

## REVISIONAL CRIMINAL.

*Before Mr. Justice Piggott.*

EMPEROR v. INDAR AND OTHERS.\*

*Criminal Procedure Code, sections 110 (f) and 117—Security for good behaviour—Evidence of general repute not admissible when the case for the prosecution rests on section 110 (f).*

In a proceeding under section 110 of the Code of Criminal Procedure where the basis of the Court's order is clause (f) of that section, the fact that the person against whom the proceeding is taken is so desperate and dangerous as to render his being at large without security hazardous to the community is not a fact which under section 47 of the Code can be proved by evidence of general repute.

IN this case Indar, Jhabbu Lal and Bhopal, a father and two sons, had been required by a Sub-Divisional Magistrate to give security to be of good behaviour for a period of one year under the provisions of section 110 of the Code of Criminal Procedure. They appealed to the District Magistrate, who dismissed their appeal. They thereupon applied in revision to the High Court.

Mr. A. H. C. Hamilton, for the applicants.

The Assistant Government Advocate (Mr. R. Malcomson,) for the Crown.

PIGGOTT, J. :—In this case Indar, Jhabbu Lal and Bhopal, a father and two sons, have been required by a Sub-Divisional Magistrate to give security to be of good behaviour for a period of one year under the provisions of section 110 of the Code of Criminal Procedure. An appeal against that order has been dismissed by the District Magistrate. The case is before me on an application for revision in respect of these two orders. I have been through the record and I am quite satisfied that the orders complained of are illegal, on more than one ground, and cannot be affirmed. The order of the District Magistrate is perfectly clear and straightforward and shows beyond possible doubt the grounds upon which the prosecution of these men for bad livelihood has proceeded and the order against them passed. There was a dacoity at the house of one Ram Dayal, in the course of which the said Ram Dayal was murdered. Information was

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\* Criminal Revision No. 795 of 1917, from an order of C. L. Alexander, District Magistrate of Faerukhabad, dated the 27th of July, 1917.

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forthcoming to the effect that this dacoity had been organized by Indar and that he and his sons, Jhabbu Lal and Bhopal, had taken part in it. The three men were placed on their trial along with others, charged with having taken part in this dacoity and in the murder of Ram Dayal. They were acquitted by the Sessions Court. The present proceedings are an attempt to prove by hearsay evidence what the prosecution were unable to prove by direct evidence at the sessions trial. The learned District Magistrate says quite frankly that he is satisfied by the evidence on the record that Indar, Bhopal and Jhabbu Lal had got up the dacoity at the house of Ram Dayal. There is practically no legal evidence to this effect on the record. If it is alleged against a person, even in a proceeding under section 110 of the Code of Criminal Procedure, that he on a certain occasion committed a particular offence, that fact must be proved by relevant evidence. It is not at all the same thing as proving by evidence of general repute that a man is a habitual offender. Moreover, in the present case the preliminary order drawn up by the Magistrate shows clearly that the prosecution were not prepared to undertake to prove, by evidence of general repute or otherwise, that these men were habitual robbers or habitual receivers of stolen property. The case against them was that they were so desperate and dangerous as to render their being at large without security hazardous to the community. This is not a fact which under section 117 of the Code of Criminal Procedure can be proved by evidence of general repute. I do not say that in a proceeding of this sort evidence of general repute may not be offered in support of an allegation that a person against whom proceedings have been taken is habitually a robber or habitually commits extortion, and that the court may not be asked at the same time to consider whether this evidence of the man's general repute, read in connection with direct evidence establishing definite facts against him, may not justify a conclusion that he is a desperate and dangerous character and within the scope of clause (f) of section 110 of the Code of Criminal Procedure. If, however, it is intended to conduct a prosecution on these lines, the accused should have fair notice of the fact in the preliminary order drawn up against him. The form of the

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preliminary order passed in the case clearly shows that those responsible for the conduct of the prosecution were not prepared to ask the Court to find that these men were habitual robbers or habitual receivers of stolen property. For all these reasons I am quite satisfied that the orders complained of cannot be sustained. I set aside the order of the Sub-Divisional Magistrate and discharge Indar, Bhopal and Jhabbu Lal. If they have furnished the securities required, their sureties will be discharged and their own recognizances cancelled. If they are in custody for failure to furnish security, they must be at once released.

*Order set aside.*

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## APPELLATE CIVIL.

*Before Mr. Justice Piggott and Mr. Justice Walsh.*

GANESHI LAL (PLAINTIFF) v. BABU LAL AND OTHERS (DEFENDANTS).\*

*Hindu Law—Partition—Right of a third party to half of the property partitioned subsequently established by suit—Right of original parties to re-partition.*

One of two brothers sued the other for partition of what they alleged to be the joint family property. The suit was compromised, and a partition was effected which was embodied in a decree. Subsequently, however, a cousin of the parties established by suit his title to one half of the family property which had been already divided between the two brothers. *Held* that it was open to the two brothers—if not *eo nomine* to re-open the partition already effected—at any rate to ask the court to adjust as between them the loss occasioned by the success of their cousin's suit. *Maruti v. Rama* (1) referred to.

GANESHI LAL and Babu Lal were brothers. In 1910 Babu Lal sued Ganeshi Lal for partition of the joint family property, namely a number of houses in Pilkhua in the Meerut district. Ganeshi Lal in his defence stated that there was another item of joint family property, namely a "shop" at Landour (Mussoorie), which also should be included in the partition. The parties entered into a compromise, and on the 21st of December, 1910, a decree was passed in accordance therewith. By this decree one-half of a large house was allotted to Babu Lal and the other half to Ganeshi Lal; and of the smaller houses, some were allotted to Babu Lal and others to Ganeshi Lal, and one was left in their

\* First Appeal No. 281 of 1916, from a decree of B. R. Neave, Subordinate Judge of Dehra Dun, dated the 11th of July, 1916.

(1) (1895) I. L. R. 21 Bom., 33.