
(1983) 02 KL CK 0024

High Court Of Kerala

Case No: Criminal M.C. No. 56 of 1983

Jose and Others

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: Feb. 10, 1983

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 106, 107, 107, 108, 108

Citation: (1983) KLJ 132

Hon'ble Judges: U.L. Bhat, J

Bench: Single Bench

Advocate: Siby Mathew, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

U.L. Bhat, J.

This is. a petition filed u/s 482 of the Code of Criminal Procedure seeking to quash the preliminary order dated 30-12-1982 passed u/s 111 of the Code of Criminal Procedure, 1973 (for short the "new Code") by the Sub Divisional Magistrate, Ottapalam in M.C. No. 39 of 1982 against five persons including the present petitioners who figure (therein as counter petitioners 3 to 5. It is argued by the learned counsel for the petitioners that as against petitioners 1 and 2 (there are no material allegations made at all and the allegations against the third petitioner is wholly insufficient to initiate action u/s 107 of the Code. It is further argued that an order u/s 111 of the Code should be preceded by an order evidencing application of mind u/s 107 of the Code and since such an order had not been passed in this case, the order u/s 111 of the Code is incompetent. The impugned order shows that all the live persons involved in the case are residents of the same locality in a village. The substance of the information quoted in the impugned order refers to six complaints presented in the Mannarghat Police Station. The first complaint was by the 4th counter petitioner in the Magistrate Court against the second counter

petitioner and others. Petition was enquired into and the offenders were warned. The second petition was by the 4th counter petitioner against the second counter petitioner and his wife for assault. Enquiry showed that it was a family quarrel. Third petition was by the 5th counter petitioner against counter petitioners 1 and 2 complaining of wrongful restraint and assault with hands and sticks. The case was registered, chargesheeted and the case is now pending trial before the local Magistrate's Court. Fourth complaint was by strangers against the 5th counter petitioner complaining of attack with chopper. This also ended in charge-sheet and the case is now pending. Fifth complaint was by a stranger against counter petitioners 1 and 2 and the case is under investigation. The last complaint was by 3rd counter petitioner alleging assault and threat with dagger by the 5th counter petitioner. It may, thus, be seen that counter petitioners 3 and 4 were never involved as counter petitioners or as accused in any complaint or case. The 5th counter petitioner was involved in one criminal case which is pending trial. On the basis of the observations of a Full Bench of this Court in *Moidu v. State of Kerala* (1982 KL.T. 578) it is argued by the learned counsel for the petitioner that the mere fact that the 5th counter petitioner figured as accused in a single criminal case by itself would not justify initiation of proceedings u/s 107 of the Code and that the decision with regard counter petitioners 3 and 4 is much worse in that they never figured as aggressors in any incident. The question which arose before the Full Bench in the case referred to above was whether involvement in a criminal case was relevant consideration at all in a proceeding u/s 107 of the Code. The Full Bench made it clear that such involvement in a case would not be relevant and that what would be relevant is the consideration of the allegations regarding the participation in the criminal incident. While the Full Bench observed that participation in such an incident would provide the basis for action u/s 107 of the Code, it was held that by itself without anything more may not be sufficient. The question is whether these observations would apply to the facts of the present case.

2. It is true that counter petitioners 3 and 4 (petitioners 1 and 2 herein) did not figure as accused in any criminal case and the impugned order does not contain any allegations to show that they had participated in any incident leading to a criminal case. But there is such an allegation regarding one case with reference to the 5th counter petitioner (3rd petitioner herein). If these averments stand by themselves and without anything more, perhaps, the petitioners' contention would merit serious consideration. But, in the "impugned order there is some more information. It is stated therein that all the parties belong to the same family and that the members of the family have been in conflict with each other. The impugned order mentions that untoward happenings have been occurring due to the frequent conflicts and was affecting the peaceful life of the local people. It is also stated that counter petitioners 1 and 2 are in one faction and the other counter petitioners are in the opposite faction and that both factions are supported by local political parties and other residents of the locality. Therefore, the Sub Divisional Magistrate came to

the conclusion that there is every probability of clashes leading to disturbance of peace. These averments, it appears, are prima-facie sufficient to support initiation of the proceedings. At any rate, this is a matter which could be urged by the petitioners before the learned Magistrate in the course of the enquiry u/s 116 of the Code. This cannot be treated as sufficient ground for invoking Section 482 of the Code.

3. The learned counsel for the petitioners would also contend that before passing the impugned order u/s 111 of the Code, the learned Magistrate should have passed a separate order u/s 107 of the Code and since such an order has not been passed, the impugned order cannot stand. The learned counsel also referred to decisions reported in [Zahir Ahmad Vs. Ganga Prasad, A.S.D.M., Ballia and Another](#), [Amalendu Ghosh and Others Vs. Prem Pathak](#), [Bishnupada Jana v. The State of West Bengal](#) (1977 CrL. L. J. 1344) and [Ibrahim Vs. State](#), .

4. It is necessary to understand the broad scheme of the provisions in Chapter VIII of the Code- Chapter VIII deals with security for keeping the peace and for good behavior. Sections 106 to 110 deal with various circumstances under which the Magistrate or court, as the case may be, can exercise powers under this Chapter. These sections are followed by Section 111 which deals with the order to be passed when the Magistrate acts under any of the Sections 107 to 110 of the Code. If the persons involved are present in court Section 112 requires the order to be read over to them. If the person is not present it is competent to the Magistrate to issue a summons requiring him to appear or where he is in custody to issue a warrant directing the authorities concerned; to bring him before the court by virtue of Section 113. Section 114 requires that 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. Section 116 requires the Magistrate to conduct an inquiry regarding the truth of the information on the basis of which he acted. The final order is to be passed in terms of Section 117 of the Code.

5. We are in this case concerned with Sections 107, 111 and 114 of the Code. Sub-section (1) of Section 107 states that when an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb public tranquility 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. Section 111 states that when Magistrate acting u/s 107 or other provisions mentioned therein, deem; 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. As we have already seen, Section 114 requires the copy of the order u/s 111 to accompany the summons or warrant issued u/s 113 of the Code.

6. Can it be said on a consideration of these provisions that the legislature contemplated passing of an order u/s 107 of the Code as preliminary to the passing of another order u/s 111 of the Code. There is no doubt that the Magistrate derives the power to act by virtue of Section 107 of the Code, on his satisfaction regarding the terms and conditions mentioned in the section. He forms an opinion that there are sufficient grounds to proceed. Section 107 does not mention that an order has to be passed. All that it requires is satisfaction to be arrived at by the Magistrate followed by the requiring (he person to show cause. Further, Section 107 of "the Code makes it dear that the person concerned is to be required to show cause in "the manner hereinafter provided". The act of requiring to show cause must be performed in the manner "hereinafter provided". That provision is contained in Section 111 which states that when the Magistrate acting u/s 107 deems it necessary to require a person to show cause, he shall pass an order in writing. That order must contain matters enumerated in Section 111 of the Act such as the substance of the information received, the amount of the bond to be executed, etc. Section 114 of the Code also refers only to an order u/s 111 of the Code and makes no reference to an order under Sec. 107. It is, therefore, clear that the Magistrate is to form an opinion or arrive at satisfaction by virtue of the power conferred on him u/s 107 of the Code and once he arrives at such a satisfaction and decides to take action, he has to proceed in the manner provided "hereinafter" that is as provided in Section 111 of the Code. It is Section 111 of the Code alone which contemplates an order to be passed by the Magistrate and it is that order which should accompany summons or warrant u/s 114 of the Code or must be read out to the person u/s 112 if he is present. The broad pattern of these provisions clearly indicates that the Magistrate is to pass only one order before the enquiry and that is the order as required u/s 111 of the Code. Ofcourse, at the termination of the enquiry he has to pass another order, viz., one u/s 117 of the Code. No order is to be passed u/s. 107, as preliminary to the order u/s. 111 of the Code. I am, therefore, unable to accept the contention of the learned counsel for the petitioner that there should have been an order u/s 107 of the Code preceding the impugned order or that in the absence of such an order the impugned order cannot stand.

7. I shall briefly refer to the various decisions referred to by the learned counsel for the petitioners. The earliest is the decision of the Division Bench of the Allahabad High Court in Zahir Ahamed's case, It was argued before the court that apart from the order u/s 112 of the Code of Criminal Procedure, 1898 for short the old "Code") (corresponding to Section 111 of the new Code), a notice must be issued containing the substance of the information, etc. The court held that apart from reading out a copy of the order to the person present or sending a copy of the order along with the summons or warrant to the person not present, no separate notice is to be

issued. The court did not consider the question whether separate order u/s 107 of the old Code as distinct from an order u/s 112 of the old Code was necessary in Amalendu Ghosh's case a single Bench of the Calcutta High Court held that the order initiating proceedings u/s 107 of the Code is not an interlocutory order within the meaning of Section 397(2) of the Code. This decision also does not state that besides an order as contemplated u/s 111 of the present Code, there must be a preceding order purported to be passed u/s 107 of the Code. This decision came up for consideration before a Division Bench of the Calcutta High Court in Bishnupada Jana's case. In that case the Magistrate; ordered drawing up of proceedings u/s 107 of the Code. The; proceeding was drawn up in separate sheets sent by the Magistrate in the form, of notice to show cause. It was held that show cause notice forming part of the record could be considered as an order made in compliance with Section 111 of the Code as it fulfilled all the requirements of Section 111 of the Code. This decision also does not support the contention put forward in this case Considerable reliance is placed on certain observations of this Court in [Ibrahim Vs. State](#). The question which came up for consideration in that case was whether when a person is summoned to appear before a Magistrate, he could be asked to execute an interim bond even before the commencement of the; enquiry. The court hold that could not be done. The court did not have occasion to consider whether two separate orders u/s 107 and 112 of "the old Code were necessary. While considering the broad scheme of Chapter 8 of the Code Bhaskaran, J. stated as follows:

A person is required to show cause why he should not be ordered to execute a bond with or without sureties for keeping peace or good behavior for such a period as mentioned in the order either u/s 107 or 110 Cr. P.C. as the case may be. A further order u/s 112 has to be passed setting forth the substance of the information received, the amount of the bond to be executed, the term for which it has to be in force and number, character and class of sureties, if any, required.

As already indicated, the question whether two separate orders were necessary or one order would be sufficient did not arise for consideration at all in this case; nor was this particular question purported to be decided therein. It is difficult to accept that in the above observation, this Court intended to lay down a broad proposition of law as canvassed by the learned counsel for the petitioners. I find no legal defect in the impugned order.

In the result, the CrI. M. C. is dismissed.