

## CRIMINAL REVISION.

*Eefore Rankin C. J. and Patterson J.*

GAGANCHANDRA DE

*v.*

KING-EMPEROR.\*

1929

Aug. 16.

*Security—Conceal, meaning of—Accused—Bound down—Code of Criminal Procedure (Act V of 1898), ss. 109, 123.*

The idea in section 109(a) of the Criminal Procedure Code is that some one may be taking precaution to conceal himself within the local limits of the magistrate's jurisdiction, not merely to conceal himself as one who hides from a policeman, but to conceal the fact of his infesting the magistrate's jurisdiction; and in that class of case, if there is reason to believe that this is a precaution taken with a view to commit an offence, the magistrate can require him to give security.

*Emperor v. Bhairon* (1) followed.

CRIMINAL RULE obtained by Gaganchandra De and another, accused.

The Subdivisional Magistrate of Brahmanbaria had directed these two accused along with another to execute bonds of Rs. 200 each with one surety each in like amount to be of good behaviour for one year, in default to suffer rigorous imprisonment for that period or until the execution of the said bonds under section 123 of the Criminal Procedure Code, holding *inter alia* that the three accused had been taking precautions to conceal their presence with a view to commit an offence of theft at midnight of the 5th of February, 1929, though they had given the police at the time of their arrest their correct names and addresses, which showed that their residence was not far from the place of occurrence.

\*Criminal Revision, No. 735 of 1929, against the order of N. L. Hindley, Sessions Judge of Tippera, dated May 6, 1929, confirming the order of Hari Charan Bose, Subdivisional Magistrate of Brahmanbaria, dated April 9, 1929.

(1) (1926) I. L. R. 49 All. 240.

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On appeal, the learned Sessions Judge of Tipperah found that the incident occurred at about "midnight in a village in a locality which had been "declared a crime centre; there was a barking of "dogs, the police patrol ran in the direction of the "commotion and found the three appellants and "others running away from the direction of a certain "house; after a chase, the accused were caught, they "struggled to escape. On one accused was found an "iron *sindh-kâti* and a pair of iron tin-cutters "inside the lining of his coat; another had a torn "handkerchief and match box and on the third "accused were found three rings with 9 keys, the "body of this man was also besmeared with oil; "circumstances pointed, therefore, to their being "concealed in this place with a view to commit an "offence." The learned Sessions Judge acquitted one of these accused, because "nothing incriminating "was found on him" but affirmed the order passed on the other two accused, who thereupon moved the High Court and obtained the present Rule.

*Mr. Upendrakumar Ray*, for the petitioners.

*No one* for the Crown.

RANKIN C. J. In this case the accused men have been bound down under section 109 of the Code of Criminal Procedure, and they have been ordered rigorous imprisonment in default of their giving security. It appears that these two men were found not very far from their home in a place outside a village and there is evidence to show that they were bent upon committing burglary at night. One man was found in possession of a *sindh-kâti* and a pair of tin-cutters and the other of a bunch of keys and there can be little doubt that these people were outside the village, in which they lived, for the purpose of committing burglary. They were seen to be approaching a certain house and at the barking of a dog they lay quiet and some time afterwards they attempted to approach again; and, in these circumstances, they were arrested and they were

charged as being people who were taking precautions to conceal their presence within the local limits of the magistrate's jurisdiction and that there was reason to believe that they were taking such precautions with a view to commit an offence. It appears that they were trying to conceal themselves from persons in the house and from any body who might come to pass that way, and there is no doubt that they were taking such precautions with a view to commit an offence. But has this anything to do with the meaning of section 109? In my opinion, it has nothing whatsoever to do with the meaning of section 109. The first thing to be noticed is that this is not a section which constitutes certain conduct a crime. It is not a section which gives authority to arrest somebody who otherwise could not have been arrested. The section says that where a magistrate receives information of a certain kind, he may require the person to show cause why he should not give security. Looking at it from that point of view, the magistrate is supposed to have had an information that there were persons, who were taking precautions to conceal the fact that they were present within the local limits of the magistrate's jurisdiction. The idea is that some one may be taking precaution to conceal himself within the local limits of the magistrate's jurisdiction, not to conceal himself as one who hides from a policeman but to conceal the fact of his infesting the magistrate's jurisdiction; and in that class of case, if there is reason to believe that this is a precaution taken with a view to commit an offence, the magistrate can require him to give security. It is reasonable in that view that clauses (a) and (b) should be found together, treating a man, who has no ostensible means of subsistence and cannot give satisfactory account of himself, as a person of the same kind, as a person trying to escape notice and to inhabit the locality without his presence in the locality becoming known, and doing this for the purpose of committing an offence.

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Authority on this point has been cited to us in the case of *Reshu Kaviraj v. The King-Emperor* (1), *Sheikh Piru v. King-Emperor* (2) and *Emperor v. Bhairon* (3). The exposition of the law given in the latter case is the correct exposition of the meaning of the first clause. It is quite true that the first clause of section 109 is not likely to come into operation every day. That is no reason why it should be applied to fill up any gap that there may be in the criminal law, or in a case in which it does not apply. The learned Judges of the Allahabad High Court say:—"In our view it is an entire mistake to read that clause as applying to any person who takes steps to conceal himself, in the sense of concealing his presence in the way, in which a criminal conceals his presence when he goes in the dark, or by a deserted road, or by some other secret means to commit a crime in his own neighbourhood." I agree with that proposition and that is sufficient to decide this case.

In the circumstances, the order made by the magistrate must be set aside and the petitioners are discharged from the obligation of giving any security. If the prisoners are in custody they must be forthwith released.

PATTERSON J. I agree.

*Rule absolute.*

G. S.

(1) (1917) 22 C. W. N. 163.

(2) (1925) 41 C. L. J. 142.

(3) (1926) I. L. R. 49 All. 240.