

Ganga Ram Vs. the State

Ganga Ram Vs. the State

SooperKanoon Citation : sooperkanoon.com/889300

Court : Himachal Pradesh

Decided On : Dec-12-1955

Reported in : AIR1956HP43,1956CriLJ996

Judge : Ramabhadran, J.C.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 109 and 117; ;
[Constitution of India](#) - Article 19

Appeal No. : Criminal Revision No. 35 of 1955

Appellant : Ganga Ram

Respondent : The State

Advocate for Def. : Dhyan Chand, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Ramabhadran, J.C.

1. The petitioner was hauled up by the S. H. O. Solan under Section 109, Criminal P. G., and put up before the Magistrate first class, Solan, who bound him over to be of good behaviour for six months. In default of furnishing security, the Magistrate directed the petitioner to undergo six months' simple imprisonment.

2. The petitioner went up in appeal to the Sessions Judge, but was unsuccessful. He has now come up in revision to this Court.

3. After going through the judgments of the Courts below, I admitted this petition on the 24th Ultimo on the ground that the evidence on the record did not fulfil the requirements of Section 109, Criminal P. C.

4. To-day, I have heard learned counsel for the respondent and gone through the record. For reasons to be stated presently, I am of the opinion that the order, binding down the petitioner, cannot be maintained.

5. The prosecution case was that on 6-4-1955 at 10.30 A. M. in the Ganj Bazar at Solan, a police party, consisting of Amar Singh S. H. p. and some constables, found the petitioner loitering, it was alleged that the petitioner tried to avoid the police and, on being questioned, gave false names and addresses. He further gave out that he was in the employ of one Jwala Singh, contractor on road construction.

This allegation, according to the police, was false, because there was no contractor of the name of Jwala Singh at Pajhota. On the other hand, the police case was that the petitioner was a previous convict and had come to Solan with a view to commit theft.

In support of their case, they produced the head-warder and the clerk of Sub-Jail, Solan, to show that on 6-4-1955 (i.e. on the day of arrest) the petitioner went to the Sub-Jail at Solan and expressed a desire to meet one Rati Ram, prisoner.

6. The petitioner was not properly examined with respect to various allegations made against him, but he denied having come to Solan to commit theft. No defence was, however, adduced.

The Courts below have bound down the petitioner on the following grounds: (a) He tried to conceal himself, when he saw the police, (b) He had no means of livelihood or residence in Solan, (c) There was apprehension that he was taking precautions to conceal himself in order to commit theft or other cognisable offences, (d) He was a previous convict and had come to Solan to contact a

prisoner confined in the Sub-Jail.

7. I shall deal with these grounds one by one;(a) The only circumstance, alleged against the petitioner in this connection is that on seeing the police party, he tried to avoid them. Mere disinclination for the society of the police amounts to no concealment. Remembering that the scene was the Solan 'bazaar' and it was broad-daylight (10-30 A. M.) and other persons were present in the bazaar', it is ridiculous to suggest that the petitioner* attempted to 'conceal' himself.

Even assuming that the petitioner gave out wrong names and addresses, that would amount, at best, to an attempt to conceal his 'identity', but that would not mean concealment, of his 'person', which is an essential ingredient of Section 109 (a).

(b) This is a very strange argument. If the proposition, propounded by the Courts below, is accepted, no one in India can stir out of his home town or village without being immediately arrested. This was never the intention of those, who enacted the Code. I may further point out that Article 19 (d) and (e) confers on all citizens the right to move freely throughout the territory of India and to reside and settle in any part of India. These fundamental rights have been swept over-board and were denied to the petitioner by a stroke of the pen.

(c) As already discussed, while dealing with (a), the evidence, at best, shows that the petitioner (assuming the prosecution allegation in this regard to be true), attempted to conceal his identity. There is no evidence worth the name to show that the petitioner concealed his presence.

In some cases under Section 109, Cr. P. C., evidence is produced to show that the suspect was found hiding behind the wall or under a bush late in the night and on being searched was found in possession of house-breaking implements etc. No such evidence is forthcoming here.

(d) I am amazed that this circumstance should have influenced the judgment of the Courts below. If the petitioner had committed offences in the past, he has paid dearly for the same.

The law does not contemplate that a man should be punished, again and again, for the same offence. Steps are being taken to ameliorate the condition of the discharged prisoners and to rehabilitate them in life. To rely upon previous convictions, as a ground for again clapping them back to jail, is--to say the least--a retrograde step.

It may be that the petitioner went to Solan to meet Rati Ram prisoner. This was no offence. No specific question in this regard was put by the Magistrate to the petitioner. In his petition to this Court, the applicant has stated that he went to Solan to return certain clothes he had borrowed from Rati Ram. This may be true or false. But this fact could not raise any presumption against, the petitioner.

8. It seems to me that the police at Solan could not resist the temptation of running down the prisoner under Section 109, Cr. P. C., in view of his past record.

Even previous convicts (however bad their record might be) continue to be the citizens of the country and cannot be deprived of their liberty on such flimsy grounds. The proceedings against the petitioner, to my mind, were misconceived.

9. In view of all that has been said above, I allow this petition, set aside the orders of the Courts below and direct that the petitioner be released forthwith, unless wanted in connection with some other case.