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In Re: Perne Maila Rai

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Court : Chennai

Decided On : Feb-04-1938

Reported in : AIR1938Mad591

Appellant : In Re: Perne Maila Rai

Judgement :

Burn, J.

1. In my opinion there was evidence upon which the learned Joint Magistrate and the learned Sessions Judge could properly rely in order to hold that the petitioner was habitually committing or attempting to commit or abetting the commission of offences involving a breach of the peace and is so desperate and dangerous as to render his being at large without security hazardous to the community. I cannot accept the contention of Mr. Jayarama Ayyar that the evidence of the police witnesses with regard to general repute should be excluded as inadmissible. The question what is a person's reputation is a question of fact. It can be spoken to by any one who knows what his general reputation is. The police officer who goes to the place where a particular person lives and who, makes enquiries to find out what his reputation is, is perfectly competent to speak in the witness box about the result of his enquiries. His evidence that the reputation of such and such a person is so and so is evidence of a fact and it is not to be excluded as mere hearsay evidence. In one sense the evidence of general repute is of course hearsay but it is hearsay of a particular kind which is made admissible in a case like this by

Section 117, Criminal P.C. It is not in my opinion necessary- I say it with all respect to the learned Judges who have held otherwise - that the witness who speaks to the general (reputation of a person must be resident in the same place. A stranger can find out what the general repute of a person is and he is competent to testify to that fact. For this reason, I would dismiss this petition holding that there is no ground for interference in revision.

2. The case was brought before this Bench apparently because of a conflict of rulings in Criminal in vision Cases Rathinam Pillai v. Emperor (1938) 25 A.I.R. Mad 35 and In re Shanmugham Asari (1938) 25 A.I.R. Mad 482. In the former case, Newsam J. is reported to have said:

There is another and I think an even stronger ground for quashing the present proceedings. Neither of the petitioners has ever been convicted of any crime, A mere perusal of Section 110 is sufficient to show that it is intended to deal with ex-convicts or habitual criminals and dangerous and desperate outlaws who are so hardened and incorrigible that the ordinary provisions of the penal law and the normal fear of condign punishment for crime are not sufficient deterrents or adequate safeguards for the public.

3. In the latter case Horwill J. stated as follows:

It is further contended that before a person can be bound over Under Section 110 it is necessary that a certain number of previous Convictions should have been proved. I can see no necessity for this if the fact that a parson is an habitual robber or housebreaker or thief can be proved otherwise. If there are no previous convictions, the quantum of proof necessary would naturally be greater.

4. The conflict appears to be that Newsam J. is thought to have held that Section 110 can only apply against habitual criminals if there are previous convictions while Horwill J. has held that it is not necessary to prove previous convictions. The point does not arise in the present case because it has not been contended by Mr. Jayarama Ayyar on behalf of the petitioner that the absence of any previous conviction renders the order of the lower Court invalid. I do not myself think that Newsam J. meant to say that the only habitual criminals who can be dealt with

Under Section 110, Criminal P.C. are ex-convicts. He says 'ex-convicts or habitual criminals and dangerous and desperate Outlaws' and I do not think 'that the word 'or' is equivalent in this context to 'namely'. The supposed conflict only arises if Newsam J.'s words are read as if he had said, 'ex-convicts, viz. habitual criminals and dangerous and desperate outlaws' If it were necessary, I would agree with Horwill J. and differ (with all respect) from the inter, pretation put upon the words of Newsam J, In Section 117, Criminal P.C. it is expressly laid down that the fact that a person is a habitual offender may be proved by evidence of general repute. This is by itself inconsistent with the ideas that a person against whom proceedings Under Section 110, Criminal P.C. are taken must be an ex-convict.

Venkataramana Rao, J.

5. This is an application to revise the order of the learned Sessions Judge of South Kanara confirming the order of the Joint Magistrate of Kundapur binding over the petitioner Under Section 110(e) and (f), Criminal P.C. There are two concurrent findings of the lower Court, viz. (1) that the appellant is a person given to habitually committing or attempting to commit or abetting the commission of offences involving a breach of the peace and (2) that the appellant is so desperate and dangerous as to render his being at large without security hazardous to the community. So far as the first finding is concerned, it is mainly based on three criminal cases which were the subject of judicial proceedings, and which ended in the discharge of the petitioner. Apart from the said proceedings, there is no other reliable evidence in the case. It seems to me that the lower Courts were not warranted in basing their finding on the evidence gathered from the proceedings in those cases, when the petitioner was exonerated in respect of the charges laid against him in those proceedings. I am therefore of the opinion that this finding is not sustainable. With regard to the other finding Mr. Jayarama Ayyar contends that it is based upon certain inadmissible evidence and therefore the finding must be set aside. His contention may be outlined thus: both the lower Courts have taken into consideration the evidence of certain police officers who have made investigation regarding certain offences, namely those which formed the subject of the above criminal proceedings, and their evidence is purely hearsay and therefore the finding based on such evidence cannot be sustained. To appreciate

this contention, one has to see what is necessary to sustain a finding with reference to a charge Under Section 110(f), Criminal P.C. Proviso (4) to Section 117 says that:

The fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

6. Therefore a finding in regard to a charge Under Section 110(f) can be based on evidence of general repute of the person who is sought to be bound over. The section does not say in what manner evidence is to be given. The evidence as to reputation is always recognized as an exception to the rule as to the non-admissibility of hearsay evidence. Phipson in his book on 'Evidence,' Edn. 7 observes thus at p. 372:

Stephen states that oral evidence must in all cases whatever be direct; that is, if it refers to an opinion, or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds. But though this is generally true, it is not invariably so, witnesses being in some cases allowed to testify to the opinions of third person who were not upon oath, e.g. when the opinion is that of the community (reputation).

7. Reputation of a man's character is the inference or estimate from the sum total of a man's actions and qualities drawn or formed by persons who are acquainted with him or among whom he resides and with whom he is chiefly conversant or the circle in which he moves; it is the prevailing opinion formed by those with whom he associates and who would have the best opportunity of knowing his habits and general behaviour. It is generally Understood that the 'place' or 'community' with reference to which reputation evidence is tendered should relate to the neighbourhood where he dwells or moves, but having regard to modern conditions, it is impossible to define 'neighbourhood' or 'community' with any degree of accuracy. Though reputation is, in one sense, hearsay evidence, yet what a man learns of a man's reputation is a fact. Taylor in his book on 'Evidence', Edn. 12 states thus in Section 1472:

It is not however enough that the impeaching witnesses should profess merely to state what he has heard 'others' say, for those others may be but few. He must be able to state what is generally said of the person, by those among whom he dwells, or with whom he is chiefly conversant, for it is this only which constitutes his general reputation. In ordinary cases, the witness should himself come from the neighbourhood of the individual whose character is in question, for if he be a stranger, sent thither by the adverse party to learn his character, he will not be allowed to testify as to the result of his enquiries. The impeaching witness may however be asked in cross-examination the names of the persons whom he has heard speak against the character for veracity of the witness impeached.

8. One of the cases to which he makes reference is Kimmel v. Kimmel 3 Serg & R 337 which gives a fairly good exposition of what reputation evidence consists of and how it is to be proved. In that case Gibson J. observes thus at p. 656:

The witness shall not be permitted to say ho was told that the person had either a good or bad character in his own neighbourhood. But that is a very different thing from a knowledge of common report, acquired, as in this case, from common report itself. A personal acquaintance with the individual to be affected, is unnecessary. The witness is to give, not his own judgment of the matter, but the aggregate result of at least a majority of the voices he has heard; or in other words, for after all there is perhaps, no more plain or practical exposition of the matter, he must state what the common report is among those who have the best opportunity of judging of the habits and integrity of the person whose character is Under consideration . The reputation of the neighbourhood is the only thing that is competent; and if the witness has acquired a knowledge of it by the report of the neighbourhood, he is exactly qualified to be heard.

9. In the same case Duncan J. observes thus at pages 657 and 658:

How often does the inquiry end in the very question put to this witness: 'What is the general reputation of the witness examined as to truth in the county in which he lives?' If a witness was not permitted to state the general reputation, there must be an end of all inquiry into character. Particular facts cannot be given in evidence. Opinion will not be evidence, for, if it were, no witness would be safe from the

shafts of calumny. No man is to be discredited by the mere opinion of another; few men live whom some do not think ill of. But it is said the witness must speak of his own knowledge. So he must. But what is this knowledge? Not a personal individual knowledge of facts. He knows by reputation what is the character of the man.

10. Thus it will be seen that reputation evidence is not what ABC state about character but what the general ones opinion concerning him is, because reputation is not the same thing as character. The witness who speaks to reputation must have opportunity to acquire knowledge of it. I do not wish to deal with the question as to what the extent of the opportunity should be and what the extent of knowledge should be, because in this case on a reading of the depositions of the witnesses, whom Mr. Jayarama Ayyar objects, I find that they are persons who are qualified to speak about the general repute. Most of them are officers within whose jurisdiction the petitioner resides and some of them are persons who have held offices in or about that locality. I also find that they do not merely say that particular person told them about the petitioner's character but they also speak from the knowledge they have acquired of the common report about the petitioner. Even excluding that evidence. I agree with the learned Sessions Judge that there is sufficient and satisfactory evidence in the case to come to the conclusion that the petitioner is a person of desperate and dangerous character within the meaning of Section 110(f). I therefore agree with my learned brother in dismissing this revision petition.

11. In this view it is unnecessary to consider how far a mere stranger, who goes out to find out what the general repute of a person is, is competent to testify to that fact; nor do I think it necessary for the purpose of this case to express an opinion on the difference of view held by Horwill J. and Newsam J., about the interpretation of Section 110, Criminal P.C. namely whether it is intended to deal only with ex-convicts or habitual criminals and dangerous and desperate outlaws who are so hardened and incorrigible that the ordinary provisions of the penal law and the normal fear of condign punishment for crime are not sufficient.

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