A. I. R. 1917 Lahore 260 (2)

SHAH DIN, J.

Nur Muhammad — Accused — Petitioner.

v.

Emperor — Respondent.

Criminal Revn. No. 1712 of 1916, decided on 8th December, 1916, from the Order of Dist Magte., Jhelum, dated 21st August, 1916.

Criminal P. C. (5 of 1898), S. 110, Clause (*f*)— Evidence of general repute is not admissible under S. 110, Clause (*f*).

In order to bring a case within Clause (*f*) of S. 110 of the Criminal Procedure Code, it is necessary to prove by definite evidence that the accused is so desperate and dangerous a person as to render his being at large without security hazardous to the community. [P. 261, C. 2.]

Evidence of general repute is not admissible in proceedings taken under that clause. 5 C. W. N. 249; 11 C. W. N. 789; 29 Cal. 779; 34 Mad. 255 and 25 All. 273, ref. to. [P. 260, C. 1.]

Muhammad Iqbal—for Petitioner.

Bhagat Ram Puri—for the Crown.

Judgment.—In this case the petitioner Nur Muhammad has been ordered under S. 110 (*f*), Criminal Procedure Code, by Mr. P. J. Anderson, Magistrate of the First Class, Chakwal, to execute a bond for Rs. 500 with two sureties to be of good behaviour for a

period of one year. The petitioner has applied to this Court for revision of the order of the Magistrate, on the ground that the evidence adduced by the Police against him is not sufficient to bring his case within the purview of Clause (*f*) of S. 110 aforesaid and after hearing Counsel for the petitioner and for the Crown, I think that this contention is sound and must be allowed. Seven witnesses have given evidence against the petitioner in the Court below, and the gist of their evidence is that the petitioner had committed two murders in 1910 and 1915, was suspected in 1911 of having committed burglary in the house of one Hassa in connection with which his house was searched but nothing incriminating was found, that he associates with bad characters in the neighbourhood, and that he is a desperate and dangerous person and people are afraid of him.

As to the murders said to have been committed by the petitioner in 1910 and 1915, the petitioner was tried on both occasions in respect of the alleged crime but was ultimately acquitted in the earlier case by the Court of Session and in the later case by this Court (see judgment of this Court. Criminal Appeal No. 999 of 1915, decided on the 6th December 1915). Having been acquitted in the two capital cases, it is clear that in the eye of the law he must be held to have been innocent; and the Magistrate was, therefore, in error in referring to and relying upon the criminal trials of 1910 and 1915 as showing that the petitioner was a dangerous person. Next, we have the fact that the petitioner's house was searched in 1911 on suspicion of his connection with a burglary in the house of one Hassa. That fact has no bearing whatever on this case, inasmuch as the petitioner has been held to be a dangerous character under Clause (*f*) and not an habitual offender under any one of the other clauses of S. 110, Criminal Procedure Code.

As regards the applicability of Clause (*f*) of the aforesaid section to the present case, it is clear that evidence of general repute is not admissible in proceedings taken under that clause [*Akhoy Kumar Chatterjee* v. *Queen-Empress* (1), *Wahid Ali Khan* v. *Emperor* (2), *Kalai Haldar* v. *Emperor* (3), *Muthu Pillai, In re* (4) and *Emperor* v. *Bidhyapati* (5)]. I have carefully gone through the evidence of the witnesses produced by the Police in this case and I find that it is mostly evidence of general repute, such as would be admissible only in proceedings taken under Clauses (*a*) to (*e*) of S. 110, and is wholly insufficient to establish that the petitioner's case falls within Clause (*f*) of that section. In order to bring the petitioner's case within Clause (*f*) of the section it is necessary to prove by definite evidence that he is so desperate and dangerous as to render his being at large without security hazardous to the community. The witnesses for the prosecution do not allege or prove any specific acts as having been done by the petitioner from which the Court could draw a reasonable inference that the petitioner was so desperate and dangerous as to render his being at large without security hazardous to the community. They all content themselves with making the bold statement that the petitioner is a desperate and dangerous individual, and in support of it most of them refer to the two murders which were alleged to have been committed by the petitioner in 1910 and 1915 and to which reference has been made above.

In my opinion it has not been proved in this case that the petitioner's case falls within Clause (*f*) of S. 110 of the Code, and I, therefore, set aside the order of the Magistrate and direct that the security-bond, if any, executed by the petitioner be cancelled.

R.M./R.K.

Order set aside.

(1) (1901) 5 C. W. N. 249.
(2) (1907) 11 C. W. N. 789.
(3) (1902) 29 Cal. 779.
(4) (1911) 34 Mad. 255=8 I. C. 493.
(5) (1903) 25 All. 273.

A. I. R. 1917 Lahore 261

SHADI LAL AND BROADWAY, JJ.

Firm Sheo Parshad Radha Kishen—Defendants—Appellants.

v.

Indore-Malwa United Mills Ltd. of Bombay—Plaintiffs—Respondents.

First Appeal No. 1488 of 1916, decided on 19th March, 1917, from the Order of Sr. Sub-Judge, Delhi, dated 4th April, 1916.