

(1923) 08 AHC CK 0004
In the Allahabad High Court

Sheo Prasad and Another

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 15-08-1923

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 109(a)

Citation : 81 Ind. Cas. 598

Hon'ble Judges : Sulaiman, J

Bench : Single Bench

Judgement

Sulaiman, J.—This is an application in revision from a conviction u/s 109 (a) of the Code of Criminal Procedure.

2. Both the applicants are residents of the city of Cawnpore and it is not disputed that they have some means of subsistence at that place. On the 7th of April 1923 the Sub-Inspector of the Circle received information that two strangers had arrived in his village Bharthana, and that they were concealing their presence in a house. When he proceeded towards the village his informer pointed out to him two men who were going away from the village across the field, and it is said that they were going by a footpath which is not much frequented. They were pursued and ultimately arrested.

3. The Trying Magistrate relying on the evidence of two witnesses, Kailash Chander and Ganga, came to the conclusion that these accused persons were taking precautions to conceal their presence in that village with a view to committing an offence. This view has been accepted by the learned District Magistrate.

4. So far as the accuseds' intention to commit an offence during their visit to the village is concerned, on the evidence in this case there can be no manner of doubt. The evidence is that on a previous occasion they had performed "confidence tricks" on certain villagers, and it was also proved that on this occasion they got the Witness Kailash Chander sent for and an offer was made to

him to have Government notes doubled by a process professed to have been known to Sheo Prasad. Kailash, however, was not entrapped as he says that he replied that he would consult his partner before agreeing to get anything like that done. There can be no doubt that the accused had gone to this village with a view to cheat some unwary villager by means of a confidence trick, namely, of doubling notes. This however was not sufficient to convict them under the section named. The prosecution had further to show that they were taking precautions to conceal their presence in that locality. Now neither of the Courts below have mentioned any facts which, in my opinion, would go to show that they were taking precautions to conceal their presence. As however the names of two witnesses relied upon had been named, I have had their evidence read over to me. So far as the evidence of Ganga is concerned it is simply this, that he saw both these accused sitting on a well near the village, and when questioned who they were, one of the accused appeared very angry and refused to give out their names, but the other accused simply stated that they were thakurs. The fact that they were seated at a village well does not necessarily justify any inference that they were taking precautions to conceal their presence; nor would the fact that they refused to give their names to a person like Ganga justify such an inference. The evidence of Kailash is to the effect that when he was sent for through a man named Kallu, who is under Police surveillance, he was taken inside the house in which the accused were, and before he was told what they would do, he was asked to promise not to mention the business to any one else. It is not Kailash Chander's statement that he had been asked not to mention the fact of the presence of the accused in the village to any one. There is no other evidence on the record to show what precautions these accused took while they were in the village to conceal their presence. For instance, there is no evidence to show that they arrived secretly at night, or that they remained all the time indoors, or that they gave false names and addresses to the villagers or any evidence of that kind. In my opinion there is a clear distinction between a request that Kailash should not mention the business which the accused were going to do to any one and the request that he should not mention the fact of their presence in the village. It is apparent that when the accused intended to commit the offence of cheating they would not like the business to be disclosed to the public; generally. That does not necessarily imply that they were taking precautions to conceal their presence in the village.

5. There is one circumstance, however, which I must mention. In the course of the judgment the learned Magistrate has referred to the evidence of the Sub-Inspector to the effect that when he asked the accused while going along the fields to give their names, the names which they first gave were not their correct names. It has been contended on behalf of the Government, that this amounted to concealing their presence with a view to commit an offence. I however think that this contention cannot prevail. There is no evidence that the accused had given false names when they were in the village. Further, when the accused were going away from the village, they then were not contemplating the committing

of an offence, but were presumably running away in order to avoid arrest. If people are accosted by the Police while going away from the village and give false names in the first instance and then give correct names afterwards, that fact by itself would not in my opinion, amount to taking precautions to conceal their presence with a view to committing an offence. It is true; that giving out false names is a concealment of the identity of the individuals-concerned but is not necessarily a concealment of their presence. In any case, as has already been noticed, this happened, after the accused had been chased by the Police. At that time they were not going to the village to commit any offence but were really bolting away Even therefore, accepting this part of the evidence of the Sub-Inspector, though I must note that there was no such mention by him in the first report. I think that the accused cannot be bound over u/s 109 (a).

6. I accordingly allow this application,, and set aside the order binding over the accused and direct that they be released. The security bond, if filed, will be cancelled.