

(1967) 09 CAL CK 0019**Calcutta High Court****Case No:** Criminal Revision Case No. 645 of 1967

Din Md. Gazi and Others

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision: Sept. 12, 1967**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 107, 114
- Criminal Procedure Code, 1898 (CrPC) - Section 107, 114, 144

Citation: 71 CWN 1039**Hon'ble Judges:** A.K. Das, J**Bench:** Single Bench**Advocate:** Chittatosh Mookherjee, for the Appellant; S.K. Palit for State and S.A. Habibullah, for the Respondent**Judgement**

A.K. Das, J.

This application is directed against an order dated July 20, 1967 directing the petitioners to show cause u/s 107 of the Code of Criminal Procedure why they shall not be asked to execute bonds for Rs. 10,000/- each with one surety of like amount for keeping the peace for one year and also against an order u/s 114 of the Code of Criminal Procedure issuing warrants of arrest against them. The order drawing up the proceeding in case No. M260 of 1967 against which this Rule is directed, is not signed by the magistrate, to be precise, it is a typed order signed as "Sd/- A.K. Majumdar, Sub-divisional Magistrate". Obviously, the learned Magistrate did not apply his mind to the allegations made or the facts disclosed or even the nature of the order he was going to pass and it betrays callous negligence on the part of a public officer purported to be a sub-divisional magistrate and a first class magistrate. That he did not apply his mind in drawing up the proceeding is also clear from the order which states that he had "received reports from various quarters including responsible Government officials" from which he was inclined to believe that the last named 12 O.Ps. were men of desperate nature and they were

either evicting illegally or helping or instigating others to evict illegally many rightful bargadars in parts of Hasnabad, Sandeshkali - I and Minakhan Development Blocks. This order also records that it was reported that they, being variously armed, were threatening others with death, grievous injury, arson etc. I have tried in vain with the help of the learned Advocates for the petitioners and the opposite party and also the learned Advocate appearing for the State to find out these materials from the record but none is available. The order again is comprehensive, viz. (1) order u/s 144, Criminal Procedure Code, restraining the opposite parties and all other persons except the petitioner and his men from going to the land, (2) proceeding u/s 107, Criminal Procedure Code to give bond for Rs. 10,000/- with one surety and (3) issue of warrant of arrest u/s 114, Criminal Procedure Code.

2. The proceeding actually drawn up however, is u/s 144, Criminal Procedure Code and no notice u/s 107 is given and no warrant of arrest is issued pursuant to this order in the case. Obviously, a routine comprehensive order is bodily lifted from some other record and typed by his Bench Clerk and it is this Bench Clerk who signed the magistrate's name in the manner earlier stated. No magistrate perhaps ever surpassed him in abusing the process of the court and encroached upon the personal liberty of a citizen with such supreme indifference. There is no proper and legal proceeding and the subsequent orders also without any legal foundation and the proceeding is therefore quashed.

The Rule is made absolute.

Send back the record early.