
(2014) 11 TP CK 0001
In the Tripura High Court
Case No : Criminal Pet. No. 58 of 2014

Bimal Rudrapal and Others	Vs	APPELLANT
State of Tripura and Others		RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 108, 109, 110, 111

Citation : (2015) 1 GLT 742

Hon'ble Judges : Deepak Gupta, C.J.

Bench : Single Bench

Advocate : P.K. Biswas, Sr. Advocate, H.K. Bhowmik and P. Majumder, for the Appellant; A. Ghosh, Addl. P.P., for the Respondent

Final Decision : Disposed off

Judgement

Deepak Gupta, C.J.?Sri Sankar Narayan Das, Executive Magistrate is present in person. He states that by mistake he had passed the impugned order. By means of this petition, the petitioners have drawn attention of this Court to order dated 1st July, 2014 and the order dated 31st July, 2014. At the outset it may be mentioned that this petition arises out of proceedings under Section 107 of the Code of Criminal Procedure. The said section reads as follows:

"107. Security for keeping the peace in other cases.

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, [with or without sureties] for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate

when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction."

2. A bare reading of the provision of Section 107 of the Cr.P.C. shows that when an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb public tranquillity or do any other action which may amount to breach of peace and is further satisfied that there is sufficient ground for proceeding against such person he may require such person to show cause why he should not be ordered to execute a bond for keeping peace for a period not exceeding one year. The Executive Magistrate is also entitled to direct such person to furnish sureties. The Magistrate is entitled to take action only when the place where the breach or disturbance is apprehended falls within his local jurisdiction or the person who is likely to commit such breach resides within his jurisdiction.

3. The procedure for taking action is prescribed under Section 111 of the Code of Criminal Procedure which reads as follows:

"111. Order to be made.--When a Magistrate acting under section 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."

A bare perusal of the section shows that before initiating proceeding under Section 107 Cr.P.C. the Magistrate should make an order in writing setting forth the substance of the information received by him and thereafter issue show cause notice to the other side. If the person is present in the Court then the Magistrate shall read over the order to him in terms of Section 112 of the Cr.P.C. When the person is not present in Court then summons or warrant have to be issued in terms of section 113 of the Cr.P.C. Section 114 Cr.P.C. reads as follows:

"114. Copy of order to accompany summons or warrant.--Every summons or warrant issued under section 113 shall be accompanied by a copy of the order made under Section 111, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served him, or arrested under, the same.

It clearly prescribes that every summons or warrant issued under Section 113 Cr.P.C. shall be accompanied by a copy of the order made under Section 111 Cr.P.C. Section 115 Cr.P.C. empowers the Magistrate to exempt the person to whom notice has been issued from personal appearance. Inquiry has to be conducted as to the truth of the information in terms of Section 116 Cr.P.C. Sub-section (3) of Section 116 Cr.P.C. empowers the Magistrate during the period of inquiry to direct the person in respect of whom order under Section 111 Cr.P.C.

has been made to execute a bond for maintaining a peace or good behavior until the conclusion of the inquiry. However, such order can be passed only after the Magistrate has satisfied himself that immediate measures are necessary for prevention of breach of peace and disturbance of public tranquillity. The inquiry has to be completed within 6(six) months and after inquiry an order for furnishing security can be passed in terms of section 117 Cr.P.C. There is no provision for granting bail to any such person. At best the Magistrate in terms of Section 116(3) can direct the person in respect of whom order has been issued under Section 111 Cr.P.C. to furnish a bond to maintain good behaviour during the period of trial.

4. The proceedings under Section 107 of the Cr. P. C are taken not in respect of an offence which has taken place but when breach of peace or disturbance of public tranquillity is apprehended. No offence has been committed, therefore, the question of grant of bail does not arise. A person can only be arrested if he commits or attempt to commit an offence. Proceedings under Section 107 Cr.P.C. are even before the stage of attempt is made and these proceedings are with a view to maintain public order, peace and tranquillity.

5. From the above discussion, it is apparent that before any proceedings or security can be asked for the Magistrate concerned first pass an order in terms of section 111 of Cr.P.C. In this order he must set forth the substance of the information received and the amount of bond to be executed and the number, character and class of surety, if any, required. This means that the Executive Magistrate at this stage has to apply his mind as to why he apprehends breach of peace, from whom he apprehends breach of peace and on that basis shall pass an order directing the person to either appear before him for the purpose of inquiry or he may pass an order that during tile course of inquiry that person should furnish a bond for keeping good behaviour. In the present case there is no order of the Executive Magistrate in terms of Section 111 of the Cr.P.C. Therefore the very basis of the action is totally illegal.

6. In fact the Magistrate was also not totally at fault. The present petitioner had appeared with his counsel and the counsel had filed an application for grant of bail. It is the duty of the counsel also to assist the Court properly and when the counsel applied for bail the Magistrate granted the bail. Learned A.P.P. was also present when the order was also passed. Neither the learned A.P.P. nor the counsel for the petitioner enlightened the Executive Magistrate about the law in this subject. The Magistrate is not a law graduate and therefore, in such circumstances the onus is more on the A.P.P. and the counsel appearing for the parties to assist the Magistrate properly. At the same time I am of the considered view that the State should seriously consider imparting legal education to the Executive Magistrates who carry out judicial or quasi judicial functions. These Magistrates are not trained in law and it is not their fault if they pass wrong order. There must be basic training of all Magistrates with regard to their judicial functions. Executive Magistrates carry out a large number of judicial functions

especially under Sections 107, 133, 145 Cr.P.C. which affect the rights of the parties. Therefore, I am of the view that they must be imparted proper training so that they can properly deal with these issues.

7. In view of the above discussion, the impugned orders are quashed and the Magistrate is at liberty to start the proceeding afresh if he still apprehends the breach of peace. However, the Magistrate must keep the provisions of the code of criminal procedure in mind while passing any such order. The petition is disposed of in the aforesaid terms.

A copy of this order shall be sent to the Chief Secretary and Secretary, Law to the State of Tripura to be sent to all Executive Magistrates and A.P.P's so that they conduct the cases in a proper manner.