
(1973) 05 AHC CK 0004
In the Allahabad High Court
Case No : Criminal Rev. No. 2175 of 1972

Baboo Lal	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 02-05-1973

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 112

Citation : (1973) 43 AWR 394

Hon'ble Judges : H.L. Capoor, J

Bench : Single Bench

Judgement

H.L. Capoor, J.—Babu Lal has preferred this application in revision against the order, dated 31-10-1972 of Sri R.K. Mishra, I Temp. Sessions Judge, Azamgarh, dismissing the application in revision made before him and maintaining the order, dated 28-9-1972 passed by the learned Magistrate issuing notice Under Sections 107 and 112 Code of Criminal Procedure against Babu Lal and others.

2. It appears that originally a notice u/s 112 Code of Criminal Procedure was issued against Babu Lal Applicant and 63 others on the basis of a report made by the station Officer, Ghosi, dated 5-9-1972 that due to the election of the Pradhan of the village, feelings had become strained between the parties and hence action u/s 107 Code of Criminal Procedure be taken against them. Being satisfied with the said report, the learned Magistrate issued notices against the opposite parties u/s 112 Code of Criminal Procedure.

3. The grievance of the learned Counsel appearing on behalf of the Applicant before me is that in view of the provisions of Section 112 Code of Criminal Procedure, it was incumbent upon the learned Magistrate to have made an order in writing setting forth the substance of information received. The words sitting forth the substance of information were interpreted by a Division Bench of this Court in the case of Zahir Ahmad v. Ganga Prasad A.S.D.M. 1962 AWR 343, in which it has been held that the provisions of Section 112 Code of Criminal Procedure are mandatory and not merely directory in their nature and its

disregard cannot be treated to be a mere irregularity. This conclusion is borne out from the language of Section 112 itself which provides that if the Magistrate deems it necessary to require any person to show cause under such section, he is to make an order in writing as provided by that section.

4. A perusal of the order, dated 28-9-1972 of the learned Magistrate shows that he was satisfied with the report of the Station Officer, dated 5-9-1972 that there was an apprehension of breach of the peace from the opposite parties, but he did not give out the substance of the information received with the result that merely by this notice which was either read out to the Applicant or was sent he could not have known as to what were the allegations with regard to there being an apprehension of breach of the peace from his side unless the report of the station officer was perused and was also made a part of the notice. This report not being made a part of the notice, the Applicant could not have known about the allegation against him unless the report of the station officer itself was perused. That could never have been the intention of the legislature. In these circumstances, the order passed by the learned Magistrate could not be said to be a legal and proper order within the meaning of Section 112 Code of Criminal Procedure.

5. For the reasons given above, the application in revision is allowed the order of the learned Magistrate, dated 28-9-1972 is set aside. The learned Magistrate would, however, be at liberty to proceed against the Applicant u/s 107 read with Section 112 Code of Criminal Procedure according to law after giving out the substance of information received if the notice u/s 112 Code of Criminal Procedure. The stay order is vacated.