

(1969) 11 PAT CK 0005

In the Patna High Court

Case No : Criminal Miscellaneous No. 968 of 1969

Basu Choudhary and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 24-11-1969

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 110, 112

Citation : AIR 1971 Patna 106 : (1971) CriLJ 619

Hon'ble Judges : B.D. Singh, J

Bench : Single Bench

Advocate : Balbhadra Pd. Sinha and Shiva Nandan Rai, for the Appellant; K.P. Verma, Government Advocate and Lala K.B. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Singh, J.—This application u/s 561A of the Code of Criminal Procedure (hereinafter referred to as "the Code") has been preferred by the petitioners for quashing a proceeding u/s 110 of the Code, and is directed against the order dated 11-6-68 of the Subdivisional Magistrate refusing to drop the proceeding and transferring the case to the court of another Magistrate for disposal.

2. In order to appreciate the points for consideration in this case it will be necessary to state the facts in brief. On 7-12-62 Sukhdeo Choudhary and 7 others filed a petition before the Subdivisional Magistrate for starting a proceeding u/s 110 of the Code against these five petitioners and four others including one Jaikrishna Roy. The Subdivisional Magistrate sent the petition to the Police for enquiry and report, who submitted a report dated 22-12-62 alleging inter alia that the petitioners were living in pomp and show and they were accused in some serious cases but were later on acquitted. The Subdivisional Magistrate by his order dated 8-1-63 drew up a proceeding u/s 110 of the Code against the petitioners and others. It will be useful to quote the relevant portion of the said order:

"Record put up today. Perused police report and also the petition filed on behalf of Basu Chaudhari.

From the police report I am satisfied that a show cause notice for proceeding u/s 110 Cr. P. C. should be issued against the persons mentioned in that petition.

Draw up a proceeding u/s 110 Cr. P. C. and order the persons noted in that report to show cause why they shall not be called upon to execute a bond of Rs. 5000/- each with two sureties of Rs. 2500/- each to be of good behaviour for a period of one year only.

x x x x x" Cause to be shown on 31/1/63. The petitioners after having learnt about the "order surrendered and got bail. Jai-krishna Roy filed a petition before the Superintendent of Police for withdrawing his case. After due enquiry the Superintendent of Police found that there was no past criminal history against him. Even then the Subdivisional Magistrate did not drop the proceeding against him, and did not accept his show cause. He then moved this Court and on the basis of the observations made by this Court the Subdivisional Magistrate dropped the proceeding against Jaikrishna Roy on 11-7-66, but ordered that the proceeding would continue against the petitioners and some others. The petitioners then filed a revision petition before the Sessions Judge, Bhagalpur under Sections 435 and 438 of the Code against the orders of the Subdivisional Magistrate dated 8-1-63 and 11-7-66, bearing Criminal Revision No. 88 of 1966 (B), which was heard by the 4th Additional Sessions Judge, who was pleased to remand the matter to the Subdivisional Magistrate by his order dated 7-9-66 for full hearing on show cause filed by the petitioners. The Subdivisional Magistrate by the impugned order dated 11-6-68, as mentioned earlier, refused to drop the proceeding. The petitioners then moved the 2nd Additional Sessions Judge, Bhagalpur for reference to this Court for quashing the proceeding, who heard the matter and rejected the prayer by his order dated 4-7-69. Hence, this revision.

3. Learned counsel appearing on behalf of the petitioners assailed the order dated 11-6-68 of the Subdivisional Magistrate and made the following submissions for consideration:

- (i) The proceeding has become stale and on that ground alone it is fit to be quashed.
- (ii) The order dated 8-1-63 is bad because it is a composite order.
- (iii) The order dated 8-1-63 is contrary to the provisions contained u/s 112 of the Code.

4. I take up for consideration point No. (i) first. Learned counsel submitted that by order dated 8-1-63 the Subdivisional Magistrate had drawn up the proceeding and since then there has been no adverse report whatsoever against the petitioners (vide paragraph 10 of the petition). He further drew my attention to its paragraph 11 wherein it is stated that the Peace Committee, Bhagalpur submitted a report to the Subdivisional Magistrate recommending for dropping

the proceeding on the ground that the activities of the petitioners were quite good and there was no adverse report against them. All the Mukhias, M.L.As. and other respectable persons of the locality had also submitted similar reports in favour of the petitioners. Even Sukh-deo Choudhary who had filed the petition dated 7-12-62 against the petitioners for taking action u/s 110 of the Code, later on filed another petition, the relevant portion of which has been quoted in paragraph 13 of the petition and reads as follows:

"Chau Barsh bit gaye lekin Bipak-shiyon ne elake me koi bhi apriya karya nahi keya hai ath es case ko age chalne ki koi awashkta nahi rah geye. Atah nive-dan hai ki bipakshiyon per se 110 Bhaka Dhara ke mukadme ko kharij ker deya jaye;".

Therefore, learned counsel urged that as there is no adverse report against the petitioners since the date of initiation of the proceeding, it should be dropped. In order to substantiate his contention he relied on a decision in Babu Ram v. Rex AIR 1949 All 21 where his Lordship at p. 22 in para 8 observed :

"So far as the present case, however, is concerned one fact is quite clear and in my opinion, is decisive of the case. The initial orders made on 18th August 1947, required the parties concerned to furnish securities for a period of three months commencing from 18th August, 1947. That period has long expired, and even if the learned Magistrate were now to hear the case upon the merits u/s 117, Criminal P.C. he would not be in a position to pass a final order in confirmation of his previous order and he would have to drop the proceedings. In the circumstances, the only proper order that can now be passed by me is to quash the original orders of the learned Magistrate dated 18th August 1947. . ."

5. On the other hand, the learned Government Advocate appearing on behalf of the State, contended that the decision in AIR 1949 All 21 (supra) has not been followed by this Court and referred to the decision in Jangi Gope and Others Vs. The State, , where his Lordship in para 3 of the judgment differed from the view taken by his Lordship in the former case, and observed that if that were the correct position in law, then in all cases, where because of long pendency of any appeal or revision the period initially fixed by the Magistrate for keeping the peace had expired, the proceeding taken u/s 107, Cr. P. C. will automatically fail. In most cases it will be difficult to dispose of an appeal from the order u/s 118 Cr.P.C. and revision, if any, from the appellate order, during the period fixed by the Magistrate for keeping the peace.

In my view the submission of learned Government Advocate has got to be accepted, as I find that a similar view was taken by B. P. Sinha, J. of this Court in a much later decision in Balkishun Sao and Others Vs. Munno Khan, . His Lordship also differed from the view taken in AIR 1949 All 21 (supra). His Lordship in para 6 at p. 481 (of BLJR) = (Para 6 at pp. 108-9 of AIR) observed that if such be the intention of law, then in every case, by coming in revision and delaying the matter, the person proceeded against would evade the execution of

the bond.

Thus, the contention of learned counsel for the petitioners under this point fails.

6. Now I consider point no. (ii). Learned counsel for the petitioners urged that the order dated 8-1-63 is also bad because the Magistrate has passed the order u/s 117(3) of the Code along with one u/s 112 of the Code. In order to find support to his contention he relied on a Bench decision of this Court in Jagdish Prasad Verma and Others Vs. The State, where their Lordships observed that it was manifestly clear that Sections 112 and 117 provide two different procedures for two different ends and, therefore, a Magistrate has no jurisdiction to pass an order u/s 117(3) along with one u/s 112 of the Code. An emergency order u/s 117(3) can only be made when the Magistrate has started to enquire into the truth of the information u/s 117(1), and, in the course of that enquiry, he considers that immediate measures are necessary.

The learned Government Advocate, on the other hand, urged that the order dated 8-1-63 is not a composite order at all, as it is an order directing the petitioners only to show cause. No order u/s 117(3) of the Code has been passed by the said order. He referred to the entire order sheet of the Sub-divisional Magistrate, which indicates that so far steps have been taken only under Sections 110, 112 and 113 of the Code. In that view of the matter the contention of the learned Government Advocate is correct. Hence, the submissions made by learned Counsel for the petitioners under this point also fails.

7. Now I turn to the last point No. (iii). Learned counsel for the petitioners has drawn my attention to the provisions contained u/s 112 of the Code which reads:

"When a Magistrate acting u/s 107, Section 108, Section 109 or Section 110 deems it necessary to require any person to show cause under such, section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required."

He urged that it was incumbent upon the Magistrate while passing the order u/s 112, to set forth the substance of the information which he had received as required in the section which he has not done in his order dated 8-1-63, which has been quoted earlier. In order to lend support to his contention he relied on a Bench decision of the Calcutta High Court in Birdhaj Roy Vs. The State, where their Lordships while dealing with the case u/s 107 of the Code observed that an order of the Magistrate not indicating nature of information received to induce him to take action u/s 107 of the Code resulted in miscarriage of justice- In that case the order of the Subdivisional Magistrate was in the following form:

"Accused Birdhaj Roy brought under arrest u/s 151, Cr. P. C. in a Mada-rihat P. S. case u/s 107, Cr. P. C. by Alipurduar Police. Prayer for taking action u/s 117(3), Cr. P. C. is also made. Bail petition moved. He is allowed bail for Rs. 2000/- with two sureties of like amount. He is to show cause why he should not sign a bond

for Rs. 2000/- u/s 107, Cr. P. C. with two sureties for the maintenance of peace for a period of one year. As there is apprehension of breach of peace in the locality as it is apparent from the reports of the police and the tea-garden manager, I further direct the said accused u/s 117(3), Cr. P. C. to sign a bond of Rs. 2000/-with two sureties for the maintenance of peace until the conclusion of the enquiry For 29-6-52."

Their Lordships observed that the said order does not indicate the nature of the information received to induce him to take action u/s 107 of the Code. No doubt, there is some indication that the learned Magistrate thought it necessary to act u/s 107 of the Code, but that act would follow only if the Magistrate after applying his mind to the facts of the case had taken action according to the provision u/s 107 of the Code. Therefore, they held that he did not act in accordance with law and this omission had resulted in miscarriage of justice. In this connection further reliance was placed on the decision of this Court in 1969 BLJR 479 : (AIR 1970 SC 107) (supra). In that case the Magistrate had passed an order on the following terms :

"Perused the police report of Malsa-lami P. S. and duly forwarded by D. I. Police, Patna City, for action u/s 107, Cr.P. C.

Whereas, I am satisfied from the police report of Malsalami P. S. that there is a serious apprehension of breach of peace at the hands of members of O. P. due to old enmity for piece of land which is graveyard which may disturb the public peace and tranquillity in a place which lies within the local limits of my jurisdiction.

Draw up proceeding u/s 107 Cr. P. C. against the members of O. P,

It was, therefore, contended by learned counsel for the petitioners in that case that the said order was vague and the notices served upon the petitioners did not disclose as to what was the substance of the information which they were to answer and learned counsel referred to the provisions contained u/s 112 of the Code which provides that a Magistrate while acting u/s 107 of the Code shall make an order in writing setting forth the substance of the information received. His Lordship accepted the contention of learned counsel for the petitioners as well founded. In that case another question was whether the petition filed by the petitioners of that case was premature, being just after the order for filing show cause. His Lordship relying on the decision of this Court in *Amanat Ali Vs. Emperor*, , held that the revision application was not premature.

8. On the other hand, learned Government Advocate submitted that the failure to comply with the provisions of Section 112 does not divest the Magistrate of his jurisdiction to deal with the proceeding and on that account the proceeding cannot be termed as void ab initio; utmost it is a mere irregularity and it cannot vitiate the proceeding. In order to substantiate his contention he relied on a Bench decision of this Court in *Raghunath Singh and Others Vs. The State*, where their Lordships at p. 4 in para 7 observed:

". . . The words "substance of the Information" mean such or so much of the information as would enable the party to know under what clause of Section 110 he is charged or to what particular class of offenders he is said to belong. A man may be suspected in a hundred cases, and there may be five hundred witnesses, as observed by Suhrawardy, J., to prove such suspicion and general reputation. Does the law require that all this information must be conveyed to the accused? I must, nevertheless, say that a mere repetition of the words of the various clauses of Section 110 ought to be avoided; but it may not be possible to do so in every notice, and I would not lay it down as the law that, where a notice contains a mere repetition of the words of the various clauses of Section 110, it is, on that account alone, illegal. . ."

Their Lordships further observed in para 8 that the order made u/s 112 of the Code when it was served on the petitioners, and if it did not contain any particulars which the petitioners wanted to know, they were entitled to complain and to ask to be furnished with such particulars; but they did not take any exception to the contents of the notice served u/s 112 of the Code. If no exception is taken to the notice and the persons against whom it was made showed cause and eventually bound over, they can scarcely have any legitimate ground for complaint on that score. They observed in para 9 that even if there was no sufficient compliance of Section 112 of the Code, that would not be sufficient to vitiate the entire proceeding. The petitioners further must show that they had been prejudiced in their defence by reason of such non-compliance. It seems that the judgment of a Bench decision of this Court in *Raghunath Singh and Others Vs. The State*, was not brought to the notice of his Lordship by the learned counsel for the opposite party in 1969 BLJR 479 : (AIR 1970 SC 107) (supra). In that view of the matter with great respect I do not feel inclined to agree with the above observation of B. P. Singh, J., on this point. Further, In preference to the Bench decision of the Calcutta High Court in *Birdhaj Roy Vs. The State*, I am bound by the observation of a Bench decision of our High Court in *Raghunath Singh and Others Vs. The State*, .

Therefore, in my view, the absence of the details given in the order dated 8-1-63 will not necessarily vitiate the proceeding. The extent of the information which must be set forth depends in each case upon the circumstances of that case. In *re Muthuswami Chettiar* AIR 1940 Mad 23 a Full Bench of that Court while dealing with the question regarding the substance of information as provided u/s 112 of the Code, observed at page 26 that there is no doubt that an action u/s 112 of the Code constitutes a judicial act and, therefore, the Magistrate should not act arbitrarily. There must be information of a nature which convinces him that there is a likelihood of the breach of the peace. It is impossible to formulate a hard and fast rule with regard to the nature of the information on which a Magistrate should act. What is reasonably sufficient to satisfy a Magistrate must depend on the particular situation. They further observed that the person who gave the information might not be in a position to give details, but the source of the information might be sufficient to convince the Magistrate that a breach of

the peace was likely and if he was convinced the law required him to take action.

9. In the instant case, from, the impugned order dated 11-6-68 it appears that the petitioners have showed cause. Besides, there is nothing on the record to suggest that they were in any way prejudiced due to the absence of details in the notice or in the order dated 8-1-63. Even in the petition before this Court, no specific ground has been made out that they were so prejudiced because of the absence of the details. If they had any such grievance they ought to have approached the Magistrate for obtaining further information as observed by their Lordships in Raghunath Singh and Others Vs. The State, . In the order it has been rightly observed that the decisions regarding the dropping of the proceedings can only be taken after the evidence has been gone into,

10. After careful consideration of the circumstances in the case and in the light of the discussions made above, in my judgment, the petitioners have failed to make out a case at this stage to quash the proceeding.

11. In the result the order is upheld. The application is dismissed and the rule is discharged. I further direct that the proceeding must be expeditiously disposed of.