

**Sunil Kumar Saha Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/856310](http://sooperkanoon.com/856310)

**Court :** Kolkata

**Decided On :** Mar-26-1957

**Reported in :** AIR1958Cal191,1958CriLJ500,61CWN557

**Judge :** Debabrata Mookerjee, J.

**Acts :** Code of Criminal Procedure (CrPC) , 1908 - Section 109

**Appeal No. :** Criminal Revn. Case No. 1431 of 1956

**Appellant :** Sunil Kumar Saha

**Respondent :** The State

**Advocate for Def. :** J.M. Banerjee, Adv.

**Advocate for Pet/Ap. :** Sashi Charan Roy, Adv.

**Judgement :**

ORDER

**Debabrata Mookerjee, J.**

1. This is a petition for revision of an order under Section 109(a) of the Code of Criminal procedure requiring the petitioner to execute a bond in the sum of Rs. 250/- with one surety to be of good behaviour for a period of eight months.

2. The allegations on which the present proceedings were initiated were briefly that on the 19th January, 1950, the petitioner was seen by some plain-clothed policemen at about 6-15 p.m. moving from place to place on the Howrah Railway Station platform. It was said that he was found going about with passengers of the platform and feeling their pockets. He moved from one third class compartment to another, and this he did on two platforms where the Bombay and the Punjab Mails were on the lines getting ready to start. One of the witnesses for the prosecution kept a watch on him and noticed his suspicious movements which included the covering up of his head with a piece of chaddar. When he thus came to be suspected he was searched, and no Railway ticket was found on his person.

3. On these allegations a report was submitted against the petitioner, and eventually proceedings under Section 109 of the Code of Criminal Procedure were started. The petitioner's case seems to be that he was falsely charged, and that he lived at No. 11, Mahindra Roy Lane, Howrah, with wife and children and had means of livelihood. The learned Magistrate, however, believed the allegations against the petitioner and held that the circumstances made out a case for preventive action against the petitioner, and in that view, an order under Section 109 of the Code of Criminal Procedure was made against him binding him over to be of good behaviour.

4. There was an appeal against the aforesaid order which was heard by the Sessions Judge of Howrah and dismissed by him. The petitioner thereafter applied to this Court and obtained the present Rule.

5. The main contention is that the facts alleged, even if believed, did not make out a case under Section 109 (a) of the Code of Criminal Procedure. This contention requires examination.

6. Section 109 of the Code of Criminal Procedure provides that when one or other of the Magistrates named in the section receives information that any person is taking precautions to conceal his presence within the local limits of the Magistrate's jurisdiction and that there is reason to believe that such person is taking such precautions with a view to committing any offence, the Magistrate may in the manner provided in the succeeding sections, require the said person to

show cause why he should not be ordered to execute a bond with sureties for his good behaviour for a period not exceeding one year. I am not concerned in this Rule with Clause (b) of the section, since the petitioner was proceeded against and bound over under Clause (a) of section 109.

7. IF the allegations are believed then the only thing that is proved is that on a particular date the petitioner was found at the Howrah Station moving from place to place amongst the passengers and that he was found muffling up his head with a piece of chaddar. This does not, in my view, constitute continuous behaviour, but refers merely to an isolated act of concealment, even if the muffling up of the head with a piece of chaddar in winter can be said to be an act of concealment of identity. The prosecution has not been able to prove, in my view, that the petitioner is a person who by reason of a continuous course of conduct, can be said to be concealing his presence. The requirements of sec. 109 (a) seem to be that the Court has to be satisfied that a person was taking precautions to conceal his presence, and that there was reason to believe that such precautions were being taken with a view to commit an offence. An isolated act on the part of the petitioner that evening cannot, in my view, form the basis of an order under Section 109 (a) of the Code of Criminal Procedure. The mere fact that he was found without a Railway ticket cannot necessarily lead to the conclusion that he was intending to commit an offence. The allegation that he was trying to feel the pockets of some of the passengers in the crowd is not established by the evidence of any of the passengers themselves, but is sought to be proved merely by the evidence of the police officers who claimed to have seen the petitioner feeling the pockets. The other circumstances relied upon, viz., that the petitioner muffled up his head with a piece of chaddar is not such a circumstance as would indubitably lead to the conclusion that thereby he was trying to take precautions to conceal his presence, remembering that the time of the year was winter. In any event, it seems to me that this isolated act on the part of the petitioner cannot form the foundation of an order under Section 109 (a) of the Code of Criminal Procedure.

8. The result, therefore, is that this Rule is made absolute and the order of the Magistrate complained of is set aside.

