

(1984) 02 PAT CK 0027

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 104 of 1983

Bijoy Kumar Azad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-02-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 111, 113

Citation : (1984) PLJR 818

Hon'ble Judges : Ram Naresh Thakur, J; Anand Prasad Sinha, J

Bench : Division Bench

Advocate : Y.C. Verma and Uma Shankar, for the Appellant; J.P. Shukla and G.P. Jaiswal, for the Respondent

Judgement

Anand Prasad Sinha and Ram Naresh Thakur, JJ.—This application is for quashing of the entire proceeding initiated u/s 107 of the Code of Criminal Procedure (hereinafter to be referred to as the Code), being case No. 324M of 1983. It appears that on the basis of a police report the above mentioned proceeding had been drawn on 2.4.1983 by the Sub-divisional Magistrate, Monghyr and a notice had been sent to the petitioner asking him to show cause by the 5th of April, 1983 as to why he should not be asked to execute a bond of Rs. 1000/- with two sureties of the like amount each for keeping peace. The alleged notice is Annexure-1 to the petition and the order initiating the said proceeding is Annexure-2 to this application.

2. In pursuance of the notice, the petitioner had appeared in the proceeding being case No. 324M of 1983 on 5.4.1983 and it appears that the Sub-divisional Magistrate on the basis of another case being No. 298-M of 1983 had taken the petitioner in custody as an application u/s 113 of the Code was pending against him and the petitioner was directed to execute a bond of Rs. 20,000/- with two sureties of the like amount each for keeping peace. The aforesaid order is also indicated in Annexure-2.

3. Therefore, from perusal of Annexure-1, which is the notice having been issued

in case No. 324-M of 1983, it will appear that the substance of accusation has not been furnished to the petitioner and that being so he is unable to file effective show cause in the proceeding. Thus there has been non-compliance of section 111 of the Code and that being so it has affected the legal validity of the proceeding in the manner stated above.

4. The another illegal procedure adopted by the learned Sub-divisional Magistrate is that he was in seisin of case No. 324-M of 1983 in which notice had been issued, as slated above, and the petitioner had appeared, but in this very case he took the petitioner in custody in connection with another case and had also passed simultaneously an order for execution of bond amounting to Rs. 20,000/- with two sureties of the like amount each. As a matter of fact, if any such order was necessary that ought to have been passed in the case record of that case being case No. 298-M of 1983.

5. The impugned order asking for execution of Bond of Rs. 20,000/- with two sureties of the like amount each can be said to be under the provisions of section 116(3) of the Code. In absence of any enquiry or allegations warranting an action for execution of ad interim bond as contemplated u/s 116(3) of the Code, it cannot be said to be in accordance with law and that being so, the impugned order asking for execution of bond for Rs. 20,000/- with two sureties of the like amount each is not legal.

6. Another fact worth consideration will be that a proceeding u/s 107 of the Code being a judicial proceeding, a court while passing any order under Chapter VIII of the Code connected with the proceeding u/s 107 of the Code, should pass the order after application of mind and any such order should not suffer from arbitrariness or without proper application of mind.

7. The very fact that the petitioner has been asked to execute a bond of Rs. 20,000/- will indicate that there has been non-application of mind. Asking a bond for such a huge amount can safely be termed some thing extra ordinary and abnormal because usually even after the final orders the amount of bond does not exceed Rs. 1,000/- or so and if that be the intention derived by imposing such a huge amount, it will amount to a pretext created to take the petitioner in custody although in a proceeding u/s 107 of the Code the status of a person proceeded against is not that of an accused and the proceeding itself is preventive and not punitive in nature. Under the circumstances, imposition of a condition for execution of bond fixing such a high amount will indicate that such an order is arbitrary and thus it will lead that it suffers from illegality. In the result, this application is allowed for the reasons stated above and the proceeding is hereby quashed. The impugned order dated the 5th April, 1983 is accordingly set aside.