

(1992) 07 BOM CK 0074

Bombay High Court

Case No: Criminal Writ Petition No. 873 of 1987

Sunil Kisan Chavan

APPELLANT

Vs

The Special Executive Magistrate,
Crimes, Pune and another

RESPONDENT

Date of Decision: July 15, 1992

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 110, 116, 117, 482

Citation: (1992) 3 BomCR 392 : (1992) CriLJ 3445

Hon'ble Judges: S.M. Daud, J

Bench: Single Bench

Advocate: Miss A.M. Desai, S.B. Patil, P.P, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

1. This is a petition under Art. 227 of the Constitution and S. 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.)

2. The petitioner was hauled up before the Special Executive Magistrate, Crimes, Pune under S. 110(e) and (g) of the Cr.P.C. The Special Executive Magistrate - hereinafter to be referred to as "respondent No. 1" - went through the papers and decided to proceed against the petitioner. A notice was served upon him and he was called upon to show cause why proceedings under S. 110 read with S. 117 of the Cr.P.C. should not be initiated against him. The petitioner appeared before the respondent No. 1 and was called upon to execute and interim bond under S. 116(3) of the Cr.P.C. The order initiating proceedings and calling upon the petitioner to furnish interim bond was questioned in a revision application to the Sessions Court. The revision was assigned to an Additional Sessions Judge. The operative part of the verdict delivered by the said learned Judge on 6-5-1987 reads as follows :-

"The revision is dismissed with a modification that the interim bond under S. 116(3) should be for an amount of Rs. 2,000/- supported by two sureties of Rs. 1,000/- each. The sureties should be settled businessmen or settled respectable persons from the locality where the applicant resides. The applicant should also report to Vishrambaug Police Station on every Monday between 4 p.m. to 6 p.m. With this modification the remaining conditions by the trial Court are set aside.

The applicant is in jail. He should be produced before the trial authority on or before 12th May, 1987 for further progress in the matter."

What took place hereafter is narrated in the petition and without there being any exception taken to the correctness thereof. The same is reproduced hereinbelow :-

"The necessary papers were sent to the Lower Court to comply with this order. Verification had taken place of the sureties proposed by the petitioner. The learned Magistrate however, in spite of the production of sureties and the willingness of the sureties, continued to delay the acceptance of the sureties, for reasons best known to himself. The petitioner submits that this attitude and behaviour of the Magistrate prevented the petitioner from availing of the order passed by learned Extra Judge and he continued to be in custody."

The petitioner thereafter moved the Sessions Court with what described as an appeal. This appeal came up before a successor of the learned Judge who had passed the order dated 6-5-1987. The successor Judge held the appeal to be untenable in view of there being no order passed by the first respondent. He mentioned the grievance of the petitioner about the absence of an order and yet said that the appeal was not maintainable. The learned Advocate representing the petitioner suggested to the learned Additional Sessions Judge that the Lower Court could be directed to do the needful immediately. The learned Additional Sessions Judge washed his hands of the whole affair, saying that there was no provision in the Cr.P.C. empowering him to entertain such an application. The application was said to be misconceived and petitioner left to approach the High Court if he wanted any directions of the nature solicited by him. That is how the petitioner has come to this Court.

3. I must express my amazement at the brazen defiance of the revisional Court's order by the first respondent. He is shown to have circumvented the order passed by the revisional Court by the simple device of doing nothing to verify the security offered by the petitioner and giving a consequential direction for the petitioner's release from jail. The learned Additional Sessions Judge who passed the order dated 15-7-1987 is however more blameworthy. He was from the ranks of the subordinate judicial cadre and should have known that the power of contempt existed to set right Executive Officers interested in frustrating orders passed against their oppression of citizens. Instead of taking the first respondent to task the Additional Sessions Judge opined that an appeal did not lie, that the appeal could not be looked

upon as an application and that if the first respondent was unwilling to obey a judicial order, the remedy of the petitioner was to approach the High Court and that he could do nothing in the matter. That a Judicial Officer should countenance such impertinence on the part of the Executive is really regrettable. I hope that the State which is a party to this writ petition will at least have the restitute to direct the issue of a show cause notice to whoever was the first respondent at the relevant time and call upon the said officer wherever he be at present to explain his blatant disregard of a binding order passed by the Additional Sessions Judge on 6-5-1987. The petitioner has obtained relief in terms of prayer clauses (c) and (d). Nothing further need be said except to remark that the officer who was then occupying the position of respondent No. 1 is made personally liable for costs of the petition which are assessed at Rs. 1,000/- in this proceeding. The said costs shall be recovered from the salary of the said officer and remitted to this Court for being made over to the petitioner. I am aware that respondent No. 1 eo nomine as a party has been directed to be deleted pursuant to an order passed by Kantharia, J. on 24-3-1992. That however cannot absolve the officer occupying the office at the relevant time of the consequences ensuing as a result of his wilful disregard of the orders of a superior Court. The State Government shall trace out the said officer wherever he be at present and effect the recovery as early as possible - remitting the amount to this Court for being made over to the petitioner. A copy of this order be sent to the State of Maharashtra in the General Administration Department for doing the needful. Rule discharged as rendered superfluous by the passage of time.

4. Order accordingly.