

(1995) 04 PAT CK 0009
In the Patna High Court
Case No : Criminal Appeal No. 3 of 1993

Basudeo Sharma and others		APPELLANT
	Vs	
The State of Bihar and others		RESPONDENT

Date of Decision : 24-04-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 10, 107, 116, 116(5), 116(6)

Citation : (1995) 04 PAT CK 0009

Hon'ble Judges : A.N. Chaturvedi, J

Bench : Single Bench

Advocate : Pankaj Kumar Sinha and Minay Kumar, for the Appellant; Arun Prasad Ambastha and Binod Kumar for the Opp. Party and Mr. K.N. Lal for the State, for the Respondent

Final Decision : Allowed

Judgement

A.N. Chaturvedi, J.—This petition in revision is directed against the order dated 16.8.1993 passed by Sri Bharat Prasad Sharma, Sessions Judge, Purnea in Cr. Appeal No. 3 of 1993 whereby the learned Sessions Judge dismissed the appeal and upheld the order dated 22.9.1902 passed by the Executive Magistrate, Purnea in Case No. 738M of 1992. From the record it appears that a proceeding u/s 107 of the Code of Criminal Procedure was initiated against the petitioners who were the second party in the said proceeding, on 27.7.1991 on the basis of a police report. On notice, the petitioners appeared before the Magistrate on 12.8.1991 and filed a petition on 23.8.1991 for starting a proceeding u/s 107 of the Code of Criminal Procedure against the members of the first party also and the learned Magistrate ordered accordingly on the ground that the apprehension of breach of peace was due to land dispute. In pursuance of the notice the first party also appeared. As it appears from the judgment of the learned Executive Magistrate, Anandi Mistri of the first party appeared on 4.9.1991 and four members of the first party appeared on 9.9.1991. One remaining member of the first party appeared on 23.9.1991. Show cause was filed on behalf of both the

parties. By his order dated 13.3.1992 the learned Executive Magistrate on the petition of the first party extended the period of the enquiry for six months. Witnesses were examined on behalf of the parties and by his order dated 22.9.1992 the learned Magistrate dropped the proceeding against the first party and directed the members of the second party to furnish security bond of Rs. 1000/- with two sureties of the like amount each for maintaining peace for a period of one year. The petitioners preferred Cr. Appeal No. 3 of 1993 before the learned Sessions Judge against the said order of the learned Magistrate and the learned Sessions Judge by his impugned order dated 16.8.1993 dismissed the appeal and hence this revision against the judgment of the Sessions Judge.

2. As mentioned above, the learned Executive Magistrate by his order dated 13.3.1992 extended the period of the enquiry by six months. Referring to the said order dated 13.3.1992 it was pointed out by the learned counsel for the petitioners that the same was passed without hearing the second party petitioners. It was further pointed out that there is nothing in the order dated 13.3.1992 to show that the case had been called out for hearing in the matter of extension of the period and the second party petitioners had not appeared. It was also pointed out that the said order dated 13.3.1992 was passed by simply hearing the first party. It was also pointed out that for extending the period of the enquiry the Magistrate is required to record special reasons but no special reason has been recorded for extending the period of the enquiry, rather the period was extended simply on the submission of the learned counsel for the first party that there was still apprehension of breach of peace and that being so the order dated 13.3.1992 extending the period of enquiry was not justified. In this connection it was also pointed out that when the first party filed a petition for extending the period of enquiry the learned Magistrate did not think it necessary to call for further report from the police if there was still apprehension of breach of peace or not and that being so there was no material to justify the extension of the period of enquiry. To me, there appears much substance in the contention of the learned counsel for the petitioners that special reasons for extending the period of enquiry not having been recorded and the order dated 13.3.1992 having been passed without hearing the second party petitioners, the same cannot be said to be in accordance with the provisions of Section 116 (6) of the Code of Criminal Procedure and that being so, the enquiry terminated on the expiry of the period of six months from the date of commencement thereof and hence the final order dated 22.9.1992 passed by the Magistrate was without jurisdiction.

3. It has already been pointed out above that the proceeding u/s 107 of the Code of Criminal Procedure was initially initiated against the second party petitioners but on the petition of the second party petitioners, proceeding was also initiated against the first party. So it became a joint proceeding u/s 107 of the Code of Criminal Procedure against both the parties. It was contended by the learned counsel for the petitioners that it is well settled principle of law that opposite parties in a dispute cannot be proceeded against in a joint enquiry u/s 107 of the

Code of Criminal Procedure. In this connection the learned counsel for the petitioner referred to a decision of Madras High Court, reported in 1984 Criminal Law Journal, page 760. In this connection it was contended on behalf of the opposite parties that joint enquiry u/s 107 of the Code of Criminal Procedure is not necessarily void in the absence of actual prejudice and it is not the case of the petitioners that they had raised objection to joint trial before the Magistrate or that any prejudice had been caused to them due to joint enquiry. It may be pointed out that in Section 116 (5) the words "persons associated together" cannot take within their fold members of two hostile parties or members of rival parties. There can never be a joint enquiry.

4. It was further contended on behalf of the petitioners that in view of sub-section (2) of section 116 of the Code of Criminal Procedure summons procedure is applicable to an enquiry u/s 10 of the Code of Criminal Procedure and that being so, the provisions of Section 313 of Code of Criminal Procedure have also to be followed and the persons facing an enquiry u/s 107 of the Code of Criminal Procedure must be examined by the Magistrate before they are called upon to adduce evidence but in the instant case the Magistrate did not examine the second party petitioners u/s 313 of the Code of Criminal Procedure. In support of this contention, the learned counsel for the petitioners referred to a decision of this court reported in 1979 PLJR page 1 (Ranglal Mahto and others versus The State of Bihar). A perusal of the order sheet of the learned Magistrate shows that he did not examine the petitioners u/s 313 of the Code of Criminal Procedure before calling upon them to adduce evidence. In this connection it was contended on behalf of the opposite parties that it is not the case of the petitioners that any prejudice has been caused to them due to their non-examination u/s 313 of the Code of Criminal Procedure and that being so the non-examination u/s 313 of the Code of Criminal Procedure will not vitiate the proceeding. In the instant case, it does not appear necessary to go into the question if non-examination of the petitioners u/s 313 of the Code of Criminal Procedure has vitiated the proceeding or not as it has already been pointed out earlier that the extension of time by the learned Magistrate was not justified as the same was passed without hearing the petitioners and without assigning special reasons and hence was without jurisdiction.

5. As mentioned earlier, the proceeding was initiated on 27.7.1991 and since then more than three and half years have already elapsed. It is the case of neither party that there was any breach of peace at the hands of either of the parties after the initiation of the proceeding on 27.7.1991. That being so the necessity of executing bond for maintaining peace does not appear to be there. In view of what has been pointed out above, this criminal revision petition is allowed and the impugned order dated 16.8.1993 passed by the learned Sessions Judge, Purnea is hereby set aside. However, this will not prevent the learned Executive Magistrate from initiating another proceeding if the situation so justifies.