

(1933) 10 AHC CK 0053
In the Allahabad High Court

Kanshi Nath Singh

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 12-10-1933

Acts Referred:

Citation : (1933) 10 AHC CK 0053

Final Decision : Allowed

Judgement

1. The applicant in this case was called on by a Magistrate to provide bond and sureties on the ground that he had been taking precautions to conceal his presence with a view to committing an offence within the meaning of Clause (a) of Section 109 of the Criminal Procedure Code. The Sessions Judge upheld that order, and when the matter came up in revision before the High Court there was a difference of opinion between the two learned Judges who composed the Bench, the Hon''ble C.J., holding that the provisions of Section 109 (a) would cover the case, while Mr. Justice King held that they would not. So far as the facts of the case are concerned it is only necessary to state that the applicant Kashi Nath Singh is actually the son of a blind beggar of Benares, and that he represented to the Raja of Manda that he was Kashi Nath Singh, Maharaj Kumar of Toda, a person of influence who would be able to help the Raja of Manda to make a rich marriage and to arrange for loans at low rates of interest etc. The Magistrate and the Sessions Judge held that by representing himself to be the Maharaj Kumar of Toda the applicant had been taking precautions to conceal his presence with a view to cheating the Raja of Manda.

2. Both the learned Judges of this Court who have considered the case have found that a man may be concealing his presence when he is concealing his identity. The Hon''ble C.J., has pointed out that if a man of small status is posing as a Raja of a big State in order to facilitate his cheating other people he is doing two things: (1) concealing his true identity and (2) trying to impersonate another man, and he further remarks:

It seems to me that the test is whether the concealment of true identity was a

part of the scheme which the accused had in mind in committing the offence.

3. The concealment of a person's true identity evidently consists of two parts:

(1) Concealing the presence of A by denying his identity and

(2) The impersonation of B

and it seems to me that in order to attract the provisions of Clause (a) of Section 109, Criminal Procedure Code, it is necessary to show. that the person concerned was concealing his own presence for the purpose of committing the offence--in other words that the act which was to help him to commit the offence was the concealment of his own presence or identity and not the impersonation of another. I am led to this conclusion, not only by the words of Section. 109 (a), viz., "taking precautions to conceal his presence with a view to committing an offence", but by the following considerations. In the passages quoted by the Hon"ble C.J., from the Full Bench case of Emperor Vs. Phuchai and Another to show that a man may be "concealing his presence" by refusing to disclose his identity, or assuming the identity of another, the emphasis is laid on the first part, or the concealment, and not the second part, or the assumption of the fictitious identity. The meaning I wish to convey can perhaps be illustrated more clearly by concrete examples. If A, a notorious bad character, conceals himself in a jungle for the purpose of committing a burglary, he may undoubtedly be apprehended u/s 109, Criminal Procedure Code, and if as is often the case he attempts when challenged to persuade the Police that he is not A but B, he is trying to "conceal his identity", i. e., the identity of A, and that is a ground for proceeding against him; but the reason for his apprehension is that he is trying to conceal the presence of A, or to conceal the identity of A, not that he is trying to assume the identity of B. To take a more elaborate case: A, a skilled burglar or "cracksman", disguises himself as B, a Bank clerk, in order to obtain access to a Bank with a view to breaking open a safe. His object is two-fold, to conceal the identity of A the skilled "cracksman", and to assume that of B the Bank clerk--and he is liable to proceedings u/s 109 (a), but it is because he is concealing the identity of A and not because he is assuming that of B. In the case before the Bench, the applicant might have gone to Manda and concealed his presence there for an unlimited period, and no one would have been perturbed or would have thought of proceeding against him. He might have gone further and concealed his identity by pretending to be a chowkidar, or a dhobi, or an old woman, and his actions might still have been attributed to an amusable facetiousness. The concealment of his presence and identity as the son of a blind beggar of Benares would not in the least have helped him to cheat the Raja of Manda, unless and until he had attempted to assume the identity of a particular person, viz: the Maharaj Kumar of Toda; and, therefore, I am led to conclude that the concealment of his identity was no part of his criminal objective, it was in fact not his objective at all. The criminality of assuming the identity of the Maharaj Kumar may of course be even more heinous, but it is not, in the view I have taken, a criminality that is contemplated by Section 109 (a) of the Criminal

Procedure Code.

4. In the instances which have been quoted in the judgment of the learned Judges who have dissented, the criterion which I have used can be successfully applied, and it is unnecessary for me to take them seriatim. My conclusion, therefore, is that Clause (a) of Section 109, Criminal Procedure Code, should not be applied in a case of this kind, and I agree with the opinion of Mr. Justice King that the application for revision ought to be allowed.

Sulaiman, C.J. and King, J.

5. In view of the opinion expressed by the majority of the Judges this revision is allowed, the order of the court below is set aside and the accused released. The security bonds are hereby cancelled.