CRIMINAL REVISION.

Before Mr. Justice Pratt and Mr. Justice Handley.

JUNAB ALI

v.

EMPEROR.*

1904
May 10.

Good behaviour, security for—General repute—Locus pœnitentiæ—Criminal Procedure Code (Act V of 1898) ss. 110, 118.

The petitioner was imprisoned for one year on failure to furnish security for his good behaviour under s. 110 of the Criminal Procedure Code.

About fifteen months after his release from jail fresh proceedings of the same nature were started against him and he was again ordered to furnish security to be of good behaviour.

Held, that the order should be set aside as the petitioner had not had a sufficient *locus pœnitentiæ.*

RULE granted to the petitioner, Junab Ali.

This was a Rule calling upon the District Magistrate of Tipperah to show cause why the order under s. 118 of the Criminal Procedure Code should not be set aside on the grounds:—

(1) that the evidence on the record was unreliable and the result of party feeling;

(2) that no evidence of a period anterior to the imprisonment of the petitioner should have been admitted or relied on;

(3) that the Court below had misconceived the real issue in the case;

(4) that having regard to the facts of the case the opinion as to general repute was insufficient.

The petitioner was released from jail on the 26th September 1902 after having undergone one year's imprisonment on failure to furnish security for his good behaviour under s. 110 of the Criminal Procedure Code. About fifteen months afterwards fresh proceedings under s. 110 of the Code were started against

* Criminal Revision No. 359 of 1904 made against the order passed by H. W. Scroope, District Magistrate of Tipperah, dated the 29th of February, 1904.

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JUNAB ALI v. EMPEROR.

him before the District Magistrate of Tipperah, it being alleged that he was a habitual thief and burglar and associated with others for the purpose of committing theft. On the 29th February 1904 the District Magistrate under s. 118 of the Criminal Procedure Code directed the petitioner to execute a bond for Rs. 200 with two sureties for Rs. 100 each to be of good behaviour for a period of one year.

The judgment of the District Magistrate was as follows:—

The accused is one Junab Ali: the proceedings against him are under s. 110 of the Criminal Procedure Code. He is alleged to be a habitual thief and burglar and to associate with others for the purpose of committing theft.

The accused is an inhabitant of Muradpur, one of the mohallas included within the municipal limits of Comilla and the witnesses, who have deposed both in his favor and against him are most of them residents of the town belonging to the mohallas of Muradpur, Bajrapur, Chartha, Dakhin Chartha, Mirpur and Mogaltoli. He has been once convicted under s. 110 of the Criminal Procedure Code and was released after a year's imprisonment on 26th September, 1902. During the earlier months of the present year there was a serious outbreak of thefts and burglaries in the town, and I infer, though it is nowhere expressly stated in evidence, that to this circumstance is mainly due the institution of cases under s. 110 of the Criminal Procedure Code against the accused and several other persons, who are alleged to be his intimate associates. What has to be regarded as the real point of issue in the present proceedings is the nature of the accused's reputation among his fellow townsmen, since his release from jail. The learned pleader, who argues the case on his behalf, contends that the inability of the prosecution witnesses to quote specific instances of misconduct again st him since his release is a fact which would justify the dropping of the present proceedings, but I cannot accept this view having regard to the facts which have been elicited as to the accused's general reputation and the ruling in *Rai Isri Pershad* v. *Queen-Empress*(1). Thitry-three witnesses have been examined for the prosecution and Nos. 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 16, 19, 20, 21, 22, 27, 29, 30 and 33 depose that the accused has the reputation of being an habitual thief. Many of these wit nesses are persons holding respectable positions and their evidence leaves no doubt in my mind as to the fact that accused is an object of fear and suspicion to his fellow townsmen. Of the other witnesses No. 2 proves that the accused visited Koshba in company with other notorious bad characters on a date when a serious burglary occurred in a house in that village and I see no reason for disbelieving that the witness identified the accused on that occasion. Witnesses 14 and 15 established that the accused visited the house of one Ashgorali, who was subsequently arrested on a charge of concealing stolen property, witness No. 17 saw the accused in Hill Tippera in company with Syedali and Altabali, who are notorious bad characters of the town and witnesses 24, 25 and 26 prove the occurrence of theft cases in Hill Tipperah, in which however there are no sufficient reasons for suspecting accused.

(1) (1895) I. L. R. 23 Calc. 621.

None of the witnesses are shown to have any reason for wishing to injure the accused and it is absolutely certain that the present case is not one of those which has its origin in party feeling. The accused has cited 18 defence witnesses, most of whom are related to him. The others know little or nothing about him beyond the fact that he is now working as driver of a ticca-gari: it is mainly upon this that they base their opinion as to his character. The defence evidence offers no satisfactory explanation of the general consensus of opinion among the prosecution witnesses that the accused is an associate of thieves and himself a suspected thief. I therefore direct the accused to execute a bond of Rs. 200 with two securities of Rs. 100 each to be of good behaviour for a period of one year. In default he will undergo rigorous imprisonment for that period.

M. Syed Shamsul Huda for the petitioner. The petitioner was only released from jail a few months ago, and it is hardly fair to have proceeded again against him under s. 110 of the Criminal Procedure Code without giving him an opportunity of reforming. The evil reputation he had still follows him. He has not had sufficient time to throw off the slur cast upon him by his imprisonment. The evidence against him was mainly that of general repute. Under the circumstances it would be impossible for a man to acquire a good reputation in so short a time.

PRATT AND HANDLEY JJ. The petitioner was released from jail on the 26th September 1902, after having undergone one year's imprisonment on failure to furnish security for his good behaviour under section 110 of the Code of Criminal Procedure. About fifteen months afterwards fresh proceedings of the same nature were started against him and in the result he has been again ordered to furnish security to be of good behaviour for a period of one year.

We think that the petitioner has not had a sufficient *locus pœnitentiæ* and that the evil reputation which he had before his imprisonment has still followed him and permeated the evidence of many of the witnesses. We therefore think that the order of the Magistrate dated the 29th February 1904, should be set aside and we order accordingly.

Rule made absolute.

D. S.