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SooperKanoon Citation : sooperkanoon.com/753228

Court : Rajasthan

Decided On : Nov-20-1956

Reported in : 1957CriLJ477

Judge : Modi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 512

Appeal No. : Criminal Revn. No. 39 of 1956

Appellant : The State

Respondent : Umraokhan and ors.

Advocate for Pet/Ap. : Govt. Adv.

Disposition : Revision allowed

Judgement :

ORDER

Modi, J.

1. This revision raises an interesting point as to the interpretation of Section 512 of the Code of Criminal Procedure, and the point is not covered by authority.
2. The facts leading up to this revision may be shortly stated. The case for the prosecution is that there is a village named Kelnor in Tehsil Banner on the border

of India and Pakistan within the territories of India where one Akheysingh lived. It is said that on the 7th September, 1952, certain dacoits came from Pakistan and decamped with a number of cattle belonging to Akheysingh, valued at Rs. 3,000/- approximately. A servant of Akheysingh, who was grazing them, was in charge of the cattle. The first information report was lodged at thana Chohtan on the 8th September, 1952, by Akheysingh. The names of the accused were mentioned in the first report.

The police investigated the case and were unable to arrest the accused. Eventually on the 12th October, 1955, a challan was submitted under Section 512, Cri. P. C., in the court of the Sub-Divisional Magistrate, Barmer, and it was prayed that the evidence against the accused who were residents of Pakistan and as to whom there was no immediate prospect of arrest be recorded. The Sub-Divisional Magistrate returned the challan saying that it was not alleged that the accused were absconding from their place of residence and, therefore, the provisions of Section 512, Cr. P. C., were not attracted. A revision was preferred on behalf of the State from the above order to the District Magistrate, Barmer.

The District Magistrate held that an accused can be considered to be absconding only

'when he is proved to have fled away from his residence and cannot be arrested or he is hid-ing at his residence and taking precautions in order to evade arrest.'

He further stated that in this case it was admitted that the accused were residents of Pakistan and that, therefore, there was no question of their flying away or hiding from their place of residence. In this view of the matter, the District Magistrate upheld the order of the Sub-Divisional Magistrate. The present revision has been preferred by the State from the above order.

3. It is contended by the learned Deputy Government Advocate that the view taken by the courts below is wrong and should be set aside, and it is urged that an unduly narrow meaning has been put on the phrase 'has absconded'. The question for determination is as to the precise meaning of the word 'abscond'. Does this word connote any necessary connection with the place of residence of

the person said to be absconding?

4. On a careful examination of the whole matter, it seems to me that 'absconding' does not necessarily mean absconding from one's residence although usually when a person is hiding from his place of residence he is said to abscond. The primary meaning of this word is 'to hide'. A person may hide even in his place of residence or away from it and in either case he will be absconding when he does so.

In this view of the matter, it seems to me to be an undue simplification to say that a person can only be said to abscond when he has run away from his place of residence. Again for aught one knows, there may be offenders who have no fixed place of residence at all, and if an offender of this type having committed a crime runs away from the place of the crime or the country in which it was committed, then on the reasoning of the courts below Section 512, Cr. P. C., could have no application to the case of such an offender; and yet having regard to the object underlying this section, it may indeed be highly expedient in the interests of justice to preserve evidence to be used when necessary and after the offender is arrested and which evidence otherwise might well be lost altogether.

5. In this connection I have also examined the dictionary meaning of the word 'abscond'. Its primary meaning is 'to hide'; but that of course is not strictly applicable in the present context. The other meaning is to quit the country in order to escape a legal process. Thus Wharton's Law Lexicon (Fourteenth Edition) gives the meaning as 'to fly the country in order to escape arrest for crime.' To the same effect is the meaning given in the Oxford English Dictionary (Vol. 1 A-B) where it is said that the word is generally used of criminals eluding the law. We have it from the Webster's New International Dictionary (Vol. 1 A-L) that the word is used specifically of a person who leaves the jurisdiction of a court or secretes himself within its jurisdiction for a fraudulent purpose such as hindering or defrauding creditors by avoiding legal process.

The purpose stated in the definition is clearly just one example and there may be others, and another example of a fraudulent purpose may be the escaping of a trial for a crime committed. Having regard to this meaning of the word, it is clear

that the country or the place which an offender quits or flies from need not be the country where he lives or has his home.

It may as well be the country where he has committed a crime and where, therefore, he would be ordinarily liable to be tried according to the law of that country and from where he escapes the arm of the law. Where, therefore, a person having committed an offence in a particular country leaves it, I am quite clear in my mind that he must be said to abscond so far as that country and its laws are concerned.

6. If the above meaning of the word 'abscond' is the true meaning that should be attached to it, it follows that the view taken by the courts below was wrong and must be set aside. The prosecution case is that the offenders in this case, who admittedly belonged to Pakistan came to Kelnor, a village in the Indian territories, and committed the crime and then ran back to Pakistan. But, that notwithstanding it can be correctly postulated of them that they have absconded within the meaning of Section 512 of the Code of Criminal Procedure. The case of the prosecution further was that there was no immediate prospect of arresting the accused in the present case.

It must follow from what I have stated above that the two conditions precedent to the application of Section 512, namely (1) that an accused person has absconded and (2) that there is no immediate prospect of arresting him, stand fulfilled in the present case, and, therefore, the Sub Divisional Magistrate was wrong when he came to the conclusion that he had no jurisdiction or authority to record the evidence of the witnesses who were sought to be produced by the prosecution under Section 512, Cr. P. C., before him.

7. For the reasons mentioned above, I allow this revision, set aside the orders of the courts below and hereby direct that the Sub-Divisional Magistrate, Banner, will proceed with the case according to law in the light of the observations made above.