
(1924) 09 AHC CK 0003

Allahabad High Court

Case No: None

Ram Prasad and Others

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: Sept. 29, 1924

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 110
- Penal Code, 1860 (IPC) - Section 400

Citation: AIR 1925 All 250

Hon'ble Judges: Mukerji, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Mukerji, J.

Four persons, Ram Prasad, Sheo Prasad, Bhairon Prasad and Naubat Singh, have come up before this Court with a petition in revision to revise an order calling upon them to furnish security to be of good behaviour for three years u/s 110 of the Criminal Procedure Code.

2. There seems to have been some amount of confusion in procedure in the Court below. By an order dated the 15th of March, 1924 a learned Magistrate called-1 upon seven persons, the four applicants and Mian Khan Jwala Prasad and Nizarm Shah, to show cause why they should not be bound over on the ground that they were "habitual dacoits and belonged to the dangerous gang of Dhani and Ram Kishan, dacoits". After hearing the case the learned Magistrate modified his notice and bound over two of the seven persons, viz., Jwala Prasad and Nizam Shah to furnish security for one year only. He ordered that so far as the five persons were concerned who have been asked to furnish security for three years, the proceedings should be laid before the Sessions Judge. Apparently under some misapprehension an appeal was filed through a learned vakil to the Sessions Judge on behalf of all the

seven persons. The learned Sessions Judge treated the proceedings before him as one in appeal. By his order dated the 20th of May, 1924 he cancelled the order as to bonds against Jwala, Prasad and Nizam Shah and purported to dismiss the appeal of the remaining five persons.

3. It is needless to say that it was for the learned Sessions Judge to have himself passed the order as to security as there was no appeal on behalf of the five persons mentioned which could be dismissed.

4. Several points have been taken and the point No. 2 is that the proceedings were illegal inasmuch as the notice called upon the applicants to furnish security on the ground that they belonged to a gang of dacoits.

5. On a reference to Section 110 of the Criminal Procedure Code it will be found that it does not provide for any person being called upon to furnish security on the ground that he was by habit a dacoit and belonged to a gang of dacoits. It is not for the Courts to find out the motive for the omission, but if it were necessary one could easily be found. Being a member of a gang of dacoits is a definite offence defined and punishable under the Indian Penal Code and it was for that reason that under the preventive sections, action could not be taken for having committed a specific offence. In this particular case seven persons were jointly tried for being members of a gang of dacoits. The charge was very definite that they not only belonged to a gang of dacoits, but they belonged to a gang of which the heads were two specific persons. Thus it was a clear charge u/s 400 of the Indian Penal Code against the applicants and Mian Khan. It cannot be permitted that instead of the specific charge being tried in a Court of session on a proper evidence the applicants should be indirectly punished by proceedings under the preventive sections although Section 110 does not apply to a case like this.

6. It has been urged that if a man can be called upon to furnish security on the ground that he is by habit a robber, there is no reason why he should not be bound over on the ground that he is by habit a dacoit. I have really already answered this argument. A man may be by habit a jobber and so long as he is not charged with a definite act of robbery, he may be bound over under the preventive sections. But as soon as it is said that he along with four or more others, habitually commits robbery, the man becomes at once a member of the gang of dacoits and thereby commits a definite and specific offence under the Indian Penal Code. In my opinion Section 110 deliberately omitted "dacoity" out of its purview.

7. In this view of the law it is not necessary for me to go into the merits of the case.

8. Mian Khan has not filed any application in revision, but there is no reason why he should continue to be bound over while the other four men should be set at liberty.

9. I set aside the order of the Sub-Divisional Magistrate dated the 22nd of April, 1924, and the order of the Sessions Judge dated the 20th of May, 1924, so far as the

latter affects the applicants and Mian Khan, quash the orders as to security to be taken from the applicants and Mian Khan and order their release.