

Ramji Das Vs. the State

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Court : Himachal Pradesh

Decided On : Sep-11-1953

Judge : Chowdhry, J.C.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 109

Appeal No. : Criminal Revn. No. 34 of 1953

Appellant : Ramji Das

Respondent : The State

Advocate for Def. : D.N. Vaidya, Govt. Adv.

Advocate for Pet/Ap. : Party in person

Disposition : Revision allowed

Judgement :

ORDER

Chowdhry, J.C.

1. This is a revision petition by one Ramji Das who was ordered by a first class Magistrate of Mandi to execute a bond in Rs. 1000/-and furnish one surety in like amount to be of good behaviour for a period of one year under Section 109 (b), Cr. P. C. The petitioner failed to furnish the security and has been undergoing rigorous imprisonment for one year since the passing of the order by the Magistrate on 9-3-

1953. His appeal from jail was dismissed by the learned Sessions Judge, and now he has filed the present revision.

2. It has been found against him both that he had no ostensible means of subsistence and that he could not give a satisfactory account of himself. Neither of these findings appears, however, to be well founded. So far as the first finding is concerned the record shows that the police as well as the Magistrate confined attention merely to the fact that the petitioner had no ostensible means of subsistence in Mandi where he was arrested on 16-10-1952, and to which place he does not belong. The words used in Section 109 (b) of the Code are : 'That there is within such limits a person who has no ostensible means of subsistence'. The words 'within such limits' have no reference to ostensible means of subsistence but only to the person in question being found within the local limits of the Magistrate's jurisdiction. That being so, it will not do merely to allege and prove that the person concerned has no ostensible means of subsistence within the said limits. If he has such means outside the said limits, there would be no justification for taking any security proceedings against him.

In the present case, all that the prosecution witnesses, including Sub Inspector Nand Lal, have stated is that the petitioner was found to have no ostensible means of subsistence in Mandi. But he may have such means of subsistence outside Mandi, and there is nothing in the prosecution evidence to rule out such a possibility. Indeed, one of the prosecution witnesses, Joban Singh says that on inquiry the petitioner told him that he received money for expenses from his sister. There is nothing on the record to show that this information conveyed to the witness by the petitioner was wrong. The onus of proving correctness of the information imparted to the witness by the petitioner did not lie on him for it was for the prosecution to prove that the petitioner had no ostensible means of subsistence. I therefore hold that the finding that the petitioner had no ostensible means of subsistence is unsustainable.

3. Coming to the other ground of whether the petitioner could not give a satisfactory account of himself, it has been stated by the Sub Inspector Nand Lal and H. C. Makund Ram that the petitioner gave different names and addresses.

Prom that alone, however, it cannot be held that he failed to give a satisfactory account of himself. It may be that he wanted to remain incognito. There is no suggestion, much less proof, that the purpose of the petitioner concealing his identity was something which might lead to the inference that he was a vagrant or a suspected person. The aforesaid prosecution witness Joban Singh, who is an employee in the local Employment Ex-change, has stated that for 20 days the petitioner continued to come to his office with the object of getting his name registered there. True, the witness says that eventually the petitioner made no written application for registration, but the fact remains that the petitioner was trying to get his name registered, and that for this purpose he frequented the office of the Employment Exchange for as many as 20 days. This lay itself would be a satisfactory account of the petitioner's presence in Mandi.

4. The learned Government Advocate cited the case of--'Abdul Rashid v. Emperor', 64 Ind Cas 141 (All) (A), where it was laid down that if a person when arrested under suspicious circumstances, gives a wrong name and address, he fails to give a satisfactory account of himself and proceedings against him under Section 109 Cr. P. C., are perfectly justified. In the present case all that can be said is that the petitioner gave a wrong name and address, but the other condition of the petitioner having been arrested under suspicious circumstances has not been satisfied. H. C. Makund Ram deposes that he arrested the petitioner at 10 or 11 O'clock in the day. True, he adds that he arrested the petitioner under suspicious circumstances, but what those suspicious circumstances were he does not say. Obviously, no such suspicious circumstances could attend the arrest of a person when the arrest was admittedly made in broad day light. The aforesaid case has therefore no application here. I am afraid, there was no justification whatsoever for taking security proceedings against the petitioner. The revision is accordingly allowed, the order of the learned Magistrate is set aside and the petitioner is hereby ordered to be released forthwith unless wanted in some other connection.