

ejection against him. The objectors purchased the property about four years after the actual possession was delivered to Major Prem Pal Singh, respondent No. 1, on August 14, 1973. It was the duty of the tenant to see that the building from which he was evicted, remained intact and no change was made therein. After all, the construction was not made in a day or two. When the objectors collected material for the re-construction of the building, the tenant could approach the civil Court and could get an injunction order restraining them not to change the nature of the building till the disposal of his restoration application. This was never done on his behalf. Even the vendees were not made parties in appeal filed before the Appellate Authority by the petitioner. Under the circumstances, the construction made by the objectors after the purchase of the said property by them cannot be said to be illegal or improper in any case. They constructed the building in good faith after having spent huge money thereon. Therefore, now they cannot be deprived of the property which they purchased for consideration. As observed earlier, the rights of a tenant under section 13(4) of the Act are very limited and because of the subsequent events, the tenant cannot be allowed to execute the decree for restoration of the building which does not exist at the site.

(6) After giving my thoughtful consideration to all the facts and circumstances of the present case, I do not find that the executing Court has acted illegally and with material irregularity in the exercise of its jurisdiction resulting in failure of justice as to call for any interference in revisional jurisdiction under section 115, Code of Civil Procedure.

(7) Consequently, this petition fails and is dismissed with costs.

N. K. S.

Before M. M. Punchhi, J.

MAHANT RAM NATH and others,—*Petitioners.*

versus

THE STATE OF HARYANA,—*Respondent.*

Criminal Misc. No. 5071-M of 1982.

October 6, 1982.

*Code of Criminal Procedure (II of 1974)—Sections 109 and 482—
Accused found loitering with a married woman in the middle of the*

Mahant Ram Nath and others v. The State of Haryana
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night—Police apprehending them but identity not disclosed by them—Proceedings initiated under Section 109—Accused—Whether could be bound down in such circumstances—Proceedings under section 109—Whether liable to be quashed.

Held, that the act of the accused in concealing their names in the first instance could be spelled out that they were taking precautions to conceal their presence. But this fact alone would not attract the provisions of section 109 of the Code of Criminal Procedure, 1973, unless, additionally, there was material on which the Executive Magistrate could acquire reason to believe that the accused were doing so with a view to committing a cognizable offence. Even if the offence of adultery was in view to be committed, this offence could not be cognizable for a complaint needs to be filed by the husband aggrieved of the offence. Besides the said offence, there was nothing to suggest any other offence which was in view to be committed and for which purpose the accused are to have taken precautions to conceal their presence. In this view of the matter, it is to be held that the requirements of section 109 of the Code are not satisfied on the bare reading of the report and the High Court would be well within its right to interfere at the initial stages to prevent the abuse of the process of the Court as also in the interest of justice under section 482 of the Code.

(Para 3).

Petition under Section 482 Cr. P. C. praying that the police Calendar attached as Annexure P. 1 and the proceedings consequent thereupon against the petitioners be quashed.

Further praying that further proceedings before the Sub-Divisional Magistrate, Ballabgarh, pending against the petitioner be stayed during the pendency of the present petition.

R. S. Mittal, Advocate and N. K. Khosla, Advocate, for the Petitioner.

Pardeep Sharma, and Harsh Kumar, Advocate with him.

Jai Vir Yadav, Advocate for A.G., Haryana, for the respondent.

JUDGMENT

M. M. Punchhi, J. (Oral)

1. This is a petition under section 482 of the Code of Criminal Procedure for quashing proceedings under section 109 of the said

Code pending in the Court of Sub-Divisional Magistrate, Ballabgarh, against the petitioners on the basis of a report submitted by the S.H.O., Police Station, Saddar, Ballabgarh.

2. The allegations against the petitioners, briefly stated, are to the effect that they (three of whom are males and one female) were found having parked their car on the G.T. Road leading from Delhi to Palwal at a point near the link road of Shahpur Khurd. All the four were standing outside when the police patrolling party reached near them. They were asked to disclose their names and each of them told his/her name wrongly as also his residence to be of village Sikri. Incidentally, Sukhi Ram, Sarpanch of village Sikri, was with the police and he refuted the assertion of the petitioners that they belonged to village Sikri. Thereupon, the petitioners came out with their correct names when asked as to why they were present at the dead of the night at that place, they told that all the four had come from Kalka Mandir, Delhi, searching for a place to have a good time. On account of the petitioners' explanation that they were present at that hour at the G.T. Road searching for a place to have a good time, they were arrested under sections 41(2) and 109 of the Code of Criminal Procedure. The personal search of the petitioners led to recovery of articles which are mentioned in the report, but those particulars are not relevant for the purposes of disposal of this petition.

3. Section 109 of the Code of Criminal Procedure reads as under :—

“109. *Security for good behaviour from suspected persons.*—
When an Executive Magistrate receives information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.”

Learned counsel for the petitioners contends, and rightly, that the act of the petitioners in concealing their names in the first instance could be spelled out that they were taking precautions to conceal their presence. But he says that this fact alone would not attract

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the provisions of section 109 of the Code of Criminal Procedure, unless, additionally, there was material on which the Executive Magistrate could acquire reason to believe that the petitioners were doing so with a view to committing a cognizable offence. Learned counsel further contends that in the instant case, the explanation of the petitioners that they had come to the spot at that odd hour in order to have a good time was accepted by the police and projected forth in the report before the Magistrate as the purpose for concealment of their presence. He says that to have a good time is no offence, much less a cognizable one. And on that score, the second ingredient of section 109 of the Code of Criminal Procedure being missing, it is pleaded that the proceedings before the learned Magistrate were without jurisdiction. To meet the argument, Mr. Jai Vir Yadav, learned counsel for the State, has stated that the lady was a married woman (though this fact is disputed by the learned counsel) and as such the offence of adultery was in view to be committed. But that offence would not be cognizable for a complaint needs to be filed by the husband aggrieved of the offence. Besides the said offence, learned counsel for the State has not been able to suggest any other offence which was in view to be committed and for which purpose the petitioners are to have taken the precautions to conceal their presence. In this view of matter, it is to be held that the requirements of section 109 of the Code of Criminal Procedure are not satisfied on the bare reading of the report. And if that is so, this Court would be well within its right to interfere at the initial stages to prevent the abuse of the process of the Court as also in the interest of justice under Section 482 of the Code of Criminal Procedure.

4. For the foregoing reasons, this petition is allowed and the proceedings against the petitioners are hereby quashed.

N. K. S.

Before S. S. Sandhawalia, C.J. & G. C. Mital, J.

CHANDIGARH ADMINISTRATION and others,—Appellants.

versus

SURJIT KESAR,—Respondent

Letters Patent Appeal No. 978 of 1982.

October 6, 1982.

Punjab Cinemas (Regulation) Act (XI of 1952)—Section 5—Punjab Cinema (Regulation) Rules, 1952—Rules 2(ix), 3 and 72—Temporary