
Kadir Ali Dewan and Others Vs Wahab Ali and Others

None

Court: Gauhati High Court

Date of Decision: April 12, 1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 107, 108, 109, 110, 111

Citation: (1980) CriLJ 507

Hon'ble Judges: K.N. Saikia, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

K.N. Saikia, J.

By this Criminal Revision under Sections 397/401 read with Section 482 of the Cr. P. C. 23 petitioners challenge the

proceeding in M/s. No. 749/78, which arose as follows:

2. The 4 Opposite Parties for themselves and on behalf of 31 other families filed an application, supported by an affidavit, in the Criminal Court at

Mangaldoi against the present petitioners u/s 107 Cr. P. C. alleging that the first party got settlement of land measuring 272B. 4k. 14 Lechas in the

name of 35 families in 1972 as landless people and have since been cultivating the same, and the second party by forming an unlawful assembly

were preparing to oust and evict the first party threatening with dire consequences, and consequently there was every likelihood of breach of the

peace and so there was the need to prevent the second party men from entering the land to avoid mutual fight. It was accordingly prayed that the

matter be investigated into and u/s 107 Cr. P. C., after issue of non-bailable warrant of arrest, make the second party men execute a bond to

maintain peace and good behaviour.

3. On 7-10-78 the Executive Magistrate, Mangaldoi being satisfied that there was likelihood of breach of peace registered M/C. Case No.

749/78 u/s 107 Cr. P. C. and issued non-bailable warrant of arrest against all the petitioners. The said Order, rendered into English, read as

follows:-

7-10-78- Seen the petition of the First Party and also the affidavit. Heard the learned Advocate. I am satisfied that there is every likelihood of

breach of peace between the parties.

So, a case u/s 107 Cr. P. C. has been registered and issue Non-bailable warrant of arrest against all the second party men. Fix 25-10-78.

Sd/- J. C. Dutta,

Magistrate (Executive),

Mangaldoi.

4. On 17-10-78 the Petitioner No. 1 being arrested moved a bail petition to which the Opposite Parties filed an objection, and the learned

Magistrate (Ex) called for a report from the police fixing 20-10-78. The said order rendered into English, is as under :-

17-10-78- 2nd Party Kadir Ali Dewan has been produced before me under arrest.

Heard both the parties. 2nd Party has moved a petition for bail and 1st Party has filed an objection. Call for a report from the police to the effect

that whether there is likelihood of any breach of peace if the second party is released on bail. Police to submit report at an early date. D/- 20-10-

78.

Sd/- J. C. Dutta,

Magistrate (Ex.),

Mangaldoi.

5. On 19-10-78 another bail petition of petitioner No. 1 was moved and bail was allowed for Rs. 5.000/-. The Petitioner No. 1 was further

ordered to execute an ad-interim bond, with two sureties, to the effect that he would refrain from doing any possible illegal act which was likely to

cause breach of peace. The Order dated 19-10-78, rendered into English, reads:

19-10-78- Seen the Petition of the Second Party and also heard. The Second Party is allowed to go on bail of Rupees 5.000/- The Second Party

will execute an ad interim bond with two sureties to the effect that he will refrain from doing any possible illegal act and undertake to refrain from

doing any act which is likely to cause breach of peace till disposal of this Case.

Sd/- J. C. Dutta.

Magistrate (Ex).

Mangaldoi.

6. On the same date the bail bond and the ad-interim bond were accepted by the learned Magistrate. Hence, this application for quashing the

proceeding.

7. The learned Counsel appearing for the petitioners attacks the proceeding, including the orders, mainly on the ground that the provisions of

Sections 111, 113, 114 and 116 of the Cr. P. C., 1973, have not been complied with and this has resulted in grave miscarriage of justice; and he

prays that the proceeding be quashed. Nobody appears for the Opposite Parties. No Counter Affidavit has been filed.

8. Sections 107, 111, 112 and 114 of the Code may be quoted here.

107. Security for keeping the peace in other cases : - (1) When an Executive Magistrate receives information that any person is likely to commit a

breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the

public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to

show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one

year, as the Magistrate thinks fit.

(2) Proceedings under this Section may be taken before any Executive Magistrate when either the place where the breach of the peace or

disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace

or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction:

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111. Order to be made : - When a Magistrate acting u/s 107, Section 108, Section 109 or Section 110, deems it necessary to require any person

to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond

to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

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113. Summons or warrant in case of person not so present : - If such person is not present in Court, the Magistrate shall issue a summons requiring

him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court:

Provided that whenever it appears to such Magistrate, upon the report of a police officer or upon other information (the substance of which report

or information shall be recorded by the Magistrate), 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.

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114. Copy of order to accompany summons or warrant : - Every summons or warrant issued u/s 113 shall be accompanied by a copy of the order

made u/s 111, and such copy shall be delivered by the Officer serving or executing such summons or warrant to the person served with, or

arrested under, the same.

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9. Section 116 then provides-

Inquiry as to truth of information : - (1) When an order u/s 111 has been read or explained u/s 112 to a person present in Court, or when any

person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued u/s 113, the Magistrate

shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear

necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in

summons cases.

(3) Pending the completion of the inquiry under Sub-section (1) the Magistrate, if he considers that immediate measures are necessary for the

prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for

reasons to be recorded in writing, direct the person in respect of whom the order u/s 111 has been made to execute a bond, with or without

sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is

executed or, in default of execution, until the inquiry is concluded :

10. The question now is whether the impugned proceeding is in conformity with the above provisions, and, if not, whether it is liable to be

quashed?

11. Before initiating a proceeding u/s 107 it should be seen whether the apprehended breach of peace has arisen out of a land dispute. If it has so

arisen the guideline given in 1973 Cri LJ 151 should be followed. In the former, Islam J.. as his Lordship then was, observed -

Section 107, Cr. P. C. does not provide for decision of any dispute with regard to land in respect to which there is possibility of the breach of the

peace. Proceedings u/s 107, Cr. P. C. drawn against the parties concerning dispute with regard to land, are in my opinion, an abuse of the process

of the Court and the proper procedure is the proceeding u/s 145 of the Cr. P. C.

12. In the later case his Lordship again observed-

When there is likelihood of the breach of the peace with regard to a dispute over land, the proper procedure is to draw proceedings u/s 145 of the

Code and not u/s 107. The impugned proceedings, therefore, are bad in law and are quashed.

13. If the dispute creating apprehension of breach of the peace is not with respect to land then Section 107 may be resorted to. In initiating

proceeding u/s 107 the Magistrate should be satisfied that there is need for such a proceeding and he should record reasons for his satisfaction and

then issue the notice contemplated u/s 111 to the person sought to be bound by it. Section 107 provides when notice to show cause u/s 111 has to

be issued. A proceeding u/s 107 can be initiated against a person only upon making an order in compliance with the provisions of Section 111.

As was observed in 1978 Cri LJ 273 (Kant) an order in compliance with the provisions of Section 111 is the foundation for the proceeding u/s

107 and the other connected Sections. A show cause notice u/s 111 should incorporate all the conditions laid down in the Section and then alone it

can be construed as an order under that Section Bishnupada Jana Vs. The State of West Bengal, Even a separate copy of Order need not

necessarily accompany the notice or summons. Where a Magistrate while purporting to proceed u/s 107 issued a show cause notice to the

accused as to why they should not be directed u/s 107 to "execute a bond for maintenance of good behaviour instead for keeping the peace and

the notice also did not state the substance of information received, the amount of the land etc. the order was held to be invalid (1978 Cri LJ 273)

(Kant). The notice to show cause must contain definite particulars prescribed in Section 111 Tulsibala Rakhit and Another Vs. N.N. Khosal, This

notice gives an opportunity to the person proceeded against. Unless an opportunity is given to show cause the proceedings will be liable to be

quashed (AIR 1965 Tripura 20).

Section 116 contemplates inquiry as to truth of information and under Sub-section (3) after the commencement, and before the completion of the

inquiry under Sub-section (1) the Magistrate, if he considers that immediate measures are necessary, he may, for reasons to be recorded in writing

direct the person in respect of whom the order u/s 111 has been made to execute a bond, with or without sureties for keeping the peace or

maintaining good behaviour until the conclusion of the inquiry and may detain him in custody. Thus, the execution of the bond is the penultimate

stage of the proceeding.

14. In Criminal Misc. Case No. 89 of 1974 (unreported) the order of the learned Magistrate did not fulfil the requirements of Section 111. The

order had not set forth the amount of the bond to be executed, the term for which it was to be in force, and the number, character and class of

sureties, in that order, as required u/s 111. The Magistrate did not commence any inquiry before he passed the order directing the petitioner and

others to execute the interim bond. No witness was examined till then. He passed the order on the basis of some secret information which was

passed on to him. It was held by this Hon"ble Court that the order directing the petitioner and others to execute interim bond was illegal and

without jurisdiction on the face of it. It was observed that an interim bond could be taken only after the commencement and before the completion

of the inquiry u/s 111(1)

Referring to cases of Madhu Limaye v. Ved Murti AIR 1971 SC 2481 and Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others,

it was held that the Magistrate could direct execution of the interim bond only after he commenced the inquiry into the truth or otherwise of the

information by examining some witnesses. He could not do so before the actual inquiry commenced. Their Lordships further held:

There is no scope for any local inspection before the commencement of the inquiry and that too behind the back of the parties. Section 310 is the

only provision in the Code providing for local inspection. Under this section local inspection can be made only for the purpose of appreciating the

evidence and that can be done only after due notice to the parties. In the present case there was no scope for such local inspection as no witness

was examined till then.

15. Their Lordships in that case found that the learned Additional Deputy Commissioner misdirected himself and committed illegalities at every

stage of the proceeding. The impugned proceedings as well as the impugned orders were accordingly quashed. This being a Division Bench

decision is binding on us.

16. In the instant case apart from that it was not a proper case for a proceeding u/s 107, Cr. P. C. I find that the learned Magistrate misdirected

himself in every stage of the proceeding failing to comply with the requirements of Sections 111, 113, 114 and 116 of the Cr. P. C. in issuing non-

bailable warrant of arrest without complying with Section 111, and ordering the execution of ad interim bond without complying with the provisions

of Section 116.

17. It should be remembered that Section 107 may act as an engine of injustice and oppression, if it is not properly used It is not an alternative to

Section 145. Where there is misuse of the Section, the proceeding may be quashed (1943) 47 CWN 731. The Magistrate has to follow the

prescribed procedure. In 1978 Cri LJ 1066 (Pat) it is aptly observed- "the words "in the manner hereinafter provided" in Section 107 are essential

words and the Magistrate cannot discover a manner of his own. The manner provided is clearly laid down u/s 111 of the Code.

18. In the instant case none of the above provisions having been complied with and the proceeding having resulted in injustice, it is liable to be

quashed, and it is accordingly quashed. Petition is allowed. The Rule is made absolute.

19. Petition allowed.