

Reshu Kabiraj Vs. Emperor

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Court : Kolkata

Decided On : Jul-10-1917

Reported in : 41Ind.Cas.649

Judge : Teunon and ;Shamsul Huda, JJ.

Appellant : Reshu Kabiraj

Respondent : Emperor

Judgement :

Teunon, J.

1. In this case Die petitioner has beet? required to give security for his good behaviour under the provisions of Section 118 read with Section 109 of the Criminal Procedure1 Code.

2. The facts found (sic) that on the night of the 28th February last, the petitioner, who is by professional(sic) kabinaj and a dealer in cocoons, was found at about midnight in a lane in the town of Raghunath-gunje in association with two others who had in their possession house-breaking imple-ments, that on being discovered he fled that when arrested he remained silent, and that the explanation subsequently offered to the Magistrate of his presence at the time and place in question is false.

3. The Magistrate has, therefore, held that the petitioner was concealing himself with the object presumably of committing the offence of house-breaking.

4. In this application we are invited to set aside the order against which the Rule is directed, on the ground that the facts found do not bring the petitioner within the provisions of either Clause (a) on which the Magistrate has relied; or of Clause (b) of Section 109.

5. With regard to Clause (a) it is urged that the petitioner's presence or residence within the Magistrate's jurisdiction was well known that there was no attempt to conceal the same, and that the petitioner's attempt to conceal his presence at a particular spot at a particular time (even if it were with the object of assisting in the commission of house-breaking) does not bring him within the mischief of the clause.

6. Similarly with regard to Clause (b) it is urged that inasmuch as his name, residence description, business and profession are known and his possession of means has been found he has given a satisfactory account of himself, within the meaning of Clause (6), and that it is not necessary that he should be able to give a satisfactory explanation of what he was doing at a particular place at a particular time.

7. It is further urged that inasmuch as the Magistrate has proceeded under and relied on Clause (a), the order cannot be supported in this Court under Clause (b). Inasmuch as the petitioner had a full opportunity of meeting the facts alleged against him this last contention, we think, cannot be sustained but in view of the conclusion at which we have arrived it need not be discussed at length.

8. In support of the two main contentions we have been referred to the cases of Sharif Ahmad v. Emperor (1) 12 Ind. Cas. 304 : 8 A. L. J. 1097 : 12 Cr. L. J. 536; Chandra Sarkar v. Emperor 13 Ind. Cas. 913: 39 C. 456 : 16 C. W. N. 499 : 15 C. L. J. 396: 13 Cr. L. J. 161. while the Deputy Legal Remembrancer appearing for the Crown has cited Narendra Mohan Ghose Chowdhury v. Emperor 14 Ind. Cas. 431 : 13 Cr. L. J. 239.

9. The case last cited was that of a young man found associating with political conspirators in a district in which he was a stranger and the decision therefore on the facts of the case is not opposed to the view taken in the two cases first mentioned. On the whole, though speaking for myself with some hesitation, we have arrived at the conclusion that the facts found do not bring the petitioner within either Clause of Section 109 of the Code, and in further support of this view we may refer to the case of *Reg. v. Bhujia* (4) (1872) Rat, Un. Cr. C. 63. decided in Bombay in 1872 and also to the provisions of the Calcutta Police Act, Section 32. That Section appears to be based on and largely to reproduce the provisions of the Vagrancy Act in respect of suspected persons. It would doubtless cover a case such as the present but the language therein used by the Legislature is very different from that used in Section 109 of the Criminal Procedure Code.

10. In the result we make this Rule absolute and set aside the order complained of. The petitioner will now be set at liberty.

Huda J.

11. I would like to add that in my opinion clause (a) of Section, 09, Criminal Procedure Code, refers to a continuous act and does not, therefore apply to a case like the present, where there is a momentary effort at concealment to avoid detection or arrest. I also think that the provisions of Clause (a) cannot apply to the case of a person brought under arrest as the accused was for it cannot be said of such a person that he is taking precautions to conceal his presence