CRIMINAL REVISION.

Before Patterson and Guha JJ.

1934

March 2, 7, 8, 16.

PARBATICHARAN BAISHYA

v.

EMPEROR.*

Security—Joint trial, when legal—"Dangerous character", Meaning of —Proceedings under section 110, Propriety of—Revision, Scope of—Security, Enquiry into—Code of Criminal Procedure (Act V of 1898), ss. 110, 122, 123.

In the case of orders made in a proceeding under section 110 of the Code of Criminal Procedure, the revisional jurisdiction of the High Court is as much unfettered as in other cases. It should, however, be said that the power to demand security from suspected person is a power that is almost as much of an executive as of a judicial nature. The High Court will, therefore, interfere only on very strong and clear grounds, which go to show that there has been, in a particular case, a miscarriage of justice.

A joint trial in a case under section 110 (*f*) of the Code of Criminal Procedure is permissible, where there is evidence in the nature of a conspiracy and acting in concert, the legality of a joint trial depending on what is alleged for the prosecution.

Jogendra Kumar Nag v. *King-Emperor* (1) and other cases referred to.

Where the evidence against each of the accused persons has been considered separately and no prejudice has been caused, the order should not be interfered with, even if an imperative rule of procedure has been broken.

Abdul Rahman v. *King-Emperor* (2) referred to.

A man of "desperate and dangerous character" in clause (*f*) of section 110 means a man, who has reckless disregard of the safety of the person as well as the property of his neighbours, the word "neighbours" to be taken to denote the members of "the community."

Wahid Ali Khan v. *Emperor* (3) and *Manindra Mohan Sanyal* v. *Emperor* (4) referred to.

In the circumstances of the case, the starting of proceedings under section 110 of the Code of Criminal Procedure, shortly after the withdrawal of a case of dacoity against the accused, was not improper.

Kismat Akanda v. *Emperor* (5) and *Alep Pramanik* v. *King-Emperor* (6) distinguished.

*Criminal Revision, No. 1064 of 1933, against the orders of R. F. Lodge, Sessions Judge of Mymensingh, dated Aug. 26, 1933, and Sep. 15, 1933.

(1) (1920) 25 C. W. N. 334.
(2) (1926) I. L. R. 5 Ran. 53; L. R. 54 I. A. 96.
(3) (1907) 11 C. W. N. 789.
(4) (1918) I. L. R. 46 Calc. 215.
(5) (1906) 11 C. W. N. 129.
(6) (1906) 11 C. W. N. 413.

1934

Parbaticharan Baishya v. Emperor.

The magistrate alone is vested with the authority either to accept or reject sureties demandable under section 110 of the Code of Criminal Procedure. The Sessions Judge has no such power under section 123. The course open to him is to send the proceedings back to the magistrate, with his decision on the merits of the case, for taking action under section 122.

CRIMINAL REVISION.

The material facts and arguments appear in the judgment.

Beerendrakumar De for the petitioners.

The Deputy Legal Remembrancer, Khundkar, and *Anilchandra Ray Chaudhuri* for the Crown.

GUHA J. This Rule was issued on an application arising out of a proceeding binding down the petitioners under section 110 of the Code of Criminal Procedure, and it was allowed to be argued on the footing that it related to two orders passed by the learned Sessions Judge of Mymensingh: one on the 26th August, 1933, and the other on the 15th September, 1933,—the former calling upon the petitioners to furnish security on the ground that they are so desperate and dangerous as to render their being at large without security hazardous to the community, and the latter rejecting the bonds given by the sureties offered and directing the petitioners Parbaticharan Baishya, Dheerendranath Datta and Beerendrachandra Chaudhuri, petitioners Nos. 1, 2 and 3, to surrender. The Rule granted by this Court on the 13th November, 1933, was, it may be mentioned, in general terms: to show cause why the order binding the petitioners down under section 110 read with section 118 of the Code of Criminal Procedure should not be set aside, or why such other or further order should not be made as to this Court may seem fit and proper.

It appears that a proceeding under section 110(*f*) of the Code of Criminal Procedure was initiated against the petitioners, on the report of the Additional Superintendent of Police, East Mymensingh, dated the 2nd May, 1933, on the ground that they belonged

1934

Parbaticharan Baishya v. Emperor.

Guha J.

to a terrorist organisation, the object of which was to terrorise people, and to collect money by illegal means, and to collect arms and ammunition for the purpose of murdering persons in authority, and those helpful to Government. In point of time, the initiation of the proceeding under section 110(*f*) of the Code of Criminal Procedure followed closely upon the discharge of the petitioners from the category of accused persons in a dacoity case, which was tried by a special tribunal appointed by the Government. The case against the petitioners, so far as the dacoity was concerned, appears to have been withdrawn under section 494 of the Code on the 20th March, 1933, before the special tribunal, constituted for the trial of the dacoity case known as the Kunihati Dacoity Case, functioned. The trial of the petitioners, so far as the proceeding started against them under section 110 of the Code was concerned, was held before the learned Additional Magistrate, Mymensingh; and the magistrate, in a judgment, exhaustively dealing with the materials placed on the record, gave his decision on the 5th June, 1933, directing each of the petitioners to execute a bond of Rs. 500 with two sureties of a like amount, to be of good behaviour for two years. The case then came up to the Sessions Judge of Mymensingh, under section 123(*2*) of the Code of Criminal Procedure, on the petitioners having refused to furnish security. The learned judge, in his judgment, dealt with the questions raised before him on behalf of the petitioners, bearing upon matters of procedure and on the merits of the case, and gave his decision on the 22nd June, 1933, affirming the order of the learned magistrate, and recorded an order on the 15th September, 1933, dealing with the question of fitness of sureties offered by the petitioners, and embodying the reasons for his conclusion that none of the sureties offered by the petitioners Nos. 1, 2 and 3 named above, should be accepted.

It may be mentioned, at the outset, that the orders passed by the Sessions Judge in the case before us

were made by him when the records were before him in view of the provisions contained in section 123(*2*) of the Code of Criminal Procedure. The position may also be indicated that the orders passed by the Sessions Judge in this case, which have been challenged in the application on which this Rule was granted, are subject to revision by this Court, on grounds on which revisional powers are exercised in the case of non-appealable sentences or orders. There can be no doubt that, in the case of orders made in a proceeding under section 110 of the Code of Criminal Procedure, the revisional jurisdiction of this Court is as much unfettered as in other cases coming before it; and interference by this Court would be called for and justified, on a proper case being made out. At the same time, the position cannot be overlooked that the question, whether it is necessary, in the interest of keeping the peace, to take security from a person, is essentially a question which concerns the magistrate and the local police; and it may be said that the power to demand security from suspected persons is a power that is almost as much of an executive as of a judicial nature. This Court will, therefore, interfere only on very strong and clear grounds which go to show that there has been, in a particular case, a miscarriage of justice. The question, therefore, in the case before us is whether the order of the Additional District Magistrate, who held the enquiry under section 110 of the Code of Criminal Procedure, and the order passed by the Sessions Judge under section 123 of the Code, should be interfered with by this Court, on the grounds submitted for our consideration in support of this Rule, in the light of the observations made above.

In regard to the question raised before us, that the joint trial of all the petitioners was illegal and that the adoption of such a procedure has prejudiced each of them, it has to be noticed that the subject matter of the charge against the petitioners was that they were so desperate and dangerous as to render their

1934

Parbaticharan Baishya v. Emperor.

Guha J.

being at large without security hazardous to the community as mentioned in section 110(*f*) of the Code of Criminal Procedure. Details of the charge so made were given in the proceeding drawn up by the magistrate in this case on the 2nd May, 1933, a reference to which has already been made. On the proceeding as drawn up, the enquiry was to be of the nature contemplated by section 117(5), where two or more persons have been associated together in the matter under enquiry; and these persons could, therefore, under the law, be dealt with in the same or separate enquiries as the magistrate thought just. As has been pointed out by this Court in the case of *Jogendra Kumar Nag* v. *King-Emperor* (1), a joint trial in a case under section 110 is permissible, where there is evidence in the nature of a conspiracy or acting in concert, the legality of a joint trial depending on what is alleged for the prosecution. It may be mentioned, in this connection, that a man of "desperate and dangerous character", in clause (*f*) of section 110, means a man who has reckless disregard of the safety of person and the property of his neighbours, as has been held by this Court. See *Wahid Ali Khan* v. *Emperor* (2), *Manindra Mohan Sanyal* v. *Emperor* (3). The word "neighbours", used in these decisions, must be taken to have been used to denote the members of "the community"; "community" being the word mentioned in clause (*f*) of section 110 of the Code of Criminal Procedure. The observations of Sanderson C.J. in *Manindra Mohan Sanyal* v. *Emperor* (3) referred to above throw a great deal of light on the question of joint trial of persons under section 110(*f*) of the Code, where the case is that the accused persons were associated or connected with an organisation, the activities of which were of the nature comtemplated by the aforesaid provision of the law, invoking a menace not only to the person, but also to the property of the community; and, in view of those

(1) (1920) 25 C. W. N. 334. (2) (1907) 11 C. W. N. 789.
(3) (1918) I. L. R. 46 Calc. 215.

1934

Parbaticharan Baishya v. Emperor.

Guha J.

observations a joint enquiry was the proper procedure to be followed in a case of the present description. On the provisions of the law as contained in section 117(5) of the Code of Criminal Procedure, and, on the authority of decisions of this Court, to which reference has been made above, the conclusion appears to be irresistible that a joint trial in the case before us was not only permissible, but a joint trial was the only procedure that could be followed in the case, regard being had to the nature of the proceedings, and the facts and circumstances which had to be established by evidence.

Reference was made in the course of argument before us to the case of *Hari Telang* v. *Queen-Empress* (1) and to some other cases decided by other High Courts in India, namely, *Emperor* v. *Angnu Singh* (2), In re *Kutti Goundan* (3) and *Jai Sao* v. *Emperor* (4), in which joint trials of persons under section 110 of the Code of Criminal Procedure were held to be improper. On an examination of the decisions referred to above, it is abundantly clear that, on the facts and in the circumstances of those cases, joint trials of persons under section 110 of the Code of Criminal Procedure could not be supported. The cases cited before us were cases in which joint trials could not properly be held, inasmuch as the matter under enquiry was whether a person individually was or was not a habitual offender. There can, however, be no doubt that a joint trial could be held, and a joint trial was the proper procedure, in the case of persons acting in concert, persons who are associates and confederates, so as to call into operation the provision contained in section 117(5) of the Code of Criminal Procedure. In cases, where proceedings are taken jointly against more persons than one, under section 110, the magistrate is required to come to separate findings as regards each of the persons

(1) (1900) I. L. R. 27 Calc. 781.
(2) (1922) I. L. R. 45 All. 109.
(3) (1924) 47 Mad. L. J. 689; 86 Ind. Cas. 49.
(4) (1921) 65 Ind. Cas. 484.

1934

Parbaticharan Baishya v. Emperor.

Guha J.

charged, individually. That has been done, in this case, both by the Additional District Magistrate and the Sessions Judge. The joint trial of the petitioners, therefore, was proper, on the facts and in the circumstances of the case before us, and, regard being had to the position that the evidence against each of them was separated and considered distinctly, there was no prejudice, so far as the petitioners were concerned, by their having been jointly tried. A reference may be made in this connection to the observations of their Lordships of the Judicial Committee of the Privy Council in the case of *Abdul Rahman* v. *King-Emperor* (1) that, even in a case in which an imperative rule of procedure has been broken, that was not enough to vitiate the trial or proceeding. The gravity of the irregularity or omission has to be considered, and whether such irregularity or omission might have worked actual injustice to the accused. For the reasons stated above, the contention urged before us, regarding the illegality of a joint trial of the petitioners, cannot be given effect to in the absence of proof of any prejudice. It was not suggested even that the joint trial in this case has worked actual injustice to the accused, and no prejudice could be pointed out.

The question next raised before us, in support of the Rule, related to this that the evidence adduced by the prosecution was not sufficient to justify an order under section 110(*f*) of the Code of Criminal Procedure. So far as this question is concerned, there can be no doubt, upon the exhaustive judgments of the courts below, that, in the case of each of the petitioners, the overt acts, with which they were connected, received the consideration they deserved, and that the findings on evidence before the magistrate cannot possibly be interfered with. Closely connected with the general question referred to above was the argument advanced before us that the first witness on the side of the prosecution,

(1) (1926) I. L. R. 5 Ran. 53; L. R. 54 I. A. 96.

Ambikacharan Bhattacharjya, was not a reliable witness, and that the evidence given by this witness had not been corroborated in material particulars. It has only to be mentioned, in this connection, that both the magistrate and the Sessions Judge have carefully dealt with the evidence given by this witness, and have considered the question of corroboration of that evidence. There is no reason to differ from the conclusions arrived at, on evidence, by the courts below and no serious attempt was made before us to make out that those conclusions were not justified on the materials on the record.

It was urged before us, in support of the Rule, that the case against the petitioners, in which they were charged with commission of a dacoity, having been withdrawn and the petitioners having been discharged, the proceeding under section 110(*f*) of the Code of Criminal Procedure, started immediately after the discharge, was not justifiable. There can be no doubt that evidence, which was regarded as unreliable and insufficient to convict a person on the charge of dacoity, should not be treated as reliable evidence to show that such person is a dangerous and desperate character, who ought to be called upon to furnish security for good behaviour. In one of the decisions cited before us on this part of the case, the evidence against the person charged under section 110 consisted of evidence given in the dacoity case, which was disbelieved by the court, and had, therefore, to be excluded from consideration in the trial of the accused under section 110. The rest of the evidence was extremely flimsy; and, on that evidence, it was not possible to compel the accused to give sureties for good behaviour. *Kismat Akanda* v. *Emperor* (1). In another case, relied upon before us, after the prosecution failed to prove a definite charge against the accused, there was a proceeding under section 110, and the evidence, given in support of the proceeding so drawn up against the accused, was

(1) (1906) 11 C. W. N. 129.

1934

Parbaticharan Baishya v. Emperor.

Guha J.

considered to be perfectly worthless as proving that the accused were habitual thieves and dacoits, *Alep Pramanik* v. *King-Emperor* (1). In the case before us, evidence was led on the side of the prosecution for the purpose of making out that the petitioners took part in the dacoity known as the Kunihati Dacoity. The petitioners were, as mentioned already, discharged before the trial of the dacoity case by a Special Tribunal; and there was no question of any evidence against them, so far as their participation or association with others in the dacoity who were actually tried before the Special Tribunal, having been disbelieved. There was evidence led against the petitioners, which, according to the court below, established, beyond reasonable doubt, that they were members of the *Anusheelan* of Netrokona; that the *Anusheelan* was a terrorist organisation, whose object was to commit violent crimes; and, further, that the petitioners were individually connected with overt acts in furtherance of the objects of the *Anusheelan*. In this state of the evidence before the Court, it could not be seriously argued that the proceeding under section 110(*f*) of the Code of Criminal Procedure, as initiated, was not justified, on the facts proved in the case. The evidence to which detailed reference has been made in the judgments of the courts below and the conclusions come to upon that evidence justified the proceeding, in spite of the fact that the petitioners were discharged, so far as the commission of the offence of dacoity with other persons at Kunihati was concerned.

In view of the above decision, arrived at by us, negativing the contentions urged in support of the Rule, the orders passed by the Additional District Magistrate of Mymensingh on the 5th June, 1933, and the decision of the Sessions Judge of Mymensingh, dated the 22nd August, 1933, must be upheld; and we direct accordingly.

(1) (1906) 11 C. W. N. 413.

1934

Parbaticharan Baishya v. Emperor.

Guha J.

It remains now to consider the order of the Sessions Judge, passed on the 15th September, 1933, refusing to accept the sureties offered on behalf of the petitioners Parbaticharan Baishya, Dheerendranath Datta, and Beerendrachandra Chaudhuri. On a careful examination of the provisions contained in sections 122, 123 and 406A of the Code of Criminal Procedure, it appears that the power to reject sureties is given to the magistrate, and that there is a right of appeal from an order passed by the magistrate refusing to accept or rejecting a surety under section 122, to the Sessions Judge. The clear implication of these provisions of the law, taken together, is that the magistrate is vested with the authority either to accept or reject sureties demandable under section 110 of the Code, and it is not open to the Sessions Judge, exercising jurisdiction under section 123 of the Code, to accept or reject the sureties offered. The course open to the Sessions Judge, under the law as it stands, was to send the proceedings back to the magistrate, with his decision on the merits of the case, for taking action under section 122 of the Code of Criminal Procedure. This was not done in the case before us; the Sessions Judge took upon himself to reject sureties for reasons stated by him. It might be mentioned incidentally that the reasons given by the judge do not altogether commend themselves to us, that there is much to be said in favour of the view that the relatives of the petitioners are in a better position than other persons to keep an eye on them, and that the position that they are sureties for the petitioners might very well lead these relations to consider seriously the fact of their inability to control the activities of the petitioners. These are, however, matters for consideration by the magistrate on proper materials, and relating to which enquiry may have to be made by him, before he accepts or rejects the sureties offered by the petitioners when the case goes back to him. The order of the Sessions Judge, passed on the

1934

Parbaticharan Baishya v. Emperor.

Guha J.

15th September, 1933, so far as it relates to petitioners Nos. 1, 2 and 3 in this Court, is set aside and the case is remitted to the Additional District Magistrate for consideration of the question of acceptance or rejection of sureties offered by these petitioners, in accordance with law.

In the result, the Rule is discharged; and the case is sent back to the Additional District Magistrate, for completing the proceedings as contemplated by section 122 of the Code of Criminal Procedure, in the light of the observations made above.

In view of the order passed by this Court, on the 13th November, 1933, the petitioners Nos. 1, 2 and 3 will continue to be on bail, pending the termination of the proceedings before the Additional District Magistrate.

PATTERSON J. I agree.

Rule discharged.

A. C. R. C.