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No. 1 claimed the land as rent-free, and the plaintiff's agent denied the claim. There was thus a clear claim of *niskar* title unqualified by reference to any document, and a clear denial of the same by the plaintiff's agent. A complete hostile right was claimed to the knowledge of the plaintiff, and no suit was brought until more than twelve years after. I think that this suit, as framed, is clearly barred by limitation and has been rightly dismissed. I agree, therefore, in dismissing the appeal without costs.

S. C. G.

*Appeal dismissed.*

## CRIMINAL REVISION.

*Before Mr. Justice Holmwood and Mr. Justice Sharfu ldin.*

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 Jan. 15.

SATISH CHANDRA SARKAR

v.

EMPEROR.\*

*Security for good behaviour—Return of absconding suspect home on withdrawal of warrant, and residence in his father's house without taking steps to conceal himself to commit an offence—Relevancy of evidence of previous connection with a criminal conspiracy or concealment outside the trying Magistrate's jurisdiction—Ostensible means of subsistence—Support by father possessing substance—Jurisdiction of Magistrate to require a person to give an account of his presence while in another jurisdiction—Criminal Procedure Code (Act V of 1898), s. 109, cls. (a), (b).*

Clause (a) of section 109 of the Criminal Procedure Code should be read in its entirety. The concealment referred to therein must be with a view to committing some offence.

Where a person, against whom a warrant had been issued, absconded from home for two years, but returned thereto after its withdrawal, and was found living in his father's house, without having taken any particular

\* Criminal Revision, No. 1378 of 1911, against the order passed by G. P. Hogg, Offg. District Magistrate of Rajshahi, dated Sept. 26, 1911.

steps to conceal himself for the purpose of committing any offence thereafter, the fact of previous connection with a criminal conspiracy or of present correspondence with criminals outside the Magistrate's jurisdiction, is not relevant under section 109, though it might form the basis of a substantive proceeding under section 110.

A person cannot be called on to furnish security under section 109 in respect of an alleged temporary concealment in his father's house unconnected with any intent to commit an offence, nor with any previous concealment outside the Magistrate's jurisdiction.

As long as a young man, out of employment, is staying in the house of his father, who is a man of substance and able, if necessary, to support him, he cannot be held to be without ostensible means of subsistence.

Where the account a person gives of his presence within the limits of a Magistrate's jurisdiction is satisfactory, *e.g.*, that he has returned to, and is living in, his father's house in strict seclusion on the withdrawal of a warrant against him, he cannot be called upon by such Magistrate to give an account of his presence in any other jurisdiction.

THE facts of the case are as follows. Some two years before the institution of the present proceedings, the petitioner, Satish Chandra Sarkar, was suspected in connection with a dacoity at Haludbari, and his brother's house searched. The petitioner was a leading member of a Samiti at Nattore, and was associated with one Bejoy Chuckerbutty, who was subsequently convicted under the Arms Act. Satish was also suspected of selling the *Jugantar*. A warrant was issued against him in connection with the Howrah Gang case, and he absconded. The warrant was withdrawn on the 15th June 1911, and he appeared in Nattore on the 9th or 10th August, and was found living in the house of his father, who was a man of substance. On the 12th August, a proceeding under section 109 of the Criminal Procedure Code was drawn up against him by the District Magistrate of Rajshahi, in the terms set forth in the judgment of the High Court, and he was arrested, but released on bail.

The case for the prosecution was that the petitioner was concealing himself at Nattore and its vicinity in

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order to avoid observation, that he was connected with an anarchist agitation and conspiracy to commit dacoity and other crimes, and that he had no ostensible means of subsistence, nor could he give a satisfactory account of himself. The petitioner filed a written statement denying the prosecution story, and alleging that he was living openly with his father, a Government pensioner, and two brothers, as members of a joint Hindu family, having considerable landed property and other sources of income. The Magistrate, after taking evidence on both sides, was of opinion that the petitioner was, since his return to Nattore, living in his father's house, and had taken no particular steps to conceal his presence there, but that he had, two years previously, been suspected of complicity in anarchist agitation and had absconded. He also found that, beyond his statement that he was in Calcutta, the petitioner had not disclosed his place of residence during such period, and, further, that he did nothing during the time and was unable to show that, as a member of Hindu joint family, he had been supported from the joint funds, and that neither his father nor his brothers had been examined to prove this fact. The Magistrate accordingly, by his order dated the 26th September 1911, directed the petitioner to execute a bond for good behaviour for one year in the sum of Rs. 500, with two sureties in the like sum, and in default to undergo rigorous imprisonment for the same period. The petitioner, thereupon, moved the High Court and obtained the present Rule,

*Babu Manmatha Nath Mukherji*, for the petitioner.

*Mr. K. N. Chaudhuri* and *Babu Srish Chunder Chaudhury*, for the Crown.

*Cur. adv. vult.*

HOLMWOOD AND SHARFUDDIN JJ. This Rule was issued calling upon the District Magistrate of Rajshahi to show cause why the order directing the petitioner to execute a bond for Rs. 500, with two sureties of Rs. 500 each, for his good behaviour for one year, under section 109 of the Criminal Procedure Code, and on failure to give security to undergo rigorous imprisonment for one year, should not be set aside on the ground that it does not appear that the petitioner is without ostensible means of subsistence, and that the account he has given of himself is satisfactory. Having given the case our most attentive consideration, we are of opinion that the Rule must be made absolute. The proceeding upon which the order complained of was based was dated the 12th August 1911, and set out that, whereas it was reported that Satish Chandra Sarkar was in Nattore or its vicinity, and was concealing himself in order to avoid observation, and there was reason to believe that he was connected with anarchist agitation and conspiracies for the purpose of committing dacoity and other crimes, and whereas he had no ostensible means of livelihood, and could not give a satisfactory account of himself, he was called upon to execute securities as set out above.

The proceedings were taken under section 109 of the Criminal Procedure Code, and not under section 110, and the ground covered was, on the face of it, in respect of both clauses (a) and (b) of the section. The officiating District Magistrate, however, dealt with it under three heads, the first being that the accused was concealing himself in order to avoid observation. This, of course, is no offence at all, and the Magistrate held, as he was bound to hold, that the prosecution had not made out its case on this head. But he omitted to notice that what he calls the second allegation against the accused is really a substantive

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and necessary part of the first, if there is to be any order under clause (a) of section 109.

The whole clause must be read together, and the object of the concealment must be with a view to committing some offence.

Now, the second allegation is that the accused is connected with anarchist agitation and conspiracies for the purpose of committing dacoity and other crimes. This standing by itself could constitute no ground for a proceeding under section 109, but would properly form the basis of a proceeding under section 110, to which the accused has had no opportunity of answering. It being found that he only returned to his father's house on the 9th of August, and merely secluded himself in the day-time, going out at night for exercise, and that the prosecution had not made out that he was taking any particular steps to conceal himself for the purpose of committing any offence, the fact that he had previously been connected with any criminal conspiracy or might still be in correspondence with any criminals outside the jurisdiction, would not be relevant in a case under section 109. It would have to form the basis of a substantive proceeding under section 110. The connection between the alleged concealment and the accused's history having admittedly failed, the proceeding under section 109 (a) necessarily fails also. The District Magistrate may, of course, take any proceedings he is advised under section 110, if he is of opinion that the accused is still a desperate and dangerous character, but he cannot be called upon to furnish any security in respect of an alleged temporary concealment in his father's house unconnected with any intention to commit an offence, nor with any previous concealment which admittedly must have been outside the jurisdiction.

We come, therefore, to the consideration of the charge under clause (b), which is that he has no ostensible means of livelihood, and that he cannot give a satisfactory account of himself. The learned Magistrate finds against him on both these points, although he finds that the accused is a member of a joint family, that he came straight to his father's house on his arrival in Nattore, and that his father and brother accompanied him to Court. He appears to expect that the father and brother should go into the witness-box and take oath that he is being supported out of joint family funds. Obviously, as long as a young man out of employment is staying in his father's house, and that father is a man of substance, able, if necessary, to support him, he cannot be said to be without ostensible means of subsistence. The use of the word "livelihood" seems to have led the learned Magistrate into error.

We have no hesitation in finding that the accused's father is a very ostensible means of subsistence as long as he keeps his son in his house, and that no further evidence is required.

As regards the account he is asked to give of himself, it would appear that the Magistrate has exceeded his jurisdiction under section 109. The account he gives of his presence in the limits of the Magistrate's jurisdiction is quite satisfactory. He had fled from fear of a warrant directed against him in a specific case. That warrant having been withdrawn three months ago, he has ventured to return to his home, though he keeps himself, as is natural and we think proper, in strict seclusion from curious enquiries.

He cannot be called upon to give any account of his presence in any other jurisdiction, except by the Magistrate who is empowered to take proceedings in that jurisdiction.

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The whole object of this part of the clause is to enable Magistrates to take action against suspicious strangers lurking within their jurisdiction. The greatest criminal in the world is not liable to be questioned as to his presence in his own home, unless there is some specific outstanding charge against him.

We, therefore, hold that the proceeding under clause (b) of the section also fails, and the proceedings in this case must be set aside and the accused discharged from his bail, subject to any action the District Magistrate may see fit to take under section 110, but no such proceeding, we may point out, should be taken unless there is evidence that the petitioner is still connected with conspiracies to commit crime or is a desperate and dangerous character at the present time.

The Rule is made absolute, and the proceedings under section 109 are set aside.

E. H. M.

*Rule absolute.*