided On : Nov-26-1952

Reported in : 1953CriLJ698

Judge : Radke, Addl. J.C.

Appellant : Jagannath

Respondent : The State

Judgement :
ORDER

Radke, Addl. J.C.

1. This is a revision application against the order of the Additional Sessions Judge, Bhopal confirming the order of the First Class Magistrate, Sehore passed under Section 109, Criminal P.C.

2. The Ichhawar Police presented a complaint in the Court of the Magistrate, First Class, Sehore alleging that the non-applicant Jagannath son of Dulichand was found at Pangra under suspicious circumstances and he was brought to the Station House by the Choukidar. It was found that he could not give a satisfactory account of himself and that he had no ostensible means of subsistence. It was, therefore, prayed that he should be bound over under Section 109, Criminal P.C.

3. On receipt of the above complaint the Magistrate drew up a preliminary order under Section 112, Criminal P.C. and called upon the non-applicant Jagannath to show cause why he should not be called upon to execute a bond m a sum of Rs. 200 with sureties in the like amount (No. of sureties not mentioned) for a period of one year for the goods behaviour. The substance of the information was that he did not give a satisfactory account of himself when he was apprehended by the Choukidar at Pangra and that he has no ostensible means of subsistence.

4. Below the order drawn up under Section 112, Criminal P.C. the Magistrate made the following endorsement:

Read over and explained. Pleads guilty. No defence.

I find it difficult to understand what the Magistrate means by this endorsement. In the first place there were no allegations about the commission of a crime by the non-applicant and so there was no need for recording his plea of guilty. Moreover the fact that he has no defence was irrelevant at that stage. The inquiry after the preliminary order was passed and explained to the non-applicant, should have been like a warrant case as required by Section 117(2), Criminal P.C.

5. After examining the prosecution evidence the Magistrate examined the non-applicant. His examination is most superficial and does not conform to the provisions of Section 342, Criminal P.C. inasmuch as the circumstances appearing in evidence against him were not put to him and no attempt was made to obtain an explanation from him. The non-applicant stated that he had committed no offence and that he did not like to lead defence evidence. The Magistrate then passed an order and held that the non-applicant has no ostensible means of subsistence in Ichhawar Police Station and that he did not give a satisfactory reason for his visit to Pangra. He was, therefore, ordered to be bound over for his good behaviour for a period of one year under Section 118, Criminal P.C. and as he failed to execute the bond with two sureties of Rs. 200 each, he was detained in prison.

6. In appeal the Additional Sessions Judge confirmed the order of the First Class Magistrate and further held that even though he had given out a different purpose of his visit to Pangra the real purpose was to commit an offence. Being dissatisfied

with this order the non-applicant came up in revision to this Court.

7. In my opinion both the Courts below did not understand the real meaning of the provisions of Section 109, Criminal P.C. and since such cases are likely to recur it is desirable to pass an exhaustive order explaining the pro-visions of this section for the guidance of the Subordinate Courts.

8. Section 109, Criminal P.C. consists of two parts viz.: Clause (a) and Clause (b). Clause (a) deals with such a person who takes precautions to conceal his presence within the local limits of Magistrate's jurisdiction and there is reason to believe that he does so to commit ah offence. Clause (b), however, consists of two parts. The first part deals with such a person who has no ostensible means of subsistence and the second with one who cannot give a satisfactory account of himself. It should be definitely understood that the two clauses are distinct from one another and that it is not possible to switch on from the one to the other.

9. Section 109, Criminal P.C. is found in Part 4, Chapter 8 Part 4 deals with prevention of offences and consists of 6 chapters beginning from Chapter 8. The heading of Chapter 8 is as follows:

Of security for keeping the peace and for good behaviour.

Section 109 deals with

Security for good behaviour from vagrants and suspected persons.

The idea underlying in Part 4 is to take action before an offence is committed and Chapter 8 deals with the manner in which an action can be taken for a particular class of cases. Section 109 is more specific with regard to the class of cases falling within its ambit.

10. It is not necessary for me to refer to the long line of judicial decisions on the interpretations of Section 109, Criminal P.C. as most ct them are conflicting and are likely to embarrass the subordinate Courts. My purpose is to explain the various clauses with a view to guide the Courts who have to apply the provisions of this section and I proceed to do so.

11. Clause (a) of Section 109 runs as follows:

That any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence.

This clause again consists of two parts and the facts in each case must establish not only that there are precautions taken to conceal the presence, but that this is done with the avowed object to commit a crime. So far there is no difficulty. It is the first part which has given rise to conflicting interpretations. The use of the words 'is taking' suggests that it is the continuous act that is contemplated. But to hold so would land one into the difficulty of drawing the line. Is the act continuous where it lasts for one hour, one night, one week or more? Does it become continuous if it is repeated once, twice, thrice or more? Again a man may never conceal himself in the day time but may take precautions to conceal his presence night after night, would the continuity be broken because there was no concealment during day. Furthermore the section is a preventive one intended to frustrate the designs of a criminally-minded person before they are carried out.

If the idea of continuity were pushed far enough, an arrest at the very out-set of the preparation would be impossible, as the Police would always have to wait till the designs have gone on for some time and have been persisted in. It seems to me that no time limit can be put on the taking of precautions. The conflict of judicial decisions is mainly due to the use of the present continuous tense 'is taking' This expression is no doubt unhappy. But I have no doubt that it is intended to be comprehensive enough to cover the present perfect tense 'has taken' or 'has been taking.' In every case it would be a question of fact, whether the circumstances justify the inference that the non-applicant has been taking precautions to conceal his presence. It follows, therefore, that the common sense interpretation of the expression would be that the concealment contemplated is not a continuous one and that the section can apply even if the non-applicant's concealment is transitory.

12. Two classes of persons can be contemplated for the application of the section viz.: (i) those who reside and have a permanent residence within the jurisdiction of

the Magistrate and (ii) those who are strangers and come within the jurisdiction of the Magistrate. The question is whether those coming under Class (1) can come within the mischief of this section. Ordinarily it would appear that they cannot. If a man is a resident of a village within the jurisdiction of the Magistrate where he does his normal avocation and moves about during day time like a peaceful citizen, it would appear that no action can be taken against him. But if he lives in a village and goes to another village during night and conceals his presence there and takes precautions to see that none knows that he is at that other village which is also within the jurisdiction of the Magistrate, I fail to understand how he can escape if it is found that the concealment is with the object of committing an offence. Even if a man is known to be the resident of some part of his jurisdiction he can come within the ambit of the section, if he takes precautions to conceal his presence in the other part of the same jurisdiction.

13. But a man, whose place of residence is well-known and who goes out at night on the house breaking expedition with scoundrels armed with weapons, does not come within the mischief of Clause (a) at all. If such a man at the approach of the Police eludes the arrest and conceals himself under a tree or behind a wall, it cannot be said that it is enough to attract the section. Here the concealment is not to facilitate the commission of the crime, but to avoid the arrest. The circumstances must be proved to show that the concealment is to commit an offence and not to escape the arrest by the Police.

14. I shall next turn to Clause (b) of Section 109, Criminal P.C. which runs as follows:

that there is, within such limits, a person who has no ostensible means of subsistence or who cannot give a satisfactory account of himself.

This clause, like the former, can be split up into two parts. The first part deals with those who have no source of livelihood and the second part deals with those who cannot give a satisfactory account of themselves. The mere fact that a man has no source of livelihood will not be sufficient to demand security from him as there are many persons who have no fixed source of livelihood and depend on alms. But if a man does nothing and yet lives in affluent circumstances and there is reason to

believe that he lives on the proceeds of theft, or dacoity, he can be called upon to give security for good behaviour.

15. It is the second part of Clause (b) which causes difficulty in practice. In Clause (a) the expression 'concealing the presence' has been used whereas in Clause (b) 'cannot give a satisfactory account of himself has been used. This means that these two expressions are not identical in meaning. It is obviously true that the second part of Clause (b) does not justify broadly calling upon any person to satisfactorily account for how he spends his leisure time, but if there is definite evidence that he has been caught spending a portion of his leisure time in a manner giving rise to grave suspicion and he does not give satisfactory account of the incident, I am unable to see why Clause (b) should not apply.

16. If a house-holder catches a man in his garden in the middle of night armed with an instrument of house breaking and that man cannot explain what he was doing at that odd hour, surely it is not using the language in any -other than its simple straightforward sense to say that he cannot give satisfactory account of himself. The giving of satisfactory account has reference to its circumstances in which he was seen. Unless the circumstances give rise to grave suspicion no action can be taken. To hold otherwise would lead to oppression. When a man is called upon to give satisfactory account of himself, the implication necessarily follows that it is not only the general account of himself but an account of himself in relation to the circumstances in which he is called upon to give such an account.

17. I shall examine the evidence in the light of what is stated above. Noor Mohammad Khan, Station House Officer (P.W. 1) took down the report of the Choukidar in the Rojnamcha, and it is Ex. P. 1. To him the non-applicant gave out that he is a resident of Shujalpur or Shyampur. But there is no evidence to show whether an enquiry was made at Shujalpur about the non-applicant. The man, who was sent to Shyampur, was not examined at all. Kanhaiyalal (P.W. 2) stated that the non-applicant gave out his name as Nisrilal of Kalapipal in the village but to the Police he gave out his name as Jagannath of Shyampur.

The first part of his version is not corroborated by any other witness, but the latter part is - corroborated by Haricharan (P.W. 3). Thus the only evidence against the

non-applicant is that he gave out different names to different people. There is absolutely no evidence of the circumstances under which the non-applicant was found when he was caught. That was most important to infer whether his visit to Pangra was casual or with an intention to commit an offence. In the first place the accused was not asked by the Magistrate whether he had given out different names to different people and if so, why. He was not even asked whether the stick and the knife, which were seized from his possession, were actually seized from him. Size of the knife is also not ascertained.

18. The rule of law is that if no opportunity is given to an accused to explain any circumstances appearing in evidence against him, that evidence cannot be used against him at all. I fail to understand why the Magistrate did not examine the non-applicant with reference to the evidence appearing against him. The order of the Magistrate shows that the non-applicant had stated to him in reply to his question that he was carrying on barber's profession and that he had come to a relation of his whose name he did not know and whom he did not recognise. I searched in vain for such a statement of the non-applicant in the Magistrate's record, but I could not find it. I fail to understand how the Magistrate writes that which his record does not support.

The Magistrate merely asked the accused what he had to say after hearing the evidence examined in the case. This is not a proper examination. There is no evidence on record to show that the general course of the life of the non-applicant is unsatisfactory i.e. that he lives on the proceeds of theft, robbery or dacoity etc. The prosecution witnesses know nothing about the non-applicant except his conduct when he was caught. It is not proved that he has no ostensible means of subsistence. The finding, that the non-applicant has no ostensible means of subsistence at Pangra, does not help the prosecution at all.

19. Thus the prosecution evidence falls short of proving the ingredients necessary to bring the non-applicant within the ambit of Clause (b) of Section 109, Criminal P.C. In the result the revision is allowed. The order passed by the Magistrate and the Additional Sessions Judge are set aside and the non-applicant is discharged.