
(1933) 10 AHC CK 0036
In the Allahabad High Court

Kashi Nath Singh

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 12-10-1933

Acts Referred:

Citation : (1933) 10 AHC CK 0036

Hon'ble Judges : Sulaiman, C.J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sulaiman, C.J.—This is a criminal revision arising out of proceedings u/s 109, Criminal P.C. The Magistrate bound down the accused both under Sub-section (a) and Sub-section (b) of Section 109 and ordered him to execute a bond, with two sureties, for good behaviour for one year. The learned Sessions Judge, on appeal, has upheld the order so far as Sub-section (a) is concerned. The Assistant Government Advocate has not pressed before us that Sub-section (b) was equally applicable. We have therefore not to consider the effect of that section.

2. It has now been found that the accused Kashi Nath Singh is the son of Ram Karan, a Brahmin of Benares, who is a blind man and lives on begging. The accused conducted some correspondence with the Raja Bahadur of Manda and eventually he was cordially invited by the Raja Bahadur to come and stay at his guest house at Manda. The accused posed as the Maharaj Kumar of Toda in Jaipur (Rajputana) belonging to the Rajput caste, having relations with Jodhpur, Kashmir and Jaipur States. In one of his letters he said that Toda was a principedom in Jaipur State and that his father, Ram Karan, was a jagirdar. He made out that he was in a position to get the marriage of the Raja Bahadur of Manda settled somewhere in Madras where he could get a substantial dowry, i.e., above five lakhs of rupees and that he could arrange for big loans at low rates of interest for the purpose of paying off the debts due from the Manda Estate. He described his present residence as "Mandmandir Palace, Benares City," and asserted that his family had come from Jaipur State and settled down at

Benares. The accused, accompanied by a servant, duly arrived on 31st March and was comfortably accommodated in the guest house. He stayed on for several days, when some suspicion was aroused and it was decided to call in the station officer of the Manda police-station. The police officer, unsuspected by the accused, was present at the final conversation held on the night of 7th April 1932 in which the accused posed as already mentioned and undertook to arrange for the marriage and procured loans.

3. The next morning, the station officer, having secured the order of the Superintendent of Police for the arrest of the accused arrested him at the guest house and he was run in u/s 109, Criminal P.C. The Magistrate bound the accused over under both Clauses (a) and (b) relying on certain observations made in the Full Bench case of Emperor Vs. Phuchai and Another . The learned Sessions Judge also felt no doubt that the accused had concealed his presence as it is possible for a man to conceal his presence by avoiding the light of day as much as he can conceal himself under a pseudonym. His findings are that the accused persistently appeared under a pseudonym and concealed his presence with a view to cheat big men of their property. He upheld the order under Clause (a) only. The only question before us for consideration is whether on the facts found the case falls u/s 109(a), Criminal P.C. Any person found taking precautions to conceal his presence within the local limits of a Magistrate's jurisdiction, when there is reason to believe that he was taking such precautions with a view to committing any offence, brings himself within the ambit of this section. There has however been considerable difference of opinion as to the true meaning to be attached to the expression "conceal his presence." One view is that the words "his presence" mean his physical or bodily presence, i.e., his hiding himself or concealing the person from view. Such a narrow interpretation would confine the applicability of the section only to cases where a person is actually hiding himself as a thief or an absconder may do, and not to a person who goes about in broad daylight even though disguised as a woman-or passing under a false name or assuming a different appearance by growing a beard or dressing in a sadhu's cloths. On the other hand, the words "his presence" cannot be the exact equivalent of the word "identity." Every person who is concealing his identity is not necessarily "concealing his presence." But a person, who is concealing his identity by passing under a false name may, in conjunction with other circumstances, be concealing his own presence. Support for this proposition can be found in the remark which I made in the Full Bench case quoted above at 1260 (of 26 A.L.J.):

I concede that the expression "concealing his presence" is not identical with concealing himself. A man may not conceal his presence at a place and yet he may conceal his identity. For instance a man well known as Sir John Wilson, may go to a new place where nobody recognizes him and may put up at a fashionable hotel under the name, Mr. Wilson. He cannot be said to be "concealing his presence," though he is without doubt concealing his "identity." On the other hand, the giving out of a false name by a man in conjunction with other

circumstances, for example, when he disguises himself, or hides himself, or when it is his duty to disclose his identity, or absence from residence, as in the case of criminals ordered to notify their residence u/s 563, Criminal P.C., may amount to "concealing his presence.

4. Another member of the Bench, Weir, J., went somewhat further and remarked 1280 A.L.J. 26 :

A man may conceal his presence in various ways. He may endeavour to hide himself from sight so that his presence cannot be perceived at all, or he may endeavour to conceal his identity either by adopting a disguise or by giving a false name; and, if he does this, not merely in order to avoid arrest, but with a view to be able to carry out a plan to commit a crime, I think it could be said of such a person that he was "taking precautions with a view to committing an offence." I think that the words, "to conceal his presence," were used to cover all the methods of concealment which I have indicated above; because, in my view, the word "presence" in Clause (a) connotes two things, actual bodily presence and identity, so that a man who adopts a disguise or gives a false name or makes arrangements to cause people to believe that he is somewhere where he is not, attempts to conceal his presence just as touch as if he hides in a cellar, where nobody can possibly see him.

5. I do not find any expression of opinion by any of the other learned Judges which would show that they entertained a contrary view. In this connection I must distinguish another case decided by myself, i.e., Sheo Prasad v. Emperor AIR 1924 All. 202. In that case the accused had gone to a village with the object of cheating some unwary villagers. His true identity was not known to them, and therefore it did not matter what name he assumed. It was only when he was accosted by the police while going from the village that he first gave a false name and then gave the correct name afterwards. As the accused had gone to the village in broad daylight and intended to meet the villagers because the suggestion was that he intended to play "confidence tricks" on them and he gave a false name to the police when caught running away from the village, it was held by me that it could not be said that he had taken steps to "conceal his presence. In that case the mere concealment of the identity of the individual was held not to amount necessarily to a concealment of his presence, even though the object was to commit an offence. The giving of the false name was to prevent the police from tracing his residence and not for the purpose of facilitating the commission of the offence. Had the word "presence" only been there, one might have been inclined to think that physical or bodily presence was meant. But we have to interpret the words "his presence," i.e., the presence of the accused, Kashi Nath Singh, son of Ram Karan, a blind beggar, resident of Mohalla Raj Mandar, Benares city. When a person is passing under a false name and is trying to impersonate another person, he is undoubtedly concealing his own identity and trying to make people believe that he is some other person. But the subsection can only apply if the intention is to commit an offence. Thus the

fact of the false identity is to be considered in connection with the object in view. If the false name or disguise was adopted in order to facilitate the commission of the offence contemplated, and but for such pseudonym or disguise the commission of the offence would not be easy, the accused by concealing his identity is certainly concealing his presence as well. On the other hand, if the concealment of the true name or the identity is not for the purpose of facilitating the commission of the offence in contemplation but for a different purpose altogether so that there is no connection between the two, the mere concealment of identity would not be the concealment of his presence with a view to commit an offence under this clause. To give an illustration: An unknown person A passes under the name of another unknown person B, the purpose being to commit a theft, but the object of the concealment of the name being that if arrested and convicted his identity may not become known to his relations and villagers. For the purpose of his committing theft it would make no difference whether people believe him to be A or B. In such a case his passing under a false name B, would not amount to his concealing his presence. But if a person of an ordinary status were to go to a big jeweler's shop and say that he was the Raja of such and such a place with a view to induce the jeweler to hand over to him some valuable jewellery, it is obvious that but for concealing his true identity and posing as a big person, there would be no likelihood of success. In such a case, he is, in my opinion, concealing "his presence" not in the sense of physical presence but true identity. On the other hand, if a Raja of a big State were; to travel incognito and not wish to disclose his high status and may even pass under an ordinary name he would not be concealing his presence though no doubt concealing his identity, provided the concealment of his true identity is not for the purpose of facilitating the commission of an offence.

6. The same remarks would apply to a person of ordinary status who for some other ulterior purpose wishes to pose as a big Raja. But when the concealment of his true identity and the adoption of a false name and residence is a necessary part of the plan to commit an offence the position at once becomes different. If a man of small status is posing as the Raja of a big State in order to facilitate his cheating other people, he is, in my opinion, doing two things: (1) he is concealing his true identity, namely that he is so and so, an ordinary resident of a particular place, and (2) he is trying to impersonate another person of a big status and belonging to another place. I, therefore, find it difficult to hold [that a Raja passing under an ordinary name would, when the object is to conceal his personality in order to commit an offence, be concealing his presence, but a poor man posing as a Raja, with a similar object in view, would not be concealing his presence. I can see no real distinction (between the two cases. It seems to me that the test is whether the concealment of the true identity was a part of the scheme which the accused had in mind in committing the offence.

7. If he considered it necessary or convenient to hide his identity in order to facilitate the commission of the offence he has concealed his presence, but if the concealment of the true identity is for some purpose not directly connected with

the intended offence then the mere concealment of identity would not amount to concealment of presence within the meaning of the section. This view avoids one's being driven to adopt either of the two extreme views, namely, (a) presence only means physical or bodily presence the concealment of which would be the equivalent of hiding from public view, and (b) presence is the exact equivalent of identity and would always include the assumption of a pseudonym or passing in disguise. In my judgment a middle view is possible which I have indicated. In this view it has been found that the accused was pretending to be an influential person, a Maharaj Kumar, in order to be able to cheat by personation. His photograph shows that he dressed like a rich person and not like the son of a blind beggar that his father was. He was undoubtedly attempting an imposture and practising deception by adopting a pseudonym. The whole object of his not disclosing the fact that he was the son of a blind beggar of Benares, and making people believe that he was the Maharaj Kumar of Toda State, was to facilitate the deception of the Raja Bahadur of Manda and to enable the accused to cheat and defraud him. Had the accused not concealed his true identity, the Raja Bahadur was not at all likely to be entrapped, and but for his posing as a big person he would not have been able, even though temporarily, to dupe the Raja Bahadur. The concealment of his true identity was, therefore, an essential part of the scheme of cheating which the accused had in mind. I am, therefore, of opinion that he concealed his presence with a view to commit an offence within the meaning of Section 109(a), Criminal P.C. and the order binding him down was right.

King, J.

8. Kashi Nath Singh, who is in fact the son of a blind Brahmin beggar living in Benares, paid a visit to the Raja Bahadur of Manda, at the latter's residence at Manda, masquerading as a distinguished personage with influential connections. He pretended to be the Maharaj Kumar of Toda, in the Jaipur State; son of a jagirdar, of the Rajput caste and related to the Ruling Chiefs of Jaipur, Jodhpur and other states. He was accommodated at the guest house at Manda and treated as an honoured guest of the Raja Bahadur. He told the Raja Bahadur that he could arrange for his marriage with the daughter of wealthy parents who would give a dowry of five lakhs of rupees, and he could secure large loans for the Raja Bahadur at low rates of interest. Perhaps he over-acted his part. Anyhow suspicions were aroused. Enquiries revealed the truth and he was prosecuted and bound over u/s 109, Criminal P.C. It is not argued that Clause (b) of Section 109 is applicable. The only question for our consideration is whether Clause (a) of Section 109 applies to the facts of this case. I felt no doubt but that the applicant was pretending to be an influential Rajput with a view to committing an offence; He was not merely gratifying a harmless vanity or playing a practical joke, but was preparing to cheat by personation.

9. The real difficulty is whether he can fairly be said to have been "taking precautions to conceal his presence" at Manda. He came to Manda quite openly,

even ostentatiously, courting publicity rather than shunning it. In such circumstances I feel it would be putting too severe a strain upon the language of Section 109(a) to hold that he was "taking precautions to conceal his presence." The expression "taking precautions to conceal his presence." as I understand it, is equivalent to taking precautions to conceal the fact that he is present. The precautions may take the form of (a) concealing himself, or (b) concealing his identity. Take the case of an absconding offender who knows that the police and others are looking out for him. He will doubtless try "to conceal his presence" wherever he may be. He may try to escape observation altogether, i.e., to conceal himself, for example, by hiding among thick bushes or high crops or in a ruined house. If he is obliged to come into contact with other persons to earn his livelihood or for any other reason, he will at least try to escape identification, i.e., to conceal his identity. For this purpose he will be almost certain to give a false name, residence, etc., and he may even disguise himself, e.g., by growing a beard and moustache, or by shaving them off, as the case may be. I agree that concealment of identity may be a precaution taken for the purpose of concealing one's presence. Supposing a well-known detective wishes to make enquiries in a locality where a crime has been committed. He may have good reasons for concealing his presence, in that locality. As he has to make enquiries he cannot conceal his presence by concealing himself, but he may do so by concealing his identity, by adopting some disguise. I am quite prepared to admit that the absconder who conceals his identity so as to escape arrest and the detective who conceals his identity so as to make secret enquiries, are alike "taking precautions to conceal their presence," although they obviously could not be proceeded against u/s 109(a) because they are not taking such precautions with a view to committing any offence.

10. Concealment of one's identity however cannot, in my opinion, be given the same meaning as concealment of one's presence. A man may conceal his identity for the purpose of concealing his presence, but he may do so for other purposes also. An actor who disguises himself as Falstaff, can hardly be said to be "taking precautions to conceal his presence" on the stage. A person who attends a fancy-dress dance in some impenetrable disguise does not ordinarily do so with a view to concealing his presence at the dance, but he may have that object in view, i.e., if he is a subaltern who has been ordered by his commanding officer not to attend the dance. Now let us take another case more parallel to the case before us. Suppose a swindler goes to a jeweller's shop masquerading as a rich nobleman, hoping to persuade the jeweller to let him have some valuable jewels on approval. His primary object is to cheat the jeweller and not to "conceal his presence" in the shop. He would never play such a trick at a shop where he might be recognised. It seems clear therefore that a man may adopt a pseudonym for the purposes of concealing his presence and may do so for some quite different purpose. The purpose must be inferred from the facts of each case, and some Criteria may be suggested.

11. If a man tries to conceal his identity by assuming a pseudonym, with or

without the additional precaution of disguising himself, for the purpose of concealing his presence, he will (1) adopt some inconspicuous common name that attracts no attention and rouses no curiosity. An Indian Ruling Prince who wishes to remain incognito when travelling in Europe may call himself "Mr. Singh for the purpose of concealing his presence. If, on the other hand, an Englishman named Mr. William Jones were to style himself ""Sir William Jones" or "Lord William Jones" one might safely infer that he did not do so for the purpose of concealing his presence. The honorific title would make him more conspicuous, and the man who wants to conceal his presence would above all avoid making himself conspicuous. A jackdaw does not deck himself in peacock"s feathers with a view to escaping notice or "concealing his presence." (2) Behave so as not to attract attention. His guiding principle will be to escape notice so far as possible. (3) Adopt a pseudonym that does not resemble, or serve to recall, his real name. If Mr. William Jones is afraid of being identified by his name, he will not call himself "Sir William Jones." (4) Assume the pseudonym strictly for protection and not for display; as a shield and not as a weapon to attack. (5) Assume the pseudonym because he has some reason for fearing identification if ha gives out his true name. (6) Assume the pseudonym for deceiving the public in general and not for deceiving any particular person; for escaping notice and not for cheating certain individuals. Now, if we apply these criteria to the present case, what do we find? (1) The applicant having an inconspicuous name, Kashi Nath Singh, adopts the honorific title of "Maharaj Kumar," thereby rendering himself conspicuous and the centre of interest. (2) He behaves ostentatiously as the honoured guest and boon companion of the Raja Bahadur. (3) He retains his real name, Kashi Nath Singh, while, adding a title. He could not, possibly, have done this if he had been afraid of being identified by any one knowing his real name. (4) He did not adopt the pseudonym as a "precaution" or a protection or a shield. He did so in furtherance of a fraudulent scheme, as a weapon of attack.

(5) He had no reason for fearing identification under his real name. He knew that the name Kashi Nath Singh conveyed nothing to the people at Manda. Moreover he was not wanted by the police for any offence. (6) He simply wanted to deceive the Baja Bahadur and his companions, and not to deceive the general public. The deception was practised not with a view to escaping notice but with a view to cheating the Raja Bahadur.

12. Taking all the facts of this case into consideration I find myself quite unable to hold that the applicant, by posing as the Maharaj Kumar of Toda, was "taking precautions to conceal his presence" at Manda, within the meaning of Section 109(a). No doubt he was preparing to cheat by personation, but the Code must be strictly construed. I think the case is not within the mischief of Section 109(a) and the order for security should be set aside.

Kendall, J.

13. 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, Criminal P.C., 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 Chief Justice 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 Baja of Manda. 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 Chief Justice 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.

14. 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, Cr.P.C., 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 to help him to commit 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 Chief Justice 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 example. 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, Cr.P.C. 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.

15. 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 chawkidar, or a dhobi, or an old woman, and his actions might still have been attributed to an amiable 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 P.C. 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, Cr.P.C. 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.

16. 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.