CRIMINAL REVISION.

Before Mukerji and Roy JJ.

BADU MIR.

v.

EMPEROR.*

1926

Aug 17.

Bad Livelihood—Proceedings against members of a criminal tribe—Legality and expediency of such proceedings—Evidentiary value of general repute in such cases—Criminal Procedure Code (Act V of 1898), s. 110—Criminal Tribes Act (VI of 1924).

The institution of proceedings under section 110 of the Criminal Procedure Code against persons registered under the Criminal Tribes Act is not necessarily inexpedient. Each case has to be dealt with on its merits, the information on which action is asked for being scanned, and the question whether preventive action is called for considered, and due regard had to the consequences which, in most cases, will inevitably follow, *viz.*, failure to find securities. If such proceedings are necessary, evidence of general repute should be, if at all, acted upon with great caution and scrutiny.

Sheikh Ghulam Rasul v. *Emperor* (1) referred to.

The petitioners, Badu Mir and Tear Bap were registered under section 4 of the Criminal Tribes Act in December 1924. Proceedings were taken against them and one Fazar Ali in October 1925, under section 110 of the Code by the Sadar Magistrate, 1st class, Mymensingh, on the report of the Sub-Inspector of the Bhaluka police-station, Mymensingh, alleging that they were habitual dacoits, house-breakers and thieves, desperate and dangerous characters. On the 15th March 1926 they were bound down, under

* Criminal Revision No. 577 of 1926, against the order of G. C. Sankey, Sessions Judge of Mymensingh, dated April 21, 1926.

(1) (1918) 20 Cr. L. J. 30.

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section 118 of the Code, for three years in the sum of Rs. 500 each, with two sureties each in the same amount. The proceedings were referred to the Sessions Judge who discharged Fazar Ali, but upheld the order against the petitioners. They obtained a rule in the High Court on the grounds that their prosecution under section 110 was inexpedient, and that the amounts of the bonds were excessive.

Babu Suresh Chandra Talukdar, and *Babu Mahendra Kumar Ghose*, for the petitioners.

Babu Prafulla Chandra Chakravarty, for the Crown.

MUKERJI AND ROY JJ. The two petitioners, in whose favour this Rule has been issued, have been bound down under section 118 of the Criminal Procedure Code to be of good behaviour for three years, each in a bond of Rs. 500, with two sureties of the like amount. One of the grounds of the Rule is to the effect that the proceedings were inexpedient or illegal in view of the fact that the petitioners had already been registered as members of a criminal tribe. The other ground on which the Rule has been issued is to the effect that the security demanded is excessive.

In support of the first of the grounds reliance has been placed upon the decision of this Court in the case of *Sheikh Ghulam Rasul* v. *Emperor* (1). In that case the question of the legality or propriety of instituting proceedings under section 110 of the Criminal Procedure Code, against persons who had already been registered as members of a criminal tribe, came up before this Court for consideration. The learned Judges declined to quash the proceedings in that case

(1) (1918) 20 Cr. L. J. 30.

as the facts had not yet been gone into in the trial Court. Richardson J. expressed the view that, while it could not be laid down as a fixed and immutable rule that a person, who has once been registered under the Criminal Tribes Act, cannot be proceeded against under section 110 of the Criminal Procedure Code, the fact of such registration was an important factor which should be taken into consideration before an order is made binding down, under section 118 of the Criminal Procedure Code, a person so registered. Huda J. was of opinion that the proceedings were inexpedient, as the control which is obtained over a person as soon as he is brought under the Criminal Tribes Act should ordinarily be sufficient to attain the preventive object which section 110 of the Criminal Procedure Code aims at, and also because the inevitable consequences of demanding surety from such a person would be to send him to jail.

Having examined the provisions of the Criminal Tribes Act, and perused the rules framed thereunder it seems to me that, while the control that is obtained over a person, by registering him as a member of a criminal tribe, is sufficient to prevent him from committing many of the acts for which preventive action under Chapter VIII of the Code of Criminal Procedure may be necessary, he has, notwithstanding such control, enough liberty left in him to pursue a career of crime bringing him within some of the clauses (*a*) to (*e*) of section 110, or to prove himself dangerous to society within the meaning of clause (*f*) of that section. Each case, therefore, has to be scrutinized on its merits, the information upon which proceedings are asked for being scanned, and the question whether preventive action is called for or not being considered, due regard being also had to the consequences which in most cases will inevitably

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follow, namely, that there would be failure to furnish sureties. If such proceedings appear to be necessary in view of the exigencies of any particular case, evidence of general repute, which is bound to be affected in a large measure by the very fact of the person proceeded against being a member of a criminal tribe, should be, if at all, acted upon with great caution and scrutiny.

The proceedings in the present case alleged that the petitioners are by habit dacoits, house-breakers and thieves, and associate themselves for the purpose of committing those offences, and are so desperate and dangerous as to render their being at large without security hazardous to the community. The two petitioners were registered under section 4 of the Criminal Tribes Act in December 1924, and the proceedings under section 110 of the Criminal Procedure Code were started in October 1925. The evidence of general repute that has been adduced against the petitioners is not of much importance, firstly because they are members of a criminal tribe, and secondly, because they may have had the same reputation when they were registered under section 4, and the fact that their reputation continued as before does not show that further preventive action is necessary. The important thing is to see what these two persons may have done after such registration. On this point the evidence is singularly weak. As against the petitioner Badu Mir there is only the fact that in February 1925 his name was mentioned in the first information in connection with a dacoity, in which it was alleged that he was recognised as one of the culprits. He was not, however, sent up for trial in that case. As regards Tear Bap *alias* Asraf Khan, he appears to have been implicated by evidence of doubtful value in a dacoity which took place in March, 1925.

This man, at the time of his arrest, appears to have had a *dao* in his hand, and, taking the worst view of the evidence, was about to commit an assault on the Sub-Inspector when he was on the point of arresting him. It is hard to say that these materials are sufficient to bind down the two petitioners when they are already registered members of a criminal tribe.

We, accordingly, make the rule absolute. The order passed under section 118 of the Criminal Procedure Code against the two petitioners is discharged.

E. H. M.

Rule absolute.

CRIMINAL REVISION.

Before Rankin and Duval JJ.

SATTAR ALI

v.

AFZAL MAHOMED.*

1926

Aug. 19.

Accused—Discharge of accused—Disposal of elephant, the subject of the alleged offence—Claim of title to it by the accused—Proper order in the circumstances—Criminal Procedure Code (Act V of 1898), s. 517.

Where the petitioner, accused of abetment of the theft of an elephant, claimed to have purchased certain shares in the animal and his defence was apparently accepted by the trying Magistrate, and he was acquitted :—

Held, that, in the circumstances, it ought to have been made over to the accused, from whose possession the police had taken it, and not to the complainant.

Restitution to the accused ordered by the High Court.

On the complaint of one Afzal Mahomed, the petitioner was tried by Mr. A. Rahman, Extra

*Criminal Revision No. 671 of 1926, against the order of D. P. Ghose, Sessions Judge of Sylhet and Cachar, dated June 3, 1926.