

# ALLAHABAD HIGH COURT

Emperor

Vs

Phuchai

(Sulaiman. Ag. CJ.)

10.07.1928

## JUDGMENT

**Sulaiman, Ag. C.J.**

1. The facts of this case have been clearly found by the Courts below and cannot be doubted. The police received information that a number of persons were hiding themselves on a dark night at about midnight in a mango grove outside the abadi of a village with a view to commit some offence. When the police went to the grove they found four persons sitting there, who, on being challenged, tried to run away. They were chased and two of them, the present accused, were captured. They had house-breaking instruments (jemmies) with them. When caught, they first gave wrong names and addresses, and then later on disclosed their real identities. They are residents of the same sub-division. They were called upon to show cause under Section 109, Criminal P.C. The Magistrate came to the conclusion that the case fell under Section 109, Sub-clause (a) and demanded security. The learned Sessions Judge, following the recent pronouncements of this Court, held that sub-section was inapplicable. The Government have accordingly filed a revision from that order.

2. In the case of *Emperor v. Bhairon*<sup>1</sup> it was remarked that it is an entire mistake to read that sub-clause as applying to any person who takes steps to conceal himself in the sense of concealing his presence in the way in which a criminal conceals his presence, when he goes in the dark, or by a deserted road, or by some other secret means to commit a crime in his own neighborhood; that it was not intended to deal with anybody, either a habitual resident or a person well-known in the neighbourhood, trying to conceal himself, and that the offence contemplated is that of a person, probably, though not necessarily, coming from outside the jurisdiction into the Magistrate's jurisdiction for some nefarious purpose, and taking precautions to conceal the fact that he is present in that jurisdiction.

3. This case was explained in the case of *Emperor v. Himayatullah*<sup>2</sup> and it was stated that Bhairon's case *A.I.R. 1927 All. 50 (Supra)*(Supra) cannot be said to have laid down that a person

must go into the district from a place quite outside, and that a person living within the territorial jurisdiction of a Magistrate who takes steps to conceal that he is there, namely, by removing himself from one part to another and disguising his identity or hiding his person, may be within the section.

4. Two arguments appear to have appealed to the learned Judges. Firstly, that the expression "within the local limits of such Magistrate's jurisdiction" is part of the predicate "to conceal his presence"; and, secondly, that it is impossible to attribute to that expression a direction as to the jurisdiction of the Magistrate over the offence, because for that purpose the words would be superfluous, the jurisdiction being clearly established by other provisions.

5. It will be convenient to consider the second argument first. Proceedings under Section 109 are preventive in their nature and do not relate to any substantive offence. Sections 5 and 177, which confer jurisdiction, deal with offences and are inapplicable. No doubt under Section 12, Sub-clause (1) the local areas, within which Magistrates have to exercise their powers, are defined by the Local Government and under Section 36 all Magistrates have the powers conferred upon them under the third schedule and Sch. 3(No. 5) empowers a First Class Magistrate to require security for good behaviour under Section 109. But if the territorial jurisdiction of the Magistrates over proceedings under Ch. 8 had been separately fixed, there would have been no necessity to repeat similar expressions in all the relative sections. That expression occurs in Section 107, Sub-section (2), Sections 108 and 109, Clauses (a) and (b) as well as Section 110. What is still more noteworthy is that Section 107, Sub-section (2) expressly provides that proceedings shall not be taken unless the person informed against is within the local limits of such Magistrate's jurisdiction. Had that provision been already laid down by other sections of the Act, there was no necessity to specify it there particularly. Similarly Section 108 emphasizes the presence of the person within the local limits of the Magistrate's jurisdiction, who, within or without such limits, does the act mentioned therein.

6. It seems to me that the repetition of that expression in Section 109, Sub-clause (a) was by no means superfluous. Its use was necessary to specify whether it is the Magistrate within whose jurisdiction the precautions are taken, or the Magistrate within whose jurisdiction the concealment is to be effected, who should have power to demand security. Obviously it is the Magistrate last mentioned who is authorized. Had the intention been otherwise, the sub-section would have been worded as "any person is, within the jurisdiction... taking precautions..." The ordinary rule of grammar is that an adverb of place should refer to the nearest verb and not to the one more remote.

7. To say that the expression "within the local limits of such Magistrate's jurisdiction" is a part of the predicate "to conceal his presence" is, I would say with great respect, using ambiguous language, inasmuch as it does not clearly bring out the point which causes a difference of opinion, namely, whether the expression is an adjectival clause qualifying the noun "presence" or

an adverb of place modifying the verb "to conceal." If it is the former, it would mean concealing the fact of his being present aside the jurisdiction, while if it is the latter, it would mean that the act of concealing his presence must be within the jurisdiction. The former construction narrows considerably the scope of the sub-section, for which there seems to be no justification. In ordinary grammar an expression indicating a place is treated as an adverb of place modifying the nearest verb in the sentence, and not as an adjective qualifying a substantive noun.

8. It is clear that a man may be concealing his presence with a view to commit an offence, and yet he may not be concealing the fact that he is within the jurisdiction of a Magistrate. A common illustration would be that of a person, who is known to be a resident of a sub-division, and who secretly at night hides himself in a field close to a house with a view to commit burglary when the chaukidar falls asleep. He may continue this process night after night so long as the opportunity does not offer itself to him. He is certainly concealing the fact of his presence inside the field, which is situated within the jurisdiction of the Magistrate, and yet he is in no way concealing the fact that he is present within the jurisdiction. On the other hand, if the concealment of a man's presence is in a part of a larger area, there is undoubtedly a concealment in the larger area also.

9. 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 under Section 565, Criminal P.C, may amount to concealing his presence. "

10. To put a narrow construction on the section would make it practically useless except in cases where persons come from outside the jurisdiction. So long as a criminal leads no one to believe that he has left his residence, he would be quite safe in concealing his presence as much as he likes. As a matter of practice criminals under surveillance, who go from place to place, generally take good care to report their arrivals at the police stations, except when they go out at night for the purpose of committing an offence during that night. On this narrow construction the only conceivable case possible, to which the sub-section would be applicable to people residing within the jurisdiction, would be when a man has left his known residence without intimation and has moved to another place within the same jurisdiction and is in hiding there. Such cases are rare, and when they do occur, the intention is not so much to commit an offence, as to avoid arrest. Thus for practical purposes the sub-section would be useless so far as criminals living within the jurisdiction are concerned. Indeed in Himayatullah's case A.I.R. 1927 All. 592(Supra) it was remarked that a man, who is deliberately preparing to commit a burglary and when caught by the police admits his intention, cannot be dealt with under the provisions of the section. The

commonest form of cases is when criminals from one village go secretly at night to another village and remain in hiding in the house of a comrade in order to go out later at night and commit burglary. On the narrow view of the section such persons could continue the process night after night with impunity. Another difficulty would be that the police cannot always keep an eye on all the citizens every day and find out their whereabouts. So long therefore as the police have not become aware that a particular individual has left his house, and are not led to believe that he has left the jurisdiction, he can conceal his presence with a view to commit an offence without any fear.

11. Another extraordinary result would follow from the limited construction in the following way. A thief may come from one sub-division and conceal his presence in another sub-division. He is obviously concealing the fact of his presence within the jurisdiction of the Sub-Divisional Magistrate in charge of the second sub-division and can be tried by him; but as the jurisdiction of the District Magistrate extends over the whole district, the man is not concealing the fact of his presence within the jurisdiction of the District Magistrate, that is, his presence within the district. He has never intended to lead any one to believe that he has left the district itself. The District Magistrate would therefore not have power to try him, although the Sub-Divisional Magistrate would. In my opinion if a person is concealing his presence in a part of the territorial limits of the jurisdiction he is necessarily concealing his presence within that jurisdiction also.

12. I therefore think that if a man is taking precautions anywhere in order to conceal his presence, and that concealing is to be effected within the jurisdiction of a Magistrate who receives the information, such Magistrate has power to demand security even though the residence of the person informed against within the jurisdiction is well-known.

13. Now remains the argument which has found favor with the Calcutta High Court, namely, that the act contemplated by the sub-section is one which is continuous and not a momentary one. In the case of *Rashu Kabiraj v. Emperor*<sup>3</sup> Shamsul Huda, J., considered that Clause (a) referred to a continuous act and did not apply to a case where there was a momentary effort at concealment to avoid detection or arrest. Indeed he went to the length of saying that Clause (a) cannot apply to the case of a person brought under arrest, as such person cannot be said to be taking precautions to conceal his presence. Another Bench of the same High Court accepted that view, holding that the clause did not apply to a case where there is a momentary effort at concealment to avoid detection or arrest. *Piru v. Emperor*<sup>4</sup>

14. Taking the language of the sub-section literally, one might at first sight think that the taking of precautions should continue till the time when the information is received, but a too literal interpretation would lead to an absurd result. In view of the other provisions of the Act it is clear that such a narrow construction cannot be accepted. Section 55, Sub-clause (1)(a) authorizes a police-officer to arrest any person "found" taking precautions to conceal his presence within the local limits of his police station under circumstances which afford reason to believe that he is

taking such precautions with a view to commit a cognizable offence. Section 60 requires the officer to produce the person before a Magistrate without necessary delay. We also find that a person who may be ordered to show cause under Section 109 may actually be present in Court (S. 113), or may be in the custody of a police officer (S. 114). Similarly Section 117 allows the order to show cause, being made against a person who is present in Court or who is brought before a Magistrate. It is thus clear that the sub-section cannot be interpreted too literally so as to necessitate the continuance of taking precautions till the information is received by the Magistrate.

15. I must concede that the use of the present continuous tense is taking is unhappy. But I have no doubt that it is intended to be comprehensive enough to cover the present perfect tense "has taken" or "has been taking." The difficulty in holding that it is not a momentary but a continuous act that is contemplated, would be where to draw the line. Is the act continuous when it lasts for one hour, one night, one week or more? Does it become continuous if it is repeated once, twice, thrice or more? Again a man may never conceal himself in the day time but may take precautions to conceal his presence night after night. Would the continuity be broken because there was no concealment during the day? Furthermore, the section is a preventive section intended to frustrate the designs of a criminally minded person before they are carried out. If the idea of continuity were pushed far enough, an arrest at the very outset of the preparation would be impossible, as the police would always have to wait till the designs have gone on for some time and have been persisted in. It seems to me that no time-limit can be put on the taking of precautions. In every case it would be a question of fact whether the circumstances justify the inference that he has been taking precautions to conceal his presence and that there was the intention to commit an offence.

16. None of the Courts below have applied Sub-section (b). The learned Government Advocate also has not relied on this sub-section. In no reported case that I know of has it ever been held that if a man cannot explain his presence at a particular point of time or place, he is a person who cannot give an account of himself within the meaning of this sub-section. Clause (a) uses the words "conceal his presence etc." Clause (b) uses the expression "give an account of himself." When two distinct words are used in the same section, the ordinary rule of construction is that they do not mean identically the same thing. I therefore do not think that the two words "presence" and "himself" are interchangeable, and that the inability to give an account of himself is the exact equivalent of the omission to explain his presence at a particular time and place. The force of the word "cannot" is also to indicate utter inability. It has not the same meaning as "does not" or "did not." If a man proves that he is a resident of the neighbourhood, and is a man of substance, he must be said to be able to give a satisfactory account of himself, although he is not able to, or does not, give any convincing explanation why on a particular dark night he was found prowling about in a lonely place.

17. I do not see any force in the argument that because under Section 54(1) the police can arrest

any person having in his possession without lawful excuse an implement of house-breaking, therefore such a man's case must fall under Section 109(b) if it cannot fall under any other section. A man may be living openly at his residential house, he may have possession of an implement of house-breaking which he may keep in a box in the house, and he may fail to discharge the burden of proving that he has lawful excuse for keeping it. And yet I fail to see how such a man can be said not to "give a satisfactory account of himself."

18. If we give to the words "give a satisfactory account of himself" the meaning "explain what he was doing," or "explain his conduct" at any particular time or place, we would make its scope too wide. The section would become applicable to a man who does not leave his house, and as to whom there is no proof that he is concealing his presence, and even no proof that he is making any preparation for committing a crime, but who, when questioned by the police, cannot explain any particular conduct of his.

19. The section does not say that the failure to give a satisfactory account of one's self must be accompanied by other suspicious circumstances which suggest that he may be contemplating a crime. On such an extended interpretation of the expression a man could be bound over merely because he does not discharge the burden of satisfying a Magistrate as to his conduct at a particular time or place. I do not think that the legislature contemplated such an extension of its scope. To my mind the expression is somewhat akin to the other expression used in the same clause, namely "who has no ostensible means of subsistence." Of course, if a man is unable to explain his course of conduct, as distinct from failure to explain a momentary behaviour, he may very well come under the clause.

20. I am not aware of any case where a man's failure to explain his presence, has been held to bring him within the section. The cases referred to in *King-Emperor v. Bhairon A.I.R. 1927 All. 50 (Supra)* (Supra) mostly fall under Sub-clause (b) and the opinions expressed therein support my view.

21. In *Sharif Ahmad v. Emperor*<sup>5</sup> the police were expecting a gang of thieves to visit the city, and a little before midnight 7 or 8 men were seen coming in from the side of a jungle. They were pursued and the accused along with some others was arrested after a lathi fight.

**Chamier, J.**

22. held that there was no evidence that he was concealing his presence within the jurisdiction and so Clause (a) was inapplicable. As to Clause (b) the learned Judge remarked: The Magistrate seems to have required him to furnish security because he could not get a satisfactory account of himself (see Clause (b), Section 109, Criminal P.C. The applicant is a peon in the employ of the Municipality. His place of residence and occupation were well-known. It seems to me that he is not a person of whom it can be said that he was unable to give a satisfactory account of himself.

23. Similarly, in *Ghulam Jilani v. Emperor*<sup>6</sup> the three accused were met on the road in Meerut by the police, who were expecting the arrival of men of bad character. Close to that place a jemmy was found. Tudball, J., remarked: The applicants gave an explanation of themselves and as a matter of fact it has been established that they are well-to-do and respectable residents of the city of Delhi... The present applicants clearly do not come within Clause (a) as it was not alleged that they were taking precautions to conceal their presence with a view to committing an offence... as account they gave of themselves was correct and the police of Delhi have reported that these three present applicants are persons who are well-to-do and of good character. In those circumstances I do not think that Section 109, can apply to them.

24. Again, in *Laltu v. Emperor*<sup>7</sup> the accused was arrested along with a number of persons in a lane at night. The Magistrate found that Laltu had not given a true explanation of his presence on that night at that spot. Having ascertained that Laltu resided within the jurisdiction of the Magistrate, Piggot, J., remarked: I am quite satisfied that it cannot be said of Laltu that he could not give a satisfactory account of himself within the meaning of Section 109(b), Criminal P.C.

25. In this case also it had not been suggested before the Magistrate that the accused had been trying to conceal his presence.

26. Following the principles underlying the decisions of such experienced Judges, I hold that Clause (b) is wholly inapplicable. I have already expressed the opinion that Clause (a) applies.

**Boys, J.**

27. Phuchai and Buddhu were called upon by a Magistrate under Section 109(a), Criminal P.C, to give security. In appeal the Sessions Judge held that he was bound by the decision in *Emperor v. Bhairon A.I.R. 1927 All. 50 (Supra)* that Section 109(a) was not applicable to such a case, and, accepting the appeal, discharged the sureties. The decision in question was in fact also followed in *Emperor v. Himayatullah A.I.R. 1927 All. 592(Supra)*. The first case was a decision of Sir Cecil Walsh, the then Acting Chief Justice, and Pullan, J. The later decision was also by Walsh, J. sitting with Banerji, J. The Local Government has filed an application in revision based on the single ground that the learned Sessions Judge has erred in refusing to bind down the accused under Section 109, Criminal P.C.

28. The facts are simple. The police received information that a number of persons were hiding themselves in a grove near a village. The result of the raid made on these men was that Phuchai and Buddhu were captured while the others escaped. Phuchai and Buddhu were each found to be in possession of a sabri", i.e., a jemmy. Both of them at first gave false names and addresses but subsequently gave out their correct names and addresses. They were sent up for security to be taken under Section 109, Criminal P.C. The Magistrate found that, in view of the fact that Phuchai and Buddhu were found on a dark night at about midnight in a mango grove outside the

abadi with house-breaking implements and that when challenged by the constables they tried to run away and that on being caught they first gave incorrect names and addresses in order to hide their identities, fully convinced him that it has been established beyond doubt that the accused were taking precautions to conceal their presence within the local limits of my jurisdiction and that they were doing so with a view to commit some offence.

29. He had further carefully examined the defence set up and gave his reasons for rejecting it. He held the case to fall under Section 109(a) and accordingly demanded security. In *Emperor v. Bhairon A.I.R. 1927 All. 50 (Supra)*(Supra), the case relied on by the learned Sessions Judge in allowing the appeal, the facts were, as the learned Sessions Judge correctly says, very similar. Three persons who were Pasis by caste were found late at night outside a house in a village close to which they themselves lived, and a house-breaking implement was found upon one of them. When challenged they ran away and were caught and gave false names. Briefly the learned Judges held that the words "within the local limits of such Magistrate's jurisdiction" are part of the predicate to conceal his presence." In other words, they held that before Section 109(a) could be applied it must be found that the person to be held liable was not merely "concealing his presence" but concealing his presence within the local limits of the Magistrate's jurisdiction. It is contended on behalf of the Crown that the words "within the local limits of such Magistrate's jurisdiction" are applicable to the words "any person" or to the words "taking precautions" or to the word "conceal" and that the clause should be interpreted as if it read that any person within the local limits of such Magistrate's jurisdiction is taking precautions to conceal his presence" or as "that any person is taking precautions within the local limits of such Magistrate's jurisdiction to conceal his presence" or "to conceal within the local limits of such Magistrate's jurisdiction his presence". The question, then, for decision is whether on the one hand Clause (a) is applicable if the person is found within the jurisdiction" taking precautions to conceal his presence or if the person is found "taking precautions within the jurisdiction" to conceal his presence, or if the person is found taking precautions to "conceal within the jurisdiction" his presence, or whether on the other hand it is necessary for the Crown to prove that the person was taking precautions to conceal "his presence within the jurisdiction."

30. It may be conceded that the phraseology is not as clear perhaps as it might be. I should have been myself inclined to agree with Walsh, J., and Pullan, J., that "the words are free from ambiguity" and to have decided the case in accordance with the view taken by them in *Emperor v. Bhairon A.I.R. 1927 All. 50 (Supra)*(supra) without hesitation but the fact that this revision has been filed at the instance of the Local Government and the discussion which followed at the hearing of the revision are sufficient to show that the meaning of the clause is not as clearly expressed as it might be. The fact appears to be that the grammatical meaning of the whole phrase depends in the case of each interpreter upon the exact pauses he makes between or emphasis he lays on each particular portion of the whole phrase. And we must, therefore, look outside the phrase itself for aid in its interpretation. I will, therefore, proceed to give my reasons for holding that the view taken in *Emperor v. Bhairon A.I.R. 1927 All. 50 (Supra)*(Supra) and

followed in *Emperor v. Himayatullah* A.I.R. 1927 All. 592(Supra)is the correct one.

31. There can be no doubt that prima facie, apart altogether from the language used, the legislature may well have had in view either or both of two purposes.

32. Firstly, it would obviously be reasonable for the magistracy to desire power and for the legislature to confer that power to control the actions of a man whose conduct was open to suspicion and who, whether his ordinary residence was outside the jurisdiction or inside it, was concealing the fact of his "presence within the jurisdiction". A Magistrate may rightly want to be in a position to control, if necessary, persons who are found hiding the fact that they are "present within his jurisdiction" and when the conduct of such persons further gives reasons for supposing that they are contemplating the commission of an offence, the legislature might naturally be expected not to overlook the desirability of giving that power of control by the taking of security. This case, in the view that I hold and for which I will give my reasons, is provided for in Section 109, Clause (a).

33. Secondly, it would equally obviously be unlikely that the legislature would omit to notice and provide for the desirability of giving the magistracy power to control a man whose conduct was open to suspicion even though the man might be able to urge that his actual present place of residence within the jurisdiction and ordinary legitimate occupation within the jurisdiction were well-known. That is the present case before us. The Crown has contended that this also is provided for by Section 109, Clause (a), and has not addressed us on the question whether the case is not provided for by Section 109, Clause (b). The defence has contended that it does not come within Clause (a) and would of course gladly accept the Crown's failure to press upon our attention Clause (b). In my view Clause (a) does not cover the case but Clause (b) does; the legislature had in contemplation both purposes and has provided for both.

34. To consider first Clause (a). In the first place, we have the use of the word "presence" (concealing his presence). The section does not say concealing himself." It may be suggested that there is no very great difference, but to my mind there is a difference. The word "presence" itself suggests the idea of "presence in some particular locality," or at some particular time. In the present case there is no question of presence at any particular time.

35. Next, we find the phrase "is taking precautions" which suggests the idea of continuity. This latter consideration has been noticed in cases to which I shall presently have to refer.

36. In the earlier Codes we find in the Act 25 of 1861 and 10 of 1872 the expressions "vagabonds", "arrest of vagabonds", "found lurking within the limits of such station", "lurking within his jurisdiction", phrases not ordinarily applicable to a person who is known to be residing in the jurisdiction and whose residence is known. So far then as indications are to be found in the history of the provision the interpretation put on the present Section 109(a) in *Emperor v.*

Bhairon *A.I.R. 1927 All. 50 (Supra)*(Supra) finds some support.

37. Next, I will consider the scheme of the present Code which was called in aid of his argument by the learned Government Advocate but which upon examination I find repels rather than supports the view that he asks us to take. His contention was that in all the sections of the Code whether dealing with offences or dealing with the prevention of offences, we find words referring to the territorial jurisdiction of the Magistrate or of the police officer and that they were inserted for the purpose of giving him territorial jurisdiction. That proposition, however, is not correct. A Magistrate is authorized to exercise certain powers by Sch. 3, and he is declared by Section 36 to have those powers. But neither Section 36 nor Sch. 3 give any indication within what territorial limits he may exercise those powers. For that we have to look to Section 12. Section 12(2) declares that any Magistrate may exercise the powers given to him throughout the whole of the district except so far as the Local Government or the District Magistrate, subject to the control of toe Local Government, may have defined his local jurisdiction. By these sections the Magistrate has got his powers and his local jurisdiction defined. There were, however, cases in which doubt might arise. The sections already quoted would clearly be sufficient in cases where the offender, the offence and its consequences, etc., were all within the local jurisdiction of the Magistrate. But in particular cases the Magistrate needed further guidance. He finds that he has the powers and he has the local jurisdiction, but can he exercise those powers only when the offence, the offender, the consequences, etc., are all within his jurisdiction, or is it sufficient to give him jurisdiction that the offender is within his local jurisdiction or that the offence was committed within his local jurisdiction or that the consequences ensued within his local jurisdiction, etc.? To guide him on this point it was necessary in particular cases to insert words indicating the special condition necessary to the existence of his jurisdiction.

38. Therefore, in particular cases, where doubt might otherwise arise, we have his powers limited by such qualification as "If any person within the jurisdiction" or "If any person does so and so within the jurisdiction." Similarly without the addition of some such words it would not be possible to say in regard to the prevention of offences whether it was sufficient that the offender was within the jurisdiction or whether it was sufficient that the offence was expected to be committed within the jurisdiction, etc. Now let us see how the legislature dealt with this question in Section 108. The governing factor might be the place where the person was who disseminated seditious matter, or it might be the place where the dissemination occurred. The legislature directed the Magistrate to be governed by the consideration of the place where the person might be and not by the consideration where the dissemination took place. It therefore worded Section 108 "there is within the limits of his jurisdiction any person." This rendered it beyond doubt that at any rate the person must be within the jurisdiction, and it was sufficient if he was within the jurisdiction. Why, then, in dealing with Section 109, if the legislature had meant the governing factor to be the fact that the person was or was not concealing himself within the jurisdiction, should it not have similarly said that "any person within the local limits" or "taking precautions within the local limits" or "precautions to conceal within the limits."? As the person and the act

of concealing will be presumably in the same place the natural thing to have said, if that was the intention of the legislature, would have been "any person within the local limits." Take again Section 110. We similarly find "any person within the local limits." I have not made any reference to Section 107 because it is not possible to draw any conclusion therefrom and it will serve no useful purpose to lengthen this judgment by entering into a detailed discussion of that section. The words in Section 107 of 1882 were somewhat similar to the words in Section 109(a) of the present Code. But there the punctuation was different and the interpretation was different from either of those which are supported in the present case. To clear the matter the disturbing words were left out of the clause altogether and a complete new sub-section was enacted with special conditions. Lastly, I am unable to find any single case in which Section 109(a) has received the interpretation which the Crown would ask us to give it. In *Sharif v. Emperor* [1911] 8 A.L.J. 1097(Supra) the facts were as follows:

39. The police expected a gang of thieves to visit the city. A little before midnight 7 or 8 men were seen coming in from the jungle and were pursued. They ran to a certain shop and a lathi fight followed. Subsequently the accused was arrested at the shop with a lathi in his possession. Accused was an octroi chaprasi. The order initiating the proceedings showed that action was taken against the accused on the ground that they were habitual thieves and robbers and were taking precautions to conceal their presence within the limits of the Magistrate's jurisdiction.

40. The Magistrate (Trial Court) demanded security apparently under Section 109(b) because the accused could not "give a satisfactory account of himself." The District Magistrate on appeal said that the accused prowls about at night and is a companion of scoundrels and that he bolts from the police and is armed with and uses a lathi.

41. Chamier, J., held: The Magistrate seems to think that the words "give a satisfactory account of himself" mean satisfy the Magistrate that he spends his time or at least his leisure hours in a satisfactory manner. I cannot agree. There is no evidence that the applicant was taking precautions to conceal his presence within the Magistrate's jurisdiction.... The applicant is a peon in the employ of the Municipality. His place of residence and occupation were well-known." "Whether there was ground for taking action against the applicant under any other section, I cannot say. But it seems to me that the proceedings taken under Section 109, Criminal P.C., cannot be supported.

42. It seems clear that Chamier, J., held that where a person's place of residence and occupation were well-known, it could not be held that he was taking precautions to conceal his presence within the Magistrate's jurisdiction although he might be prowling about at night with scoundrels armed with and using lathis. The only inference from this is that Section 109(a) does not apply where the presence of the accused within the Magistrate's jurisdiction was not being concealed. All the other elements were there, the lurking at night in company with scoundrels armed with lathis.

43. In *Rashu Kabiraj v. Emperor* [1918] 27 C.L.J. 382(supra), a dealer whose presence and residence within the Magistrate's jurisdiction was well-known, was caught about midnight in a lane with two others who were in possession of a house-breaking implement and gave a false explanation of his presence at the time and place in question. It was held by Teunon, J., (with "some hesitation") and Shamsul Huda, J., following *Sharif Ahmad v. Emperor* [1911] 8 A.L.J. 1097(Supra) and *Emperor v. Satish Chandra*<sup>8</sup> and *Bhuja v. R.* [1872] Ratan Lals' Crim. Rep. 3 that the case did not come within either Clause (a) or Clause (b), Section 109, Shamsul Huda, J., added that in his opinion Clause (a) "refers to a continuous act." And further that clause (a) cannot apply to the case of a person brought under arrest, as the accused was, for, it cannot be said of such a person that he is taking precautions to conceal his presence.

44. With this second conclusion as to the consequence of the arrest of the accused I do not find myself in agreement and I do not find that it has been since accepted in any other case and I do not therefore think it necessary to discuss it further. The correctness of the first conclusion is, of course, in no way dependent on the correctness of the second.

45. In *Laltu v. Emperor* [1919] 17 A.L.J. 891(Supra)(Supra) referred to in the later Allahabad case, *Emperor v. Bhairon A.I.R. 1927 All. 50 (Supra)*(Supra) Piggott, J., said:I have ascertained that Laltu resides within the jurisdiction of the Joint Magistrate before whom proceedings were taken. I do not think it is possible to apply the provisions of Section 109.

46. The reference by Piggott, J., to having ascertained that Laltu resided within the jurisdiction of the Joint Magistrate can have only one meaning in reference to Clause (a) and his finding that Section 109 did not apply.

47. In *Piru v. R.A.I.R. 1925 Cal. 616 (Supra)*,(Supra) Mukerji, J., agreed with Shamsul Huda, J., quoted above, that the act of concealment referred to was a continuous act such as "passing under a false name" (not merely giving a false name once but "passing" under a false name which is quite a different thing), or "taking precautions to conceal presence or identity at a place amounting to continuous course of conduct" is what is meant by this clause."

48. In *Rambirick v. Emperor*<sup>9</sup> Miller, C J., held that the act of concealment need not necessarily be continuous, but there must be facts.indicating a desire to hide the fact that the accused is present within the local limits of the Magistrate's jurisdiction.

49. The view of Miller, C.J., as regards continuity is not really in conflict with that of Shamsul Huda, J. and Mukerji, J., for it is clear that a person may be arrested at the very beginning of that, if it had continued would have been a continuous act. It is not necessary to prove that the act had been continuing for some time. A person might come inside the jurisdiction and be concealing himself and intend to continue concealing himself, and be caught at the outset. The act of

concealment is nonetheless a continuous act in the sense used by Shamsul Huda, J., and Mukerji, J. It is quite different from the momentary or short lived act of a person who does not mean to go on concealing his presence and is only doing so for the purposes of the particular house-breaking etc., on which he is then bent.

50. These cases were followed by the cases *Emperor v. Bhairon A.I.R. 1927 All. 50 (Supra)*, and *Emperor v. Himayatullah A.I.R. 1927 All. 592 (Supra)* already referred to. I have been unable to find any case in which the contrary view has been taken. I am, therefore, of opinion on the interpretation of the section standing by itself on a consideration of the history of the section, and after studying the scheme of the Act, that Section 109(a) is only applicable where the person is concealing "his presence within the jurisdiction," and I find support for that view in all the cases that I have mentioned, and, I can find no case to the contrary.

51. I would make it clear that I do not hold that the person must be a stranger to the jurisdiction. All that is necessary is that he should be concealing his presence within the jurisdiction." He may be a stranger who has come from outside and is hiding himself within the jurisdiction or he may be a person whose ordinary residence is within the jurisdiction but who is hiding himself elsewhere within that jurisdiction. This latter case is illustrated in *Emperor v. Satish Chandra [1912] 39 Cal 456(Supra)*. There a man whose ordinary residence was well-known to be within the jurisdiction had absconded because of a warrant out against him. He left the jurisdiction, but on the warrant being cancelled he returned, unknown to the authorities, and concealed himself in his residential house, only going out at night. So far then there was a concealing of his "presence within the jurisdiction" and the case under Section 109(a) failed against him only because on the facts it was held that there was no proof that he was intending to commit an offence.

52. But in my view the matter does not end here. If it did so end it would mean that there was no means indicated by the legislature for a Magistrate to deal with the case of a man whose ordinary residence and occupation within his jurisdiction were well-known and who had not left that residence or occupation but who was (e.g.) temporarily out during the night on a house-breaking expedition. If such an untoward result followed from holding that Section 109(a) was not applicable it would not be a ground for holding Section 109(a) applicable in face of other considerations, but it would be a ground for pausing and again re-considering whether those considerations were really valid. But as I have said, in my view, the matter does not end with Section 109(a). The Government Advocate did not ask us to hold that the case could be brought within Section 109(b). He apparently accepted some decisions on the interpretation of that second clause in which, it is suggested, the view was taken that it was applicable only to cases where the person could not give a satisfactory account of himself "generally." Counsel for the defence naturally was prepared to accept that view and contended that his client could not be touched under either Clause (a) or (b). I am myself unable to agree that Clause (b) is not applicable. Mention in this connexion has been made of two or three cases, but I do not think any of those cases support a refusal to apply Clause (b) to the present facts. All that Chamier, J., did

in *Sharif v. Emperor* [1911] 8 A.L.J. 1097 (*Supra*) was to refuse to apply Clause (b) to a case where the Magistrate seemed to think that Clause (b) justified calling upon a person to satisfactorily account for his leisure time. Whether Cl (b) applied or not to the particular facts was purely a question of fact in the particular case. Similarly *Ghulam Jilani v. Emperor* [1919] 17 A.L.J. 432 (*Supra*), to which I have been referred, dealt so far as Clause (b) is concerned, purely with a question of fact, and similarly, so far as Clause (b) was concerned, the case *Laltu v. R.* [1919] 17 A.L.J. 891 (*Supra*). In *Piru v. Emperor A.I.R. 1925 Cal. 616 (Supra)*, it was held that the accused who had been charged under Clause (b) had in fact given a satisfactory account of himself. So far as Mukerji, J., seems in that case to have suggested that under Clause (b) a person has to account for his "presence within the jurisdiction" I am not able to see the justification for that gloss. The word, "there is within such limits a person" are quite different to the wording of Clause (a), and repel rather than suggest the idea that the person is in any way being called upon to account for his "presence within the jurisdiction" except in so far as that may be part of the general evidence under Clause (b).

53. None of these cases seems to me to carry any real and considered suggestion or support to the proposition that the present case does not come within Clause (b). It is obviously true that Clause (b) does not justify broadly calling upon any person to satisfactorily account for how he spends his leisure, but if there is a definite evidence that he has been caught spending a portion of that leisure in a manner giving rise to grave suspicion and can give no satisfactory account of the incident, I am unable to see why Clause (b) should not apply.

54. I can see no justification for limiting the plain, natural and unambiguous meaning of the word, "cannot give a satisfactory account of himself." If a householder catches a man in his garden in the middle of the night armed with a jemmy and that man cannot explain what he was doing at that hour of the night armed with a jemmy in somebody else's garden, surely it is not using language in any other than its simple straightforward sense to say that he cannot give a satisfactory account himself." Those words do not refer to his domestic relations or his normal daylight orthodox occupations, but require him to give a satisfactory account of himself in relation to the circumstances which led up to his being called upon for an explanation. Can a man possibly be said to do otherwise than fail in giving a satisfactory account of himself who has to say: I admit I was caught at night in the garden of so and so's house armed with a jemmy; I decline to explain what I was doing there, "(or he gives a futile explanation)" but in the day time I am a most respected member of society.

55. I would, therefore, hold that the facts found would fully justify us calling upon the person to furnish security under Section 109(b) and that such security might have been called for from Phuchai and Buddha.

56. Before concluding I would refer to one further argument which may properly be adduced in support of the conclusion at which I have arrived. It was remarked by one of the members of this

Bench at the hearing that one would expect to find the Magistrate able to take security in cases where the police officer had been empowered to arrest under Sections 54 or 55. I would prefer to state the proposition similarly but more widely and, if I may say so, more accurately. One would expect to find that where a police officer has been empowered to arrest under Sections 54 or 55, the Code would make provision for the trial and punishment of the person for a substantive offence where the circumstances indicated that a substantive offence had been committed, and that where the circumstances under which the arrest took place only indicated the intention to commit an offence, one would expect to find the Code providing for the Magistrate being able to take security. Now we are not immediately concerned with cases where the accused has been arrested on the ground that the circumstances indicated that he had committed an offence. So we may state the proposition simply thus, that we should expect to find that, where the circumstances under which the accused had been arrested, suggested that the person had been intending to commit an offence the Code would provide for, the Magistrate taking security. With the proposition so stated I entirely, of course, agree. It would be futile to give the police officer power to arrest if no further action could be taken. Section 54, Sub-section (1), clause "Secondly" and Section 55, Sub-section (1), Clauses (a), (b) and (c) deal with circumstances where security for the prevention of an offences is desirable, and in regard to which we should expect to find complementary power in the Magistrate to take security.

57. In accordance with this expectation where a person has been arrested under Section 55(1)(a) by a police officer while concealing his "presence within the limits of the police-station," we find the complementary power in the Magistrate under Section 109(a). It is, of course, apparent on the face of it that the local limits of the Magistrate's jurisdiction are wider than those of the police station (as the local jurisdiction of the District Magistrate is wider than that of a Sub-Divisional Magistrate); and the proposition is true that though a man may not be concealing his "presence within the limits of the police station," it does not follow that he is not concealing his "presence within the limits of the Magistrate's jurisdiction". But the contrary proposition is not true. If a man is concealing his "presence within the limits of the police station," it does necessarily follow that he is concealing "his presence within the larger area, the Magistrate's jurisdiction". To state the case as it is suggested the accused might state it to the Magistrate: I, ordinarily, and you knew it, resided within your jurisdiction though not within the limits of that thana. I may have been lawfully arrested. But you knew, I ordinarily resided within your jurisdiction and you therefore cannot take security under Section 109(a),

58. There is an obvious fallacy in that it assumes that because the Magistrate knew the ordinary residence of the person he continued to know all along where the person was. The obvious answer is that as soon as the person left his ordinary place of residence and began to conceal his whereabouts, the Magistrate could not in fact know where he was, and concealing his "presence within the jurisdiction of the Magistrate" had begun.

59. Similarly where a, person is arrested under circumstances coming within Section 55(1)(b)

security can be taken from him under Section 109(b).

60. Similarly where a person is arrested under circumstances coming within Section 55(1)(c) security can be taken from him under Section 110

61. There is no provision in Sections 54 and 55 for arrest corresponding to the provisions for security under Section 108, but that does not affect our argument.

62. The only remaining clause that we have to consider is Section 54(1) "Secondly", A police officer may arrest any person having in his possession without lawful excuse, the burden of proving, which excuse shall lie on such person, any implement of house-breaking.

63. Now here no element of attempted concealment is necessary to justify the arrest and, therefore, the complementary power of the Magistrate cannot be found in Section 109(a). Unless it is to be found in Section 109(a) I am unable to find any other section applicable. Here is, therefore, an additional argument in support of giving to the words "cannot give a satisfactory account of himself" their plain meaning and not by judicial decision narrowing their clear wide scope. The person arrested under Section 54(1) "Secondly" has thrown on him the burden of proving his excuse for possession of the implement of house-breaking. That is, in my view, covered by demanding that the person should give a satisfactory account of himself. If it is not covered by that, it is not, so far as I can find, covered by anything.

64. Finally I would add that if there is any doubt as to the meaning of the interpretation of Section 109(a), and at best the meaning is admitted on all hands to be open to doubt, it is surely desirable to treat the present case as coming within Section 109(b), if it is at least clear that, it does come within that clause.

65. As to the order which we should pass I think that ordinarily the order should be either, as the whole case has been gone into, a direction to the Magistrate to take security under Section 109(b), or, if that be considered necessary, a direction to the Magistrate to issue a fresh summons to the accused under Section 109(b). But we are informed that the accused persons have already been in jail, for a considerable period, and I do not think that we should now order security to be taken, but should limit ourselves to giving a direction to the Magistrate that in the circumstances which he had before him notice should be issued, and if the evidence justified it, security be taken under Section 109(b).

**Banerji, J.**

66. I see no reason to change the opinion I expressed in *Emperor v. Himayatulla A.I.R. 1927 All. 592 (Supra)* regarding the interpretation of Section 109, Criminal P.C. I would dismiss this revision.

**Kendall, J.**

67. I agree with Boys, J., that the provisions of Clause (b), Section 109, Criminal P.C, will cover the present case. I need not add anything to his remarks or to the reasons which he gives for holding that this clause is applicable. The case, however, was argued before us as one under Clause (a) of that section, and I regret that I am not able to follow him throughout in his judgment when it deals with that part of the case.

68. Two interpretations have been put on Clause (a). Without undue repetition I may say that according to one interpretation the clause means that security may be taken from any person who is taking precautions within the local limits of the Magistrate's jurisdiction to conceal himself. According to the other interpretation, security can only be taken if the person is taking precautions to conceal the fact that he is present within the local limits of the Magistrate's jurisdiction. In either case, of course, there must be circumstances to show that the person is taking precautions to conceal himself with a view to committing an offence.

69. The wider interpretation has generally been applied in Magistrates' Courts, but it is clear that there is much more authority in the judgments of this Court for the narrower interpretation, namely, that the clause means that the person must be taking precautions to conceal the fact that he is present within the local limits of the Magistrate's jurisdiction.

70. There are, in my opinion, however, reasons for accepting the broader interpretation. It may, of course, be said that the clause has not been happily worded, and that if the legislature had intended the words used to mean is taking precautions within the local limits of such Magistrate's jurisdiction to conceal himself,

71. those specific words would have been used. But it may be argued with equal force that if it had intended the words to mean taking precautions to conceal the fact that he is present within the local limits of such Magistrate's jurisdiction,

72. there is no reason why these words should not have found a place in the Act. Either interpretation may be put on the words themselves as they stand, as is proved from the fact that this Bench is divided in opinion as to which is the more natural interpretation of the words.

73. The conduct of the person will be the same in either case. He will be taking precautions to conceal himself, whether he is doing so with the more subtle intention of concealing the fact that he is present within the Magistrate's jurisdiction or not. What is to be the ratio decidendi? If the person concerned were asked whether he had been "concealing his presence within the jurisdiction" or whether he had merely been concealing himself" it is unlikely that he would be able to give an intelligible reply, and the Magistrate would have to look to the attendant circumstances for an answer. It is argued that if the person's residence and occupation are well-

known to the Magistrate he cannot be held to be taking precautions to conceal the fact that he is present within the jurisdiction even if he is hiding in a grove at night with a number of other suspicious characters in circumstances that point clearly to an intended burglary; and that in this case Clause (a) cannot be used. If this be so, it is only a stranger to the Magistrate's jurisdiction who can be dealt with under Clause (a). Now under Clause (a), Section 55, Criminal P.C, an officer in charge of a police station may cause to be arrested any person found taking precautions to conceal his presence within the limits of such station if there is reason to believe that he is doing so with a view to committing a cognizable offence. I think that there can be no doubt that the words taking precautions to conceal his presence within the limits must have the same meaning as they have in Section 109, and that the two sections are complementary to each other. If, however, the narrower interpretation of Clause (a), Section 109, be assumed for the moment to be correct, we are, I think, faced with a practical difficulty. For instance, if A and B are two persons living respectively in thana Alpha and Beta, and their occupations and residences are well-known within their own thanas; and if A goes into thana Beta and there conceals himself, and B goes into thana Alpha and there conceals himself in suspicious circumstances; then according to the interpretation we have assumed for the moment, the officer-in-charge of thana Alpha may and in fact should arrest B, and the officer-in-charge of thana Beta should arrest A and take them before the Sub-Divisional Officer. That Magistrate, however, will not be able to deal with either of them under Clause (a), 8. 109, because they both have residences and occupations within his jurisdiction. In other words, conduct that renders a man liable to arrest by the "thanadar" under Section 55, Criminal P.C, becomes blameless under Section 109 in the eyes of the Magistrate. I do not believe that such an anomalous, indeed absurd, result can have been intended by the legislature. Nor do I think that the difficulty can be met by arguing that as soon as the person concerned leaves his ordinary place of residence and begins to conceal himself, "concealing his presence within the jurisdiction of the Magistrate" begins.

74. So far as the Magistrate's jurisdiction is concerned it makes no difference whether the person crosses the boundary into another thana, or merely hides in a grove near his own village. If in the one case he is concealing his presence within the jurisdiction of the Magistrate, he is doing the same thing in the other case too; and the distinction between concealing his presence within the jurisdiction of the Magistrate "and concealing himself" disappears or at any rate is too subtle to be of any practical value.

75. One other case has been suggested which would be covered by Clause (a) if the narrower interpretation were to be accepted, viz.: that of a man who is well-known within the jurisdiction of the Magistrate, who leaves it openly, and then returns secretly and proceeds to conceal his presence there. The facts that he openly proclaimed his departure, that he did actually depart, and that he secretly returned, might no doubt be considered to be a series of precautions taken to conceal the fact of his presence within the jurisdiction. But such a case would be very exceptional and it might forcibly be argued that the precautions were not all taken "within the jurisdiction of the Magistrate" in that they involved leaving that jurisdiction. I cannot persuade

myself that Clause (a) was intended to cover this exceptional case, and that it does not cover the case of a man whose residence and occupation are well-known, but who takes precautions to conceal himself with a view to committing an offence. I would therefore accept the revision.

**Weir, J.**

76. The following are the facts of this case:

77. The station officer of Rohanya received information on 30th December 1926, that a number of persons were hiding themselves near the abadi of village Dewatpur, "in order to commit some offence." The Station Officer thereupon sent five constables to arrest those persons. The constables found the two respondents along with others in a mango grove near Dewatpur village at about 12 o'clock at night at the time when according to one witness, the moon had risen. The men who were in the grove fled, and all except the two respondents got away. When the two respondents were captured each of them had a sabari (a house-breaking implement) and a lathi. They at first gave false names and addresses to the police who arrested them but, when brought to Rohanya Police Station, they gave their correct names and addresses. They both live within the limits of police station Mirza Murad, which is contiguous to Police Station Rohanya, both the stations being within the limits of the jurisdiction of the Magistrate before whom they were brought. The Magistrate held they had been concealing their presence with a view to committing a crime and had been doing so within the local limits of his jurisdiction. He accordingly made an order under Section 109(a), Criminal P.C, requiring them to give security for good behaviour; but his decision was reversed by the Sessions Judge of Benares, who followed two decisions of this Court, namely, *Emperor v. Bhairon A.I.R. 1927 All. 50 (Supra)* and *Emperor v. Himayatulla A.I.R. 1927 All. 592*. The question which we have to decide depends on the interpretation of Section 109(a), Criminal P.C. That section provides that a Magistrate of the first class may require any person to show cause why he should not be ordered to give security for good behaviour if the Magistrate received information that 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.

78. In the two decisions which I have cited it was held that the words, "within the local limits of such Magistrate's jurisdiction" are an adjectival phrase qualifying the word, presence, so that the section would not apply to any person who attempted to conceal his presence at any particular spot within the local limits of the Magistrate's jurisdiction, unless he was attempting to conceal himself in order that the local authorities should not be aware whether he was within or without the local limits, i.e., was endeavouring to prevent the local authorities from being aware of the fact that he was anywhere within the local limits of the jurisdiction. The Government Advocate asks us to place another interpretation upon the words "within the local limits of such Magistrate's jurisdiction," namely, that they do not qualify the noun, presence, but indicate the locality within which the act of attempted concealment must have taken place, in order to give

the Magistrate jurisdiction to deal with the case.

79. Two arguments have been advanced on behalf of the respondents. First, that the words "is taking precautions to conceal etc." indicate a continuous course of action and not merely one isolated act of attempted concealment. In support of this view two authorities have been quoted to us. In the first of these, *Reshu Kaviraj v. Emperor* [1912] 39 Cal 456(Supra) it was held by Shamsul Huda, J., that Section 109(a) refers to a continuous act and does not, therefore, apply to a case... where there is a momentary effort at concealment to avoid detection and arrest, and also that clause (a) cannot apply to the case of a person brought under arrest "(as the accused in that case was)" for it cannot be said of such a person that he is taking precaution to conceal his presence.

80. The other Judge who heard the case, Teunon, J., said that he had with some hesitation arrived at the conclusion that the facts did not bring the case within the provisions of Section 109 of the Code. The facts were that at midnight the petitioner and two other persons were in a lane in the town with house-breaking implements; that when the petitioner was seen by the police he ran away and when arrested remained silent. The same opinion was expressed by another Bench of the Calcutta High Court in *Piru v. Emperor* A.I.R. 1925 Cal. 616 (Supra). The facts of that case were in some respects similar to those last mentioned. The appellant was loitering on Strand Road, at 3 a.m. and endeavoured to hide himself when he saw a constable coming. There was no evidence to suggest that he was hiding, or attempting to hide, at the time when the constable first saw him, or that he was doing so with a view to committing any crime, and, therefore, his case was clearly outside Section 109(a); but Mukerji, J., one of the two members of the Bench which heard the appeal, said: I also agree in the view expressed by Shamsul Huda, J., in the case of *Reshu Kaviraj v. Emperor* [1918] 27 C.L.J. 382 that Clause (a) of Section 109 refers to a continuous act and does not apply to a case where there is a momentary effort at concealment to avoid detection or arrest. In my opinion, passing under a false name of taking precaution to conceal one's presence or identity at a place amounting to a continuous course of conduct is what is meant by the clause. Moreover, such precautions for the purpose of concealment must be taken with a view to committing an offence.

81. If a man merely hides himself in order to avoid arrest, I think that the case does not come within the scope of Clause (a); but it seems to me that, in the two cases which I have cited, too much stress was laid on the use of the present tense in Section 109 and on the necessity of establishing something in the nature of a continuous course of conduct before any person can be brought within the purview of Clause (a). Under Section 55(a) a Sub-Inspector may arrest without a warrant any person "found taking precautions to conceal his presence within the limits of his station;" so that a man who is brought before a Magistrate may have been arrested in consequence of having taken such precautions, and I do not see why the jurisdiction of the Magistrate should be ousted by the fact that the man has been arrested, especially as Section 114 read along with Section 112 of the Code clearly shows that a Magistrate may take action under Section 109 against a person who is in custody, "because he is empowered by Section 114 to

issue" a warrant directing the officer in whose custody the person concerned is, to bring him before the Court.

82. As to the question whether the concealment must be continuous, I think that if it is begun and kept up with the object of committing a crime, it comes within the ambit of Clause (a). 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 being 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." If the attempted deception is part of a scheme or plan, I do not see how the length of time which elapses before the concealment is discovered, can be material. In the view which I take, it is not the length of time during which the concealment lasts, but the object which prompts the concealment, that determines whether the concealment is or is not such as to come within the purview of Section 109(a).

83. I now turn to consider the point on which the arguments addressed to us chiefly centered, namely, whether the words within the local limits of such Magistrate's jurisdiction, qualify the noun, "presence," so as to restrict Clause (a) of the section to what I may call, for the sake of brevity, a "within-the-local-limits" presence, or whether they indicate the place where the concealment must take place in order to give the Magistrate jurisdiction. If Sub-section (a), instead of using the words, "to conceal his presence," had used a synonym, such as "to hide himself," there could be no doubt that the words, within the local limits, "would refer to the verb. But since the signification of the words to hide" would not be wide enough to cover all possible ways in which a man might seek to prevent the police or a Magistrate from being aware that he was in the neighbourhood or a particular place, 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 indentity, 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 he is not, attempts to conceal his presence just as much as if he hides in a cellar, where nobody can possibly see him. It was said in the two cases decided by this Court, and which I have already cited, that if the words, "within the local limits," are attached to the verb, they are unnecessary, because a Magistrate can only exercise his powers within the local limits of his jurisdiction. To this, I think, two answers may be given. First, that if the words are otiose then Clause (b) of Section 109 shows that the legislature was quite capable of using the words otiosely and *ex-abandunti cautela*, because they would not be required in Clause (b) any more than in Clause (a); but I do not agree that the words are unnecessary. They are used in Sections 107, 108 and 110, all of which sections are in *pari material* with the section which I am considering, and I think that they are necessary for the purpose of showing which of two Magistrates should have jurisdiction in cases which might quite easily occur. Thus, if a man hid himself within one jurisdiction with a view to committing a crime in another, it might be a

question which of the two Magistrates could take action against him. It has been said that the words, "within the local limits," taken in their context in this section, naturally accompany and qualify the noun presence, and indicate what I have called a "within-the-local-limits-of the jurisdiction" presence. If this were so, the similar words in Section 55(a) ought to be given the same meaning, and the Criminal Procedure Code would thus deal with three classes of presences each fitting, as it were, inside the other, like those sets of boxes which are sold by vendors of toys in India, namely, a "within-the-Magistrate's jurisdiction" presence, and then, inside, that, a "within-the-police-station-limits" presence, and then inside that again, actual presence upon some particular spot. The result of this would be to introduce a kind of sliding scale of presences, discriminating in favour of the local badmash. I think that Clause (a) applies equally to all persons who by attempting to conceal their presence with a view to committing an offence, have shown that they are a danger to any member or members of the public. I do not, however, attempt to disguise from myself the fact that, on account of their place in the section, the words, "within the local limits," are susceptible of either of the two interpretations which I have indicated, and that, if the ambiguity had been present to the mind of the legislature: when the Act was passed, the legislature could have chosen some other expression which would have indicated its meaning more clearly.

84. Thus, if a "within-the-local-limits" presence had been intended, it would have been unnecessary to use the word, presence, at all: the obvious expression to use would have been, "conceal the fact that he is within the local limits" or "conceal the fact that he is anywhere within the local limits, "whereas if the second meaning, which, as I have said, I believe to be the correct interpretation, had been intended, it would have been better to have said, "taking precautions within the local limits of such Magistrate's jurisdiction to conceal his presence." I believe that the latter is the correct interpretation both for the reasons which I have already given, and for this additional, and, to my mind, cogent reason that it gives to the words, "within the local limits," the same meaning as they have in Section 109(a) namely, that of an adverbial phrase denoting place—the place where an act is done—instead of giving them an adjectival meaning qualifying the noun, presence, in such a way as to make the section work unevenly in the case of persons who are equally to blame and equally dangerous to the community.

85. I now turn to consider certain decisions of Judges of this Court which are said to support the view taken in the two cases which I have already cited, namely, *Emperor v. Bhairon A.I.R. 1927 All. 50 (Supra)* and *Emperor v. Himayatullah A.I.R. 1927 All. 592*. The first of these cases is *Sharif Ahmad v. Emperor [1911] 8 A.L.J. 1097*. In that case Chamier, J., held that a Municipal chaprasi, who was alleged "to prowl about at night and be a companion of scoundrels and to bolt from the police and go about armed" could not be required to give security under Section 109(b) as being unable to give a satisfactory account of himself. Chamier, J. said: The Magistrate seems to think that the words, give a satisfactory account of himself mean, satisfy the Magistrate that he spends his time or at least his leisure hours in a satisfactory manner. I cannot agree.

86. The facts were that six or seven men were seen coming in from the jungle. They were pursued and ran to a shop where some lathi blows were exchanged. Shariff Ahmad and some others were subsequently arrested at the shop. No doubt Chamier, J. said that there was no evidence that the accused "was taking precautions to conceal his presence within the Magistrate's jurisdiction", but that would have been true on either of the interpretations of the section. The next case is Ghulam Jilani v. Emperor [1919] 17 A.L.J. 432(Supra) decided by Tudball, J. In that case the appellants and two other persons were met by the police on the road between Meerut city and the railway station. The police had been informed that a raid upon the town was contemplated by men of bad character, and had made preparations to counter-act it. On being arrested the appellants gave their names, and it turned out that they were well-to-do and respectable residents of Delhi. The evidence against them was that somewhere close to the place where the police met them, a burglar's jemmy was found lying on the ground. In delivering judgment Tudball, J., said: "The persons contemplated in the section," i.e., Section 109, "are persons taking precautions to conceal their presence within the local limits of the Magistrate's jurisdiction or persons who have no ostensible means of subsistence and who cannot give a satisfactory account of themselves."

87. In Emperor v. Bhairon A.I.R. 1927 All. 50 (Supra) this passage from the judgment of Tudball, J., is quoted, and it is observed that although the learned Judge was only quoting the ipsissima verba of the section, yet, read in the context in which that quotation occurs, it appears that he dwelt upon the scope and ambit of the section in the sense which we are satisfied that it bears. I think that the context in the judgment of Tudball, J., shows that he was not thinking about the effect of the section as interpreted in Emperor v. Bhairon A.I.R. 1927 All. 50 (Supra), at all, because the very next words in his judgment are:

the present applicants clearly do not come within Clause (a) as it was not alleged that they were taking precautions to conceal their presence with a view to committing an offence.

88. So little was Tudball, J. thinking of a "within-the-local-limit" presence, that in paraphrasing Clause (a), he makes no mention of the words, "within the local limits." The last decision is Laltu v. Emperor [1919] 17 A.L.J. 891(Supra). The judgment in it is very brief and the facts are stated very shortly. Piggott, J. says: "the applicant was arrested by certain police officers along with a number of other persons in a lane in the city of Cawnpore under what were undoubtedly suspicious circumstances."

89. He points out that the Magistrate of Cawnpore called on the applicant to give security because he had not given a true explanation of his presence on the night in question at the spot where the police arrested him. The learned Judge then says: "I have ascertained that Laltu resides within the jurisdiction of the Joint Magistrate before whom proceedings were taken, and adds I do not think it possible to apply the provisions of Section 103, Criminal P.C., to the state of facts set forth above."

90. If that very careful Judge had meant that even if Laltu had been found in hiding with house-breaking instruments, the fact that he resided within the jurisdiction of the Joint Magistrate would have been a complete excuse. Provided that his residence was known then, I think he would have said so. But the case was really one under Clause (b), Section 109, and all that Piggott, J., decided was that on the principle laid down by Chamier, J. in the case to which I have referred, it could not be said of Laltu that he could not give a satisfactory account of himself within the meaning of Section 109, Clause (b), Criminal P.C.

91. A case which was not cited before us in argument, but which was referred to in one of the decisions of the Calcutta High Court with which I have already dealt, is that of Satish Chandra Sircar v. Emperor [1912] 39 Cal 456(Supra). In that case the applicant who appears to have been connected with an anarchist agitation and a conspiracy to commit dacoity, had returned to his father's home in Calcutta on 9th August 1911. On 12th August it was reported that he was concealing himself to avoid observation, and he was ordered to give security under Section 109. The facts which were proved against him were, that he secluded himself in the day time and went out at night for exercise. The learned Judges who decided the case said that the prosecution had not made out that the applicant was taking any particular steps to conceal himself for the purpose of committing any offence, and, on revision, they set aside the order against him, remarking that the whole of Clause (a) must be read together, and the object of the concealment must be with a view to committing some offence. They do not appear to have discussed, or even to have thought of, the distinction between a presence within the jurisdiction, and presence at a particular place.

92. I now turn to the facts of the case before us. The two respondents were obviously concealing their presence, not specially with the object of preventing the police from detecting them, but in order to escape observation by anybody, until an opportunity should occur for committing some crime of the nature of house-breaking. The fact that they were armed with lathis and had house-breaking implements with them shows that they were concealing themselves with the object of committing a crime. I think that they came within the scope of Section 109(a) and that the learned Magistrate's decision was right.

93. After I had written my judgment I had the advantage of reading that of Boys, J. I do not dissent from the view taken by him of the effect of Clause (b), Section 109, but, as the present case was urged on Clause (a), and as I am satisfied that the latter clause applied, I prefer to base my judgment upon it.(Boys and Banerji, JJ., dissenting).

94. The order of the Sessions Judge of 4th June 1927, allowing the appeal and discharging the sureties on the ground that Section 109(a) did not apply to the facts of the case was wrong. Section 109(a) did apply to the facts of the case. It is, however, unnecessary to pass any further order in view of the fact that the period of one year for which the Magistrate ordered the accused to furnish security has now elapsed, and there is nothing to indicate that the accused have given any further cause in the interval for calling upon them to furnish security. To this extent the

application in revision is allowed.

**Cases Referred.**

- 1A.I.R. 1927 All. 50
- 2A.I.R. 1927 All. 592
- 3[1918] 27 C.L.J. 382
- 4A.I.R. 1925 Cal. 616
- 5[1911] 8 A.L.J. 1097
- 6[1919] 17 A.L.J. 432
- 7[1919] 17 A.L.J. 891
- 8[1912] 39 Cal 456
- 9A.I.R. 1926 Pat. 569