

(1989) 03 PAT CK 0039

In the Patna High Court

Case No : Criminal Miscellaneous No. 4852 of 1981

Bhajan Rai and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 18-03-1989

Acts Referred:

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

Citation : (1989) 37 BLJR 292

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Jha, J.—This application has been filed for quashing an order dated 24-4-1979 passed by the learned Executive Magistrate ma proceeding u/s 107 of the Code of Criminal Procedure (for short the Code) as welt as the order dated 31-1-1981 passed by the learned Sessions Judge Muzaffarpur by which he has dismissed the appeal of the petitioner and affirmed the aforesaid order of the Executive Magistrate with certain modification.

2. The learned Executive Magistrate by the impugned order dated 24-4-1979 directed the petitioners to execute a bond of Rs 1,000 with two sureties of the like amount each to keep peace for a period of one year failing which they will have to undergo simple imprisonment for six months.

3. On appeal, the learned Sessions Judge affirmed the aforesaid order with modification to the effect that the punishment to undergo simple imprisonment for six months in default has no legal basis and he set-aside that part of the impugned order.

4. As indicated above, both these orders have been challenged by the petitioners on the ground that the inquiry was not completed within six months as envisaged under Sub-clause (6) of Section 116 or the Code and as such the proceeding automatically terminated on 3-1-1979. Therefore, both the impugned orders are

without jurisdiction and fit to be quashed

5. The facts which led to the filing of this application, in short, are that a proceeding u/s 107 of the Code was drawn upon 21-6-1978 and notice was issued to the petitioners to show-cause. In pursuance of the said notice the petitioners appeared on 3-7-1978 and filed their show-cause on 19-7-1978.

6. It was contended on behalf of the petitioners that since the inquiry could not be completed within six months from the date of its commencement, it stood automatically terminated because no special reason was recorded in writing by the Magistrate to extend the life of the said proceeding.

7. In order to appreciate the submission made on behalf of the petitioners it is necessary to examine Sub-clause (6) of Section 116 of the Code which reads as follows:

The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this chapter shall, on the expiry of the said period, stand terminated unless for special reasons to be recorded in writing, the Magistrate otherwise

Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier shall stand terminated on the expiry of a period of six months of such detention.

I am not concerned with the Proviso so far as this case is concerned.

8. learned Counsel appearing on behalf of the petitioners contended the statute has fixed the period of six months to complete the inquiry. If the proceeding is not concluded within the specified period, then it stands terminated. This Sub-clause (6) of Section 116 of the Code is an insertion of a new provision. Reason for such insertion is clear Some times it comes to me notice that proceeding u/s 107 of the Code drag on for as long as one year or even more and in many of these cases, the person concerned particularly, if he happens to be poor has to attend the Court on each and every date causing much harassment to him. Therefore, the intention of the legislature was to fix a particular period so that the person concerned may not be harassed unnecessarily. This sub-clause also provides that in case the inquiry is not completed within a period of six months, the learned Magistrate may extend this period where there are special reasons to do so. The learned Counsel vehemently argued that since the life of the proceeding was not extended during the period of six months it stood terminated automatically.

9. It was pointed out on behalf of the State that the life of the proceeding was extended later on by the learned Magistrate on 27-1-1979 but in reply the learned Counsel submitted that the question of extension does not arise at all because the life of the proceeding had already expired on 3-1-1979 therefore even if it was extended after the proceeding had lost its life, without assigning

any special reason, as required under the Act itself, it cannot be revived.

10. In the instant case, as I have already stated above that the proceeding was started on 21-6-1978 and the petitioners appeared on 3-7-1978. Therefore the question is as to when does inquiry commences.

11. It has already been decided by a Full Bench of this Court in the case of Sitaram Singh and Others, etc. Vs. State of Bihar and Another, etc., where a question was raised as to when does inquiry commences in the proceeding u/s 107 because the Code itself was silent in regard to the point of time at which inquiry into a proceeding u/s 107 of the Code must be deemed to have commenced. Their lordships after considering number of decisions on the point came to the majority view that the first appearance of the person to be proceeded against is starting point of inquiry. According to the majority view, when after a party has appeared in the Court, the Magistrate adjourns the proceeding, he does so for the purpose of proceeding with the inquiry. Thus the forming of conclusion to proceed to inquiry into the allegations takes place on the very day the party appears in the Court and the period of six months will be counted from the day of first appearance of the person concerned. In the instant case, the party appeared on 3-7-1978. Therefore, the proceeding will automatically terminate on 3-1-1979 unless the Magistrate has extended the life of the proceeding after recording special reasons for doing so.

12. From the examination of the records of the case, I find that the Magistrate has extended the life of the proceedings on 27-1-1979 i.e., after the statutory period of six months has lapsed. The learned Counsel appearing on behalf of the petitioners has rightly contended that a proceeding which has lost its life cannot be revived by a subsequent order with retrospective effect and inquiry u/s 107 of the Code after the expiry of a period of six months from the date of its commencement stands automatically terminated and once the inquiry comes to an end, the Magistrate is not empowered to revive the same. He, however, before termination of the inquiry, can order otherwise for special reasons to be recorded in writing Time could be extended before the expiry of six months period itself and not after the expiry of the same when the proceeding has already lost its life.

13. I have already indicated above that a plain reading of Sub-clause (6) of Section 116 of the Code goes to show that the inquiry after the expiry of period of six months from the date of commencement stands automatically terminated and once it has lost its life, the Magistrate is not empowered to revive the same.

14. In the present case, admittedly, the period of inquiry has been extended on 27-1-1979 after the expiry of six months which he could not do. Consequently both the impugned orders are liable to be quashed.

15. Besides this, the proceeding was initiated as far back as 21-6-1978. There is nothing on the record to show that any overt act has since then been committed by the petitioners. The learned State Counsel also could not be able to show

from the record or from any document that any overt act has been committed by the petitioners since 1978. That being the position, I find that the proceeding has become stale. If in between the period on which the proceedings were drawn up namely 21-6-1978 and today i.e. 8-3-1989, in the instant case, no overt act has been committed by the petitioners, it only shows that the further continuation of the proceeding against the petitioners would not be justified. However, it is made clear that if any complaint of overt act is reported to the Magistrate, he will be at liberty to initiate a fresh proceeding and dispose of the matter in accordance with law.

16. For the reasons recorded above, this application is allowed and the impugned orders are quashed.