

or negligent as would render him guilty of an offence under section 304A, I. P. C. The appellant therefore should be acquitted and released from his bail.

In conclusion I should like to observe that though the appellant escapes a conviction as the law is unable to reach him, if he had not chosen to drive on the road which was not open to traffic, the lives of two poor and innocent men who perhaps are the only supporters of their respective families would not have been lost, and the code of honor and morality demands that he should make adequate amends to the very best of his means to the dependents of those two men for the lamentable error of judgment on his part.

A. S. M. A.

*Appeal allowed.*

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## APPELLATE CRIMINAL.

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*Before Page and Mukerji JJ.*

VICTOR

v

EMPEROR.\*

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Jan. 20.

*Vagrancy—Code of Criminal Procedure (Act V of 1898 as amended by Act XVIII of 1923), ss 109(b) and 118, construction of.*

If a person is unable to prove the source of his livelihood he ought not to be ordered to execute a bond under sections 109 and 118 of the Code of Criminal Procedure unless there is reasonable ground for suspecting that he is sustaining himself by some dishonest means, for such an order can only be made where "it is necessary for keeping the peace or maintaining good behaviour".

If proceedings under section 109 (b) are taken against a person because he "cannot give a satisfactory account of himself", the Court ought not to pass an order under section 118 unless the prosecution satisfies the

\*Criminal Appeal No. 747 of 1925 (undefended).

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Court that suspicion that he is living dishonestly attaches to the accused because of his failure to give a satisfactory explanation when called upon to account for his presence in the place where he is found.

*Piru v. King-Emperor* (1) and *Sharif Ahmad v. Emperor* (2) referred to.

JAIL APPEAL by Victor, the appellant. The appellant was arrested on September 6, 1925 at 10-30 A.M., in Lindsay Street in Calcutta. He was unable to give any satisfactory account of his manner of living to the Police. He was placed before a Presidency Magistrate under sections 109 and 118 of the Code of Criminal Procedure to take his trial, and was ordered to furnish security for Rs. 100 to be of good behaviour for one year, or in default to suffer simple imprisonment for the same period.

No one appeared in this appeal.

PAGE J. On the 6th September 1925 at 10-30 in the forenoon the appellant was accosted by a police officer in Lindsay Street, Calcutta. He was unable to satisfy the police that he was doing any work, or to provide them with the address of any place where he was residing. The only information which he gave to the police to account for his presence in Lindsay Street on that morning was that two or three days previously he had come to Calcutta from Tatanagar. He was straightway taken to the thana, hauled before a Magistrate, remanded pending enquiries, and on the 5th October 1925 under sections 109 and 118 of the Criminal Procedure Code ordered to execute a bond for Rs. 100 with one surety for Rs. 100 to be of good behaviour for one year, or in default to suffer simple imprisonment for one year or until the security was furnished. The question which falls for determination is whether there was sufficient evidence to justify the order which was passed.

(1) (1925) 41 C. L. J. 142.

(2) (1911) 12 Cr. L. J. 536.

Under section 109 of the Criminal Procedure Code—

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“ Whenever a Presidency Magistrate, District Magistrate, Subdivisional Magistrate or Magistrate of the first class receives information (b) that there is within such limits (*i.e.*, the local limits of such Magistrate’s jurisdiction) a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself, such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding one year as the Magistrate thinks fit to fix ”.

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The provisions of section 109 (b) being disjunctive, the accused was liable to have an order passed against him under sections 109 and 118 if the evidence disclosed that he had been brought within the terms of either branch of sub-section 109(b) and section of 118. From the evidence adduced before the Magistrate it appeared that nothing was known concerning the accused at Tatanagar; that previously an order had been made against him under sections 109 and 118, and that he had been convicted for an offence in connection with the sale of opium. Further it was stated that on several occasions he had been arrested under section 54, Criminal Procedure Code, but in each case the charge against him had been dismissed. He was also suspected by the police of pilfering from motor cars. On the morning when he was arrested, however, his conduct in Lindsay Street appeared to be innocuous, and his presence there did not give rise to suspicion. Now, I am not disposed to place restrictions upon the discretion of a Magistrate in administering section 109, but the salutary provisions of this section are so stringent that it may be made an engine of oppression unless care is taken by Magistrates to prevent its abuse. The object of the section is—

“ To enable Magistrates to take action against suspicious strangers lurking within their jurisdiction ” :—*Satish Chandra Sarkar v. Emperor* (1).

(1) (1912) I. L. R. 39 Calc. 456, 462 ; 15 C. L. J. 396.

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But merely to be penniless or out of work is not an offence—many an honest man may find himself in either predicament—and in a country where there are workless people but no workhouses, and casual labourers but no casual wards, if it were the law that persons are exposed to proceedings under section 109(b), merely because they cannot give a satisfactory account of the manner in which they are eking out a precarious existence, the Magistrates' hands would be full indeed, and much injustice might be done to innocent persons; see *Piru v. King-Emperor* (1). In my opinion, however, that is not the meaning or effect of sections 109(b) and 118. As I construe the provisions of these sections if a person is unable to prove the source of his livelihood he ought not to be ordered to execute a bond under sections 109 and 118 unless there is reasonable ground for suspecting that he is sustaining himself by some dishonest means, for such an order can only be made where "it is necessary for keeping the peace or maintaining good behaviour". Again, if proceedings under section 109(b) are taken against a person because he "cannot give a satisfactory account of himself", in my opinion, the Magistrate would not be justified in passing an order under section 118, merely because the accused is unable to prove that "he spends his time or at least his leisure hours in a satisfactory manner"; *per* Chamier J. in *Sharif Ahmad v. Emperor* (2). In such a case the prosecution must satisfy the Magistrate that suspicion that he is living dishonestly attaches to the accused because of his failure to give a satisfactory explanation when called upon to account for his presence in the place where he is found; *e.g.*, if he fails to account for being discovered in the company of persons living

(1) (1925) 41 C. L. J. 142.

(2) (1911) 12 Cr. L. J. 536.

a dishonest or criminal life, or detected in some place where he has no legal right to be. But the poor and the outcast and the old offender must somewhere live and move and have their being, and, in my opinion, the appellant, who during the morning of 6th September 1925, was passing the time in Lindsay Street to all outward appearances innocently and in a manner void of suspicion was not brought within the ambit of sections 109 (b) and 118 merely because he was unable to prove that he was working for his living. If the order under appeal were upheld an old offender would be at the mercy of the police, for any ill-disposed police officer would be able to deprive him of personal freedom and procure his return to jail as his caprice or fancy moved him. For these reasons I am of opinion that the order passed upon the appellant in this case cannot be sustained in law, and must be set aside. The appellant will be released.

MUKERJI J. I agree.

B. M. S.

*Appeal allowed.*

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