
(1959) 05 PAT CK 0005
In the Patna High Court
Case No : Criminal Revision No. 1053 of 1958

Prahlad Sahni and Another	Vs	APPELLANT
The State		RESPONDENT

Date of Decision : 21-05-1959

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 109

Citation : AIR 1960 Patna 115 : (1960) CriLJ 386

Hon'ble Judges : Raj Kishore Prasad, J

Bench : Single Bench

Advocate : D. Lall and S. Sarwar Ali, for the Appellant; T.K. Prasad, for the Respondent

Judgement

Raj Kishore Prasad, J.—The two petitioners, Prahlad Sahni and Sitaram Sahni, who are brothers, have each been bound over u/s 109 of the Code of Criminal Procedure and ordered to execute a bond of Rs. 1,000/- with two sureties of Rs. 500/- each to be of good behaviour for a period of one year, and, in default, to suffer rigorous imprisonment for the same period.

2. It appears that the order u/s 109 of the Code of Criminal Procedure was passed against these two petitioners, and, three others, but the others have not come up in revision to this Court.

3. The prosecution case was that on 21-7-1957, at about midnight, the petitioners collected others at their own house with a view to commit dacoity in the house of P.W. 12. P.W. 12, having come to know about it, collected villagers and surrounded the house of the petitioners; and, the persons who were inside the house were asked to open the door. The door was suddenly opened, and the persons who were concealing in that house fled away. The two petitioners along with three others who have not moved this Court, were arrested by the villagers. The petitioners, along with others, were, therefore, prosecuted u/s 109, Criminal Procedure Code.

4. It was contended before the learned Sessions Judge, as here, that the petitioners were in their own house, and, therefore, they cannot be said to have concealed themselves for committing any crime. In repelling this contention, the learned Sessions Judge, while maintaining the order of the learned Magistrate observed :

"It appears, however, that these persons had! collected others for committing theft or dacoity and were themselves with them. They were all concealing their presence after bolting the door from in-side. The inmates were heard saying that it was past midnight and it was time for them to start. In the circumstances, although Prahlad and Sita were in their own house, it can safely be said that they had concealed themselves with others for committing some cognizable offence such as theft or dacoity."

5. In revision, the only point taken by Mrs. Dharamshilla Lall, who appeared in support of the rule, was that these two petitioners being admittedly in their own house cannot be said to be taking precautions to conceal their presence, and, therefore, this essential element of Section 109 (a) being wanting, the order against them was bad in law.

6. Section 109 (a) of the Criminal Procedure Code is in the following terms :

"109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information-

(a) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, or

* * * * *

7. It is manifest that Clause (a), of Section 109, of the Code lays down two pre-requisites before an order u/s 109 (a) can be made against a person. These two essentials are : (i) that the person concerned must be taking precaution to conceal his presence, and, (ii) that there is reason to believe that such person is taking such precaution with a view to committing any offence.

8. There is no doubt that, in the present case, the second condition is satisfied, in that, on the evidence and on the findings of the Court below there can absolutely be no doubt that these petitioners, along with others, had collected in the house of the petitioners for preparing to commit the offence of dacoity. The contention of Mrs. Dharamshila Lall, however, is that these two conditions precedent must co-exist, and, if one of them is absent, there can be no order u/s 109 (a), and, therefore, she submitted that, in the present case, the first condition is not present, and, accordingly, the order passed against the petitioners u/s 109 (a) must be quashed. I think the contention is well founded and must be given effect to.

9. If a person is in his own house, it is not expected even at midnight that he

would keep his doors open and not remain inside with the doors closed. In these circumstances, if such a person is in-side his own house, it cannot be said that he is taking precaution to conceal his presence. If, however, the prosecution case would have been that the petitioners, although asked to open the door, persisted in not opening it, then it can be said, with some justification, that the petitioners were concealing their presence. But, in the present case, on the evidence, when asked to open the door, it was suddenly opened, and, when it was opened the persons who were there, all fled away. In these circumstances, I do not think it can be said that as far as these petitioners are concerned, that they were taking precaution to conceal their presence within the meaning of Section 109 (a) of the Code by being inside their house at midnight.

10. Mrs. Lall, in support of her contention, relied on a decision of a learned Single Judge of the Allahabad High Court in *Sheetal Baksh Singh and Others Vs. Rex*, . In that case, it was held that in a case u/s 109 (a) it is for the prosecution to fellow that the applicants had taken some active steps to conceal their presence in the house or done something to show that they did not wish it to be known that they were present in the house and that such steps were taken with a view to commit some offence, and there the only evidence was that the applicants were found inside a house and there was not a word to show that they had actually concealed themselves or taken any steps to prevent their presence being known to other people and the man at whose place they were found, had stated that they were present there with his own consent and permission, and it was proved that these persons were drunk, it could not be said with any justification that the applicants, or the other persons who were arrested along with them, had taken any precautions to conceal their presence even though the applicants and their companions had tried to run away. In that case, it was found that the persons, who were drunk, were there to sleep off or to get over the effects of their drink, and in those circumstances, the order was passed.

11. The present case is much stronger, in that, the petitioners were found in their own house, and, therefore, I do not think by any stretch of imagination it can be held that the first pre-requisite required u/s 109 (a) of the Criminal Procedure Code had been satisfied. I would, therefore, set aside the order u/s 109 (a) of the Code of Criminal Procedure and discharge the petitioners from their bonds.

12. Mr. Tara Kishore Prasad, who appeared for the State, contended that on the facts, an offence u/s 216A or Section 399. Indian Penal Code, was made out, but the prosecution had wrongly started the proceeding u/s 109, Criminal Procedure Code, against the petitioners instead of prosecuting them under Sections 216A and 399, Indian Penal Code, or under any of these two sections. It is no business of this Court to probe into the wisdom of the State or to ascertain the reason why this particular course was adopted, and, not the one suggested. It is open to the State, if so advised, to take such steps as they like.