

Mayengbam Yaima Singh Vs Manipur Administration and Another

Court: Gauhati High Court (Imphal Bench)

Date of Decision: June 6, 1963

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€” Section 107, 114

Citation: AIR 1964 Guw 62 : (1964) CriLJ 684

Hon'ble Judges: T.N.R. Tirumalpad, J.C.

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

T.N.R. Tirumalpad, J.C.

1. The second respondent herein filed a petition before the S. D. M. I. E. and The stating that the land under patta No. 66/730 belonged to him,

that he had been in cultivating possession of it for 15 to 16 years, that in 1962 he raised paddy thereon, that on 19-11-1952, the petitioner with

his son forcibly entered in the field and began to reap the growing paddy, that when the second respondent protested, the petitioner threatened his

life and that the said conduct of the petitioner will cause a serious breach of the peace which may lead to bloodshed. The Magistrate sent it for a

Police report on the same date and the Police reported on 26-11-1962, supporting the second respondent and stating that the land in question

belonged to him and that proceedings under Section 107 Cr.P.C. should be drawn up against the petitioner.

On this Police report, the Magistrate drew up pro-setting u/s 107 Cr.P.C. against the petitioner on 27-11-1962 and issued summons to him to

show cause why he should not be directed to execute a bond for Rs. 500/- with a surety for a like amount for keeping the peace for a period of

one year. In the order, the Magistrate said that the petitioner had attempted to reap the paddy grown by the second respondent in the land under

patta No. 66/730, that it was done without any authority and that when protest was raised, the petitioner threatened to kill the second respondent

and hence action should be taken against him u/s 107 Cr.P.C. The case was posted to 24-12-1962. The records in the case show that the

summons was served on the petitioner on 4-12-1962. But I find that on 3-12-1962, the Magisterial issued a warrant of arrest against the petitioner

and that the petitioner was arrested and produced before him 5-12-1962. Under what circumstances the said warrant was issued is not known as

there is no order in the order-sheet directing the issue of warrant.

2. This issue of arrest warrant is clearly illegal. No doubt, Section 114 Cr.P.C. provides that whenever it appears to the Magistrate, upon the

report of a Police Officer or upon other information (the substance of which report or information shall be recorded) that there is reason to fear the

commission of a breach of the peace and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such

person, the Magistrate may at any time issue a warrant for his arrest. But there is nothing in the order-sheet to show that the proviso to Section

114 Cr.P.C. was satisfied in this case. I have already given instructions to the Magistrates in earlier orders regarding such arrest in proceedings

under Sec, 107 Cr.P.C. It appears to be the practice in this Territory not only for the Magistrates to order arrest illegally in the security

proceedings, but even for the Police to arrest persons in such proceedings without any warrant from the Magistrates. Such irregularities and

illegalities committed by the Police and the Magistrates should immediately stop. Serious notice will be taken by this Court if they are found to

occur again.

3. On 5-12-1962, when the petitioner was brought before the Magistrate under arrest he was directed to give bail for Rs. 500/- for his

appearance and in default to be committed to jail. There is no provision under the Security Proceedings in Chapter VIII Cr.P.C. either to order

bail for appearance in Court or to order him to jail custody in default of giving such bail. This is another illegality committed by this Magistrate.

Section 117 Cr.P.C. prescribes the procedure to be adopted when any person appears or is brought before a Magistrate in execution of a

summons or warrant. The person can at best be asked to execute a bond, with or without sureties for keeping the peace or maintaining good

behaviour until the conclusion of the enquiry. But what the Magistrate did in this case was to take bail from him for his appearance and not a bond

for keeping the peace for maintaining good behaviour until the conclusion of the enquiry. This is another irregularity.

4. I stated that the matter was posted to 24-12- 1962 from 27-11-1962. On 14-12-1962, the petitioner filed a petition before the Magistrate

stating that the proceedings u/s 107 started against him were illegal, that he did not know which land the second respondent was claiming as his in

patta No. 66/730, but that the petitioner was in possession of 15 and odd bighas and had raised crops thereon and he should not be prevented

from harvesting the crops raised by him. The Magistrate dealt with this petition on 24-12-1962 and heard arguments on 26-12-1962 and 27-12-

1962 and posted it to 29-12-1962 for orders. But no orders were pronounced on 29-12-1962, 4-1-1963, 18-1-1963 and 28-1-1963 to which

dates the case was successively posted.

5. On 4-2-1963 he finally passed the order which is now complained against. In the said order, he has stated that he has gone through the file and

found that the second respondent was the recorded pattadar and owner of patta ""No. 36/730"" now in dispute, that the argument of the petitioner

that he was occupying the land measuring 15 bighas and odd under patta No. 66/729, and that the case in connection with that was pending in the

Court of the Deputy Commissioner cannot be believed as his case was already disposed of by the E. A. C. (Rev.) on 2-2-1962 by declaring that

the area granted to him under patta No. 66/729 was only 5 bighas and odd and not 15 bighas and odd, that from the information received, it

appeared to him that the petitioner was disturbing the possession of the land under patta No. 66/730 without any authority, that such illegal action

of the petitioner was likely to cause breach of the peace and that therefore it was not necessary to alter the Section and so he confirmed the

proceedings drawn up against the petitioner u/s 107 Cr.P.C.

6. All that I can say about this order of the Magistrate is that the statement that he has gone through the records is not warranted by what he has

stated in the order. I have myself perused the records. The second respondent was not claiming the land under patta No. 36/730"" as stated by the

Magistrate in his order. Nor was the petitioner claiming 15 bighas and odd under patta No. 66/729. The order referred to by the E. A. C. (Rev.)

dated 2-2-1962 shows that the petitioner was claiming 15 bighas and odd under patta No. 66/708 while one Mainbam Nawang Singh was

claiming 6 bighas and odd out of it as under patta No. 66/729. Thus, It is clear that the Magistrate has not cared to understand the case of the

petitioner or even of the second respondent regarding the land in dispute. The second respondent was not 3 party before the E. A. C. in the

proceedings referred to above and the said order has no relevancy at all in the present dispute. Nor was there any enquiry by the Magistrate as to

whether the disputed land was part of land of the second respondent under patta No. 66/730 or whether It formed part of the land under patta

No. 66/708 claimed by the petitioner.

7. In any case, there was clearly a dispute about the land between the second respondent and the petitioner. The breach of the peace became

imminent as a result of such dispute about land. Thus, the case is one which came clearly u/s 145 Cr.P.C. It was most improper on the part of this

Magistrate to have decided in advance that the land in dispute formed part of patta No. 66/730 and In the 2nd Respondent's possession and to

have started proceedings u/s 107 Cr.P.C. against the petitioner. The normal rule is that when breach of the peace is threatened On account of

dispute regarding land, the Section which a Magistrate should apply is Section 145 Cr.P.C. and not Section 107 Cr.P.C. If the Magistrate is to

proceed u/s 107 Cr.P.C. he must have the clearest possible evidence before him that the land was beyond dispute in the possession of the second

respondent. The Magistrate should not blindly follow the Police report, particularly where the breach of the peace was threatened as a result of

dispute about land. The opinion of the Police Officer about possession should not be accepted by the Magistrate as gospel truth. He should

scrutinise the police report and he must judicially exercise his discretion to decide whether he should start the proceedings u/s 107 or Section 145

Cr.P.C. As pointed out in the decision Suraj Narain Rai and Others Vs. The State, Section 107 Cr.P.C. is mainly intended for persons who are

desperate: characters and habitually disturb the public peace or who in spite of the orders of Civil or Criminal Courts finding possession against

them persist in their unlawful conduct of disturbing the possession of others taking the law into their own hands.

8. Here, in this case, there was no order of any Civil or Criminal Court which showed that the land was declared to be in the possession of the

second respondent. The order of the Revenue Officer relied on by the Magistrate had nothing to do with the second respondent and did not

declare his possession in respect of the land in dispute. The Magistrate should never start proceedings u/s 107 Cr.P.C. merely on the production of

a patta. Nobody need dispute that the land under the patta produced belonged to the second respondent. But the question was whether the land in

dispute was in his possession and really formed part of the said patta. This has to be decided by the Magistrate by holding an enquiry and such an

enquiry has to be held not u/s 107, but u/s 145 Cr.P.C. Thus, no proceedings u/s 107 Cr.P.C. should have been started in this case.

9. At least when the petitioner appeared before the Magistrate and pointed out clearly that there was a dispute relating to the land, that he was in

possession of 15 bighas and odd of land and that he did not claim any land in patta No, 66/730 relied upon by the second respondent, the

Magistrate should have decided this dispute by converting the proceedings into one u/s 145 Cr.P.C. and he should not have persisted in continuing

the proceedings u/s 107 Cr.P.C. The Magistrate's attempt to decide immediately as to who was in possession of the land in dispute without giving

an opportunity to the petitioner to prove his case and in confirming his proceedings u/s 107 Cr.P.C. is most unwarranted and opposed to all

canons of justice. This amounts to pre-judging the case and holding without an enquiry that the second respondent was in possession of the

disputed land. This can never be permitted. The order of the Magistrate dated 4-2-1963 is therefore, set aside. The proceedings in this case

should never have been u/s 107 Cr.P.C. The said proceedings are quashed. If the Magistrate considers that in order to prevent a breach of the

peace, It is necessary to start proceedings under Section 145 Cr.P.C. in respect of the disputed land he may do so.

10. Ordered accordingly.