

(1980) 11 OHC CK 0012

In the Orissa High Court

Case No : Criminal Revision No. 293 of 1979

Arakhita Swain and Others

APPELLANT

Vs

Banshidhar Sahu and Others

RESPONDENT

Date of Decision : 11-11-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116(3), 116(6)

Citation : (1981) 51 CLT 33

Hon'ble Judges : J.K. Mohanty, J

Bench : Single Bench

Advocate : A.K. Padhi, for the Appellant; N.K. Acharya and B.K. Biswal, for the Respondent

Final Decision : Dismissed

Judgement

J.K. Mohanty, J.—A proceeding u/s 107, Code of Criminal Procedure was initiated on the report of the police against the Petitioners, who were the members of the second party in that proceeding, in the Court of the Executive Magistrate, Nayagarh on the allegation that they committed various overt acts on the first parties (opposite parties herein). The Magistrate by order dated 13-7-1979 directed the Petitioners u/s 116(3), Code of Criminal Procedure to execute interim bonds for Rs. 500/- with one surety each for keeping peace and maintaining good behavior until the conclusion of the inquiry. The Petitioners have filed this revision for quashing the order dated 13-7-1979 passed by the Executive Magistrate, Nayagarh.

2. When this revision was placed for admission Mrs. Padhi, learned Counsel appearing for the Petitioners submitted that as the inquiry has not been completed within six months from the date of its commencement as required u/s 116(6), Code of Criminal Procedure the entire proceeding against the Petitioners shall stand terminated as the proceeding is not maintainable after the expiry of six months. She was permitted to take this ground and amend the petition accordingly.

3. The following dates are relevant for the determination of this case:

On 17-10-1978 the Magistrate passed order after receipt of the report from the police directing the Petitioners to appear and show cause as to why they shall not execute bonds u/s 107, Code of Criminal Procedure. On 9-11-1978 all the delinquents appeared and their advocate filed a petition for time to show cause. On 2-3-1979 the Petitioners filed show cause challenging the allegations made against them. On 20-3-1979 after the examination of P.W.1 the Magistrate passed an order requiring the Petitioners to show cause why they shall not execute bonds u/s 116(3), Code of Criminal Procedure. Thereafter some adjournments were taken by the Petitioners.

Finally after hearing the argument of the parties, on 13-7-1979 the impugned order was passed. This, revision petition was filed on 18-7-1979. It was admitted on 20-7-1979 and notice was issued to the opposite parties. This case was finally heard by this Court on 4-11-1980.

4. Mrs. Padhi, learned Counsel appearing for the Petitioners, relying on the provisions of Section 116(6), Code of Criminal Procedure submitted that as the inquiry has not been completed within the period of six months from the date of its commencement, the proceeding shall stand terminated on the expiry of the said period as the Magistrate has not passed any order recording special reasons to continue the proceeding. She relied on a decision of the Calcutta High Court reported in *Paresh Chandra Hati and Others Vs. Ahitosh Panda and Another*, and submitted that the inquiry in a proceeding u/s 107 commences as soon as the opposite party in proceeding u/s 107 challenges the allegations made against him or refuses to admit the same or submits a show cause petition against the allegation or the Magistrate otherwise has reason to proceed or proceeds or decides to ascertain the truth of the allegation made against the opposite party by taking evidence or otherwise. According to her the date of commencement of the inquiry is 2-3-1979 when the second parties filed their show cause challenging the allegations made against them. The principle of the above decision has also been followed by this Court in a Full Bench decision reported in *Sona Khan and Others Vs. State of Orissa*, , wherein it has been held

The Division Bench held that the enquiry would commence as soon as the delinquent challenges the allegations made against him or refuses to admit the same or submits a show cause petition against the allegations or the Magistrate otherwise has reason to proceed or proceeds or decides to ascertain the truth of" the allegations by taking evidence or otherwise. This in our opinion is near about the correct position.

Mrs. Padbi also relied on a decision of Punjab & Haryana High Court reported in *Nasiru and Others Vs. The State of Haryana*, , and submitted that the inquiry should be completed within six months and time could only be extended before expiry of six months period itself and not after its expiry. There is no doubt that after the commencement of the inquiry six months have already expired now.

5. Mr. Acharya, learned Counsel appearing for the opposite parties submitted that the revision was filed against the order dated 13-7-1979 and the records of the case were called for. The Additional District Magistrate, Pure by his Better dated 16-8-1979 called for the records of this proceeding for transmitting the same to this Court. So the Magistrate by order dated 19-8-1979 directed that the case records be sent to this Court. The records were received by this Court on. 22-8-1979. Mr. Acharya submitted that as the case records were sent to this Court on 19-8-1979, before expiry of the period of six months from the date of commencement of the inquiry, the Magistrate could not complete the inquiry within six months, which would have ended on 2-9-1979. The Magistrate could not complete the inquiry under the circumstances beyond his control as the records were not available to him. So it cannot be said that the Magistrate did not complete the inquiry within six months. It was also beyond his power to pass orders recording special reasons for continuance of the proceeding as the records were not with him. He further submitted that at first the Petitioners filed an application before this Court on 18-7-1979 (which was within six months from the date of commencement of the inquiry) to quash the direction given by the Magistrate to execute interim bond u/s 116(3), Code of Criminal Procedure after expiry of six months when the records were before this Court, (low they are making It grievance that the proceeding has not been completed within the period of six months from the date of its commencement. He submitted that the Petitioners cannot take advantage of their own doing and now say that the proceeding should be terminated as six months have already elapsed.

6. The above argument of Mr. Acharya appears to have great force. No doubt at first the application was filed to quash the direction of the Magistrate requiring the second parties to execute interim bond u/s 116(3), Code of Criminal Procedure. But subsequently after expiry of the period of six months they took the plea that the entire proceeding should be terminated. After sending the records to this Court on 19-8-1979 it was beyond the powers of the Magistrate to complete the proceeding and he bad no scope to pass any order recording special reasons to continue the proceeding. The period of six months expired while the records were in this Court. So in the circumstances I am of the view that this proceeding cannot be terminated in terms of the provisions of Section 116(6), Code of Criminal Procedure as when the records were transmitted to this Court teller was still about 15 days left for, completion of six months and during that period the Magistrate might have completed the inquiry or passed any order recording special reasons to continue the proceeding.

7. Mrs. Padhi, however, submitted that the proceeding was initiated on 17-9-1978. More than two Affairs have elapsed in the mean time. Nothing has been alleged that in the mean time the Petitioners have committed, any breach of peace or disturbed public tranquillity or have done any wrongful act that has occasioned the breach of peace or disturbed the public tranquillity. So there is no use to continue the proceeding.

8. There may be some force in the above argument of Mrs. Padhi. However, I do not want to express any opinion in the matter and direct that the records be sent back to the Magistrate immediately who will consider the above argument and decide whether at this stage the proceeding should be continued or not. As 15 days were still left for completion of six months, the Magistrate should complete the proceeding within the period of 15 days from the date of receipt of the records. It is, however, open to the Magistrate to continue the proceeding after the expiry of 15 days by giving special reasons as required u/s 116(6), Code of Criminal Procedure or to drop the proceeding if he thinks proper. The parties are directed to appear before the Magistrate on 17-11-1980. Counsel for both parties have undertaken to intimate this fact to their respective clients.

9. With the above direction the revision is dismissed.

The records be sent back to the Magistrate immediately.