

CRIMINAL RULE.

Before Mr. Justice Ameer Ali and Mr. Justice Pratt.

KALAI HALDAR

v.

EMPEROR.*

1901
April 17.

Security for good behaviour from habitual offenders—Thief—Habitual thieves and dacoits—Desperate and dangerous characters—Evidence—Specific acts—General repute—Criminal Procedure Code (Act V of 1898) ss. 110 and 117.

A charge under clause (f), s. 110 of the Criminal Procedure Code, cannot be proved by general reputation, but by definite evidence.

To prove a charge under s. 110 that a person is by habit a thief and a dacoit or that he is so desperate and dangerous as to render his being at large without security hazardous to the community, there should be proof of specific acts showing that he, to the knowledge of some particular individual, is a dangerous or desperate character.

It is not sufficient that persons, however respectable, should come forward and depose that they have heard that such person is a thief and a dangerous character, when they themselves have no personal knowledge of or acquaintance with him. Such evidence is not only such as could not be safely acted upon, but is also likely to work serious prejudice.

THE Subdivisional Magistrate of Bagirhat on the 5th June 1900 drew up proceedings under s. 110 of the Criminal Procedure Code against the petitioners Kalai Haldar and another, charging them with being thieves and dacoits, by habit, and with being so desperate and dangerous as to render their being at large without security hazardous to the community, and by an order dated the 18th September 1900, the Magistrate directed the petitioners to enter into securities for good behaviour for the term of one year or in default to undergo rigorous imprisonment for the same period.

The petitioners appealed to the District Magistrate of Khulna, who on the 25th October 1900 affirmed the appeal.

* Criminal Rule No. 208 of 1901 made against the order passed by S. C. Mookerjee, Esq., District Magistrate of Khulna, dated the 25th of October 1900.

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The petitioners then obtained a Rule from the High Court calling upon the District Magistrate to show cause why the order of the Subdivisional Magistrate of Bagirhat, dated the 18th September 1900, purporting to have been made under s. 110 of the Code of Criminal Procedure, and requiring the petitioners to execute bonds for good behaviour for one year or, in default thereof, to undergo rigorous imprisonment for the same period, should not be set aside—*first*, upon the ground that the Courts below have misdirected themselves in the consideration of the evidence adduced for the prosecution; *secondly*, upon the ground that the evidence upon which the lower Courts have proceeded is not sufficient in law to warrant an order under s. 110; and, *thirdly*, upon the ground that, so far as one of the petitioners is concerned, the first Court had no jurisdiction to entertain the matter; or why such other order should not be made as to this Court may seem fit and proper.

Mr. Donogh and Babu Harendra Narain Mitter and Babu Brojo Gopal Chakravarti for the petitioners.

AMEER ALI AND PRATT JJ. The two petitioners before us were required under s. 110 of the Code of Criminal Procedure to enter into securities for good behaviour for the term of one year, or in default to undergo imprisonment for the same period. The charge which they were called upon to meet under that section is stated in the judgment of the Deputy Magistrate, namely, that they are thieves and dacoits by habit, and that they are desperate and dangerous to the community.

We have read through the judgments of the two Courts and examined the principal evidence upon which the District Magistrate as well as the Deputy Magistrate relied. The fact, which, according to the Deputy Magistrate, shows the dangerous character of these men is that which he mentions in his judgment, namely, that a search was made in Kalai's and Chater's house in connection with a burglary in the house of a pleader of Khulna. No specific act is mentioned in either of the judgments to show that these men, to the knowledge of any particular individual, were

dangerous and desperate characters. The charge under cl. (f), s. 110 of the Code of Criminal Procedure, cannot be proved by general reputation, but by definite evidence.

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Cl. (f) provides :—

“Wherever a Magistrate specially empowered in this behalf receives information that any person within the local limits of his jurisdiction ‘is so desperate and dangerous as to render his being at large without security hazardous to the community,’ such Magistrate may call upon him to execute a bond.”

We have not been able to discover in these proceedings any evidence of that fact. And as regards the other allegation, *viz.*, that these men were thieves and dacoits by habit, referring to the evidence of those who are stated to be respectable pleaders and Honorary Magistrates, we find that none of them know personally the individuals charged. They say that they have heard that these men are thieves and dangerous characters, but when they are asked, if they know them personally, they answer in the negative, nor can they mention the people from whom they derived their information. In our opinion the evidence is not only such as cannot be safely acted upon, but it is also likely to work serious prejudice. If the men from whom these witnesses purported to derive their information were examined, it would be possible for the accused to test their means of knowledge that they were men of bad character. General suspicion of this nature, however, is not safe to act upon.

Having regard to the nature of the evidence in this case, we are of opinion that the order against the two petitioners cannot be sustained. We accordingly set it aside, and direct that the petitioners be discharged.