

Amanat Ali Vs Emperor

Court: Patna High Court

Date of Decision: Nov. 23, 1928

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€” Section 107, 115, 145, 197

Citation: AIR 1929 Patna 67 : 115 Ind. Cas. 545

Hon'ble Judges: Fazl Ali, J

Bench: Single Bench

Judgement

Fazl Ali, J.

This is an application for quashing a proceeding u/s 107, Criminal Procedure Code, instituted against the petitioner by the Sub-

Divisional Officer of Purnea. It appears that there are about 14 bighas of lands in Baijnathpur Diara which are claimed by one Sukhraj Roy through

his alleged tenant Tafariulla Biswas on one side and one Raghunandan Missir on the other. On 20th January, 1928, the Police reported that there

was an apprehension of a breach of the peace in respect of these lands and ultimately on 1st June, 1928, the learned Sub-Divisional Officer drew

up a proceeding u/s 197, against the petitioner. It may be mentioned that the proceeding has been drawn against the petitioner on the ground that

he is a Tahsildar of Sukhraj Roy, but when the Police was enquiring into the matter, one Reazut Ali and not the petitioner was the Tahsildar of

Sukhraj Roy. On 20th February, 1928, Reazut Ali appeared and said that he had resigned from the Tahsildar ship and had got no concern with the

estate of Sukhraj Roy. Upon this the learned Sub-Divisional Officer asked the Police to mention the names of persons from whom the breach of

the peace was apprehended. The Police thereupon reported that the petitioner was a new Tahsildar of the estate and that he might be proceeded

against. Thereupon the Magistrate drew up the present proceeding against the petitioner which runs as follows:

Whereas I am satisfied from Police report dated 7th April, 1928, submitted by the officer-in-charge of Manihari P.S. that Sk. Amanat Ali

Tahsildar of Patni P.S. Manihari is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act which may

occasion a breach of the peace or disturb the public tranquillity within the local limits of the jurisdiction of this Court by attempting to interfere with

the land of the first party (Raghunandan, Missir), I, therefore, hereby order Sk. Amanat Ali Tahsildar to appear before me in person on the

forenoon of 20th June, 1928, and show cause why he should not be ordered to execute a bond of Rs. 250 with two sureties of the equal sum each

for keeping the peace for a period of one year only.

2. The petitioner moved the Sessions Judge against the order of the Sub-Divisional Officer directing the institution of the proceeding u/s 107,

Criminal Procedure Code, against him and the learned Sessions Judge disposed of the application on 1st September, 1926. The order of the

learned Sessions Judge shows that although he rejected the application, he has gone very fully into the matter and has made certain observations

which suggest that in his view the Magistrate should review his decision to continue the proceeding against the petitioner u/s 107, Criminal

Procedure Code. In my opinion there is ample material in the judgment of the learned Sessions Judge to show that a proceeding u/s 107, Criminal

Procedure Code, is not quite appropriate in the circumstances of the present case. There is, no doubt, that there is a keen dispute about certain

lands in Baijnathpur Diara and that the principal parties to the dispute are Sukhraj Roy and Raghunandan Missir. In a case like this the proper

procedure would have been to institute a proceeding u/s 115, Criminal Procedure Code, and to decide the dispute as to possession once for all so

far as the Criminal Court is concerned. The learned Magistrate, however, has not adopted that course. Another course which was open to the

Magistrate was to proceed u/s 107, Criminal Procedure Code, against both the parties to the dispute and to bind down the party who was proved

to be not in possession of the land. The learned Magistrate, however, has chosen to proceed in this case only against the Tahsildar of one of the

parties, namely, Sukhraj Roy. Besides in the proceeding u/s 107, that has been drawn up in this case, he has only reproduced the language of

Section 107, Criminal Procedure Code, without specifying in what way and with reference to what matter the petitioner was likely to commit a

breach of the peace and in what way he was likely to do a wrongful act which might occasion a breach of the peace. It is not difficult to see that a

vague proceeding like this cannot be supported.

3. I would, therefore, having regard to all the circumstances of the case, set aside the order of the learned Sub-Divisional Officer dated 1st June,

1928, directing a proceeding u/s 107, to be drawn up against the petitioner and quash the proceeding.

4. I may, however, observe that if the Magistrate is satisfied at any time that there is an apprehension of a breach of the peace arising out of the

dispute with regard to the land in question the proper course for him would be to institute a proceeding u/s 145, Criminal Procedure Code, or to

proceed u/s 107, Criminal Procedure Code, against both the parties.