
(1976) 12 CAL CK 0008
In the Calcutta High Court

Bishnupada Jana

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 24-12-1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 111, 112, 113, 114

Citation : (1977) CriLJ 1344

Hon'ble Judges : Anil K. Sen, J;A.P. Bhattacharya, J

Bench : Division Bench

Judgement

A.P. Bhattacharya, J.—These two revision petitions are directed against the order of a Magistrate drawing up a proceeding u/s 107 of the Cr, P. C. and a common point of some importance has arisen in these rules. The petitioners, in whose favour the rules have been issued challenge the order of the learned Magistrate as not in accordance with law. The respective orders are alleged to be in violation of Section 107 and Section 111 (Old Section 112) of the Cr. P. C. Those proceedings are accordingly liable to be quashed. The rules are opposed and it is maintained that the proceedings in each case have been drawn up in due compliance of Section 107 and Section 111 (Old Section 112) of the Cr. P. C, The impugned orders are similar in both the rules. In Cr. Rev. No. 409 of 1974, the Magistrate passed an order on 15-3-1974 in the following manner :

Draw proceeding Under Sections 107/117(3) of the Cr. P. C. (Old) against opposite party members to show cause as to why they should not be ordered to execute a bond of Rs. 500/- each with one surety of like amount to maintain peace of the locality for a period of one year.

2. It appears from the record of the learned Magistrate that there had been a police report dated 25-2-1974 disclosing the relevant information following a petition of Gurupada Manna, opposite party No. 1 praying for drawing up of a proceeding against the petitioner and the other opposite parties. It further appears that the Magistrate drew up a show cause notice against the opposite parties stating the substance of the information received by him. This was served

upon the opposite parties in the proceeding.

3. Similarly, in Cr. Rev. Case No. 1685 of 1976, the Magistrate recorded an order to this effect on 6-8-1976.

Seen police report. As I am satisfied that the opposite party members are people of troublesome character and there is every apprehension of breach of peace draw up a proceeding u/s 107 Cr. P. C. against all of them directing them to show cause why they would not be asked to execute a bond of Rs. 1000/- each with one surety of like amount and to keep peace for a period of one year fixing 28-8-1976 for showing cause.

4. It appears from the record of the Magistrate that an order was drawn up described as a notice on 16th day of August, 1976 which states the substance of information and records the satisfaction of the Magistrate that the person on whom the summons was directed was of troublesome character and there was every apprehension of breach of peace. A date was given for showing cause as to why the addressee should not be asked to execute a bond to keep the peace for a period of one year.

5. Under the aforesaid circumstances, it is contended, on behalf of the petitioners that the orders of the Magistrate as quoted above and the show cause notice as recorded by the Magistrate are not in accordance with Section 107, Section 111 (old Section 112) and Section 114 of the Cr. P. C. Mr. Dutt, in arguing one of the cases has drawn our attention to the provision of Section 107, Section 111 (old Section 112) and Section 114 of the Cr. P. C. in support of his contention that the impugned orders and notices were not in accordance with law. Section 107 of the Cr. P. C. empowers an Executive Magistrate to require a person to show cause why he should not be ordered to execute a bond in keeping peace for such period not exceeding one year provided (1) he receives information that the person was likely to commit a breach of peace...and the (2) Magistrate was of opinion that there was sufficient cause for proceeding in terms of Section 107 Cr. P. C. In the instant case the impugned orders of the Magistrate as quoted above would show that the Magistrate had received information in respect of the person to the effect that he was likely to commit a breach of peace. The Magistrate ordered drawing up of a proceeding u/s 107 which reflects the decision of the Magistrate on application of mind to the information received. The order further shows that the person has been directed to show cause why he should not be ordered to execute a bond for keeping the peace. The proceeding was however, drawn up in a separate sheet signed by the Magistrate and that was done in the form of a notice to show cause issued to the person in question, Mr. Dutt, in support of the rule contends in this respect that the show cause notice drawn up and signed by the Magistrate was not in due compliance of the provision of Section 111 (old Section 112) of the Cr. P. C. Section 111 enjoins that a Magistrate when acting u/s 107 of the Cr. P. C. 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

bond to be executed, the term for which it is to be in force, and the number, character and class of sureties required. Mr, Dutt submits that there is no order of the Magistrate in writing setting forth the substance of the information, though however, the substance of the information has been incorporated in the show cause notice issued upon the person in question. The contention in this respect is that there must be a separate order recorded in the order sheet setting forth the substance of the information received and a copy of such order is to accompany the summons to be issued upon the person in question. Since the person against whom the order was made was not present in Court a summons is to be issued requiring him to appear u/s 113 of the Cr. P. C. If such person is present in Court the order is to be read over to him u/s 112 Cr. P. C. The issue of summons u/s 113 of the Cr.P.C. as in these cases must be in due compliance of Section 114 of the Cr. P. C. where it has been laid down that every summons issued u/s 113 Cr. P. C. shall be accompanied by a copy of the order made u/s 111 Cr. P. C. (old S. -112). From the language used in Section 114 Cr. P. C. Mr. Dutt wants us to hold that there must be a separate order by the Magistrate, a copy of which is to accompany the summons. In the instant case, however, there is no such separate order of the Magistrate recorded in the order sheet but the order is made in the form of a summons and there had been issue of summons in due compliance of Section 113, Cr. P. C. setting forth the substance of the information as required u/s 111 of the Cr. P. C., so that such summons is substantially in due compliance of Section 114 of the Cr. P. C. This is how the order and the summons is sought to be upheld as made in accordance with law. In support of his contention that there must be an order by the Magistrate as distinct from summons u/s 111 of the Cr. P. C. (old Section 112) Mr. Dutt, relies upon some decisions which were placed before us. He has cited before us a" Supreme Court decision in Madhu Limaye and Another Vs. Ved Murti and Others, . He relies in particular upon the observation made by the Supreme Court at p. 75 (of SCA) ; (at p. 1716 of Cri LJ) dealing with the procedure to be followed by the Magistrate under S 107 of the Cr. P. C. "The first requirement is that the Magistrate must pass an order in writing setting forth the substance of the information received, the amount of bond to be executed, the terms for which it is to be in force and the number, character and class of sureties (if any) required u/s 112. This order may be passed in the presence of the person to be bound over and even in his absence. This is clear from the provisions of the two sections that follow. Section 113 deals with the procedure when the person is present in the Court, Then the Magistrate must read over the order to the person and if he so desires, the substance of it must be explained to him. When the person is not present in Court, the next section applies. The Magistrate shall then issue a summons to him to appear and if he is in custody, the Magistrate shall issue a warrant to the person who has his custody to produce him before the Court. If there is need of immediate arrest of the person, the Magistrate on the report of the Police Officer or upon other information (the substance of which report or information is to be recorded in writing by the Magistrate, may issue a warrant for the arrest of the person. This action can only be taken if there is

reason to fear that a breach of the peace cannot be prevented except by the arrest of the person (Section 114). Whenever a summons or a warrant is issued u/s 114, a copy of the order made u/s 112 must be sent and delivered to the person (Section 115).

6. In the instant cases, the orders of the Magistrate are impugned on the ground that there is no order in writing by the Magistrate setting forth the substance of the information received as indicated in the observation quoted above. Now the question is whether the show cause notice that was signed by the Magistrate and issued to the person in question can be construed as the order of the Magistrate in writing disclosing the substance of the information as required u/s 111 (old Section 112) of the Cr. P. C. It is to be noted that instead of recording the said order in the order sheet the Magistrate has maintained a copy of the show cause notice signed by him and the said show cause notice drawn up and signed by the Magistrate fulfils all the requirements of Section 111 (old Section 112) of the Cr. P. C. inasmuch as it discloses the substance of the information and records the same. The conditions which are required to be fulfilled u/s 111 (old Section 112) of the Cr. P. C. are (1) written order (2) substance of information against the person (3) amount of bond (4) period for the bond (5) number, character and class of sureties. All these appear in the order of the Magistrate described as show cause notice. It forms part of the record and it can be construed as an order of the Magistrate made in due compliance of the conditions laid down in Section 111 (old Section 112) of the Cr. P. C. It is true that the said order is described as a show cause notice. But it is part of the Magistrate's record and if it fulfils the conditions of Section 111 (old Section 112) of the Cr. P. C., it can certainly be construed as an order of the Magistrate made in due compliance with the provision of Section 111 (old Section 112) of the Cr. P. C. A separate show cause notice had been issued in proper form upon the person in question. Mr. Dutt has drawn our attention to the provision of Section 114 of the Cr. P. C. contending that the show cause notice shall be accompanied by a copy of the order and submits that the show cause notice that was issued was not accompanied by any such separate copy of the order. He himself has drawn our attention to the form of the show cause notice required to be issued u/s 113 of the Cr. P. C. It is form No. 14 Schedule II to the Code, The form so prescribed u/s 113 of the Cr. P. C. itself states that the substance of the information is to be mentioned in the said form wherein the person is required to attend office of the Magistrate or to show cause why he should not be required to enter into a bond as ordered. In the instant case the show cause notice that had been issued was in identical form No. 14 as prescribed u/s 113 of the Cr. P. C. The prescribed form does not provide for a separate copy of the order accompanying the summons or the notice. The order contemplated u/s 114 of the Cr. P. C. is nothing but an order in writing setting forth the substance of the information received and if the same is incorporated in the notice there is due compliance of the provision of Section 114 of the Cr.P.C. The absence of a separate copy of the order is not derogatory to what is contemplated u/s 114 of the Cr. P. C. The first part of the

notice issued incorporates the order of the Magistrate stating in writing the substance of the information received. There is therefore, due compliance of the provision of Section 114 of the Cr. P. C. by issue of the notice in the form as prescribed in form No. 14 of schedule II, The principle laid down in the Supreme Court decision has therefore been duly fulfilled by the order of the Magistrate incorporating all the conditions laid down in Section 111. (old Section 112) of the Cr, P. C. Mr. Dutt has also placed before us a Bench Decision of this Court reported in 57 Cal WN 251 : 1953 Cri LJ 1165 where also the requirements of Section 107 of. the Cr. P. C., Section 112 and Section 114 of the Cr. P. C. (old) was discussed. It has been observed that what is important is that the Magistrate should record in his order the nature of the information received. In particular their Lordships were dealing with a case where the accused was brought up in custody and there was no occasion to issue notice u/s 114 of the Cr. P. C. It was observed that it did not do away with the necessity of recording by the Magistrate of the substance of the nature of information which he had received, In the above case there was no issue of a notice in appropriate form and there was no order by the Magistrate recording the substance of the information received. In the instant case, there had been show cause notice in due compliance of provision of law as we have noted hereinbefore where the substance of the information received was duly recorded by the Magistrate. A similar order appearing in the file (though described as a show cause notice) is in substance an order as contemplated u/s 111 of the Cr. P. C. (old 112). The instant cases can therefore be clearly distinguished from the Division Bench decision of this Court which has been cited before us. The point which arises in these rules now was not the subject-matter of decision there.

7. Mr. Dutt however, wants to rely upon two decisions of this Court of Single Judges which is said to be in support of his contention. He has referred to a decision of A. N. Banerjee, J. in CrI. Revn. Case No. 1121 of 1975 disposed of on 4-2-1976 (Cal). It has been observed in respect of a notice issued in a proceeding u/s 107 of the Cr. P. C. that the notice gave some details, but the notice must be in accordance with the order passed by the learned Magistrate u/s 111 of the Cr. P. C. It was further observed that it was incumbent upon the learned magistrate to record in writing the substance of the information received. It thus appears that the point which now arises for decision in these rules was not entered into by his Lordship and the judgment did not proceed upon a consideration of the same. The question whether the order drawn up in the form of a show cause notice can be construed as an order of the Magistrate u/s 111 of the Cr. P. C. was not the subject-matter of decision before Banerjee J.

8. The other decision on which Mr. Dutt, relies is reported in Amalendu Ghosh and Others Vs. Prem Pathak, . It was also a decision of a single Judge of this Court where the requirements of Section 107 of the Cr. P. C. had been considered. It had been observed in the said decision of the learned Single Judge that the general allegations made in the notice do not constitute due compliance with the law. It has been further observed that the notice was not an order and

that the notice was drawn up and issued subsequent to the order starting the proceeding. His Lordship's view was that there must be an order preceding the notice. It will appear from the judgment placed before us that no such contention as is now raised came to be considered in the said decision. It was not argued in the above case that the notice that was issued could also be construed as an order of the Magistrate as contemplated under Sec, 111 of the Cr. P. C, Simply because the said order is headed by a note "show cause notice" it cannot reasonably be said that it was not an order of the Magistrate in writing fulfilling all the requirements of Section 111 (old 112) of the Cr. P. C. when it does so. The issue of the show cause notice was also in due compliance with the provision as indicated hereinbefore. The learned Single Judge had no occasion to consider whether the order of the Magistrate as aforesaid can be construed as one u/s 111 (old Section 112) of the Cr. P. C. as it fulfills all the conditions thereunder.

9. The learned Single Judge in that aforesaid decision has also condemned the proceeding before him On the ground that the Magistrate did not express his opinion about the proceeding to say that he was of the view that there was sufficient ground for such proceeding. This is one of the considerations along with others which prevailed with the learned Judge in quashing the proceeding. We are unable. to accept the view so expressed. What is laid down in Section 107 of the Cr. P. C, is the condition precedent for the Magistrate acting under that section. It is incumbent upon the Magistrate in such circumstances to fulfil the conditions as laid down in Section 111 of the Cr. P. C. If the Magistrate complies with the provision of Section 111 (old Section 112) of the Cr. P. C. the order made u/s 107 of the Cr. P. C. cannot be impugned as in any way as wrong or illegal.

10. The learned Advocate for the opposite party has relied upon a Bench decision reported in Zahir Ahmad Vs. Ganga Prasad, A.S.D.M., Ballia and Another, . In para 24 of the said judgment the decision proceeds on a consideration of the provision of Section 112 of the Cr. P. C. (old). The relevant portion is quoted below :

The question that now remains for consideration is whether the provisions of Section 112 have been complied in substance, if not in form Chapter VIII of the Code of Criminal Procedure contemplates three things. It contemplates a summons, a warrant and a notice. A notice, therefore, is not to be confused with a summons. Whereas a summons and a warrant is issued for the appearance of a person, a notice is issued in order to enable him to comply with the directions of the Court and to indicate to him the substance of the allegations against him so that in the inquiry which is to follow, he may be able to meet the case against him. In the present case, the Magistrate issued separate notices to each of the persons who were on their trial along with the petitioner. A perusal of Section 112 would show that if an order in writing is passed 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 and the

same is read out to the persons who are being proceeded with the same would constitute the notice. Section 112 does not speak of a notice different from the order mentioned therein.

11. This observation is to consonance with our finding as indicated above.

12. For the reasons given hereinbefore, we are of the view that in the instant cases the Magistrate had drawn up an order in due compliance of the provision of Section 107 and Section 111 (old Section 112) of the Cr. P. C. and the notice that was issued was also in compliance with the provision of Section 113 and Section 114 of the Cr. P. C. There is no illegality in the impugned orders.

13. Coming to the merits of the revision Case No. 1685 of 1976, it appears that this was drawn up against five persons who are the petitioners before us. In the application for revision, it has been categorically stated that petitioners 2, 3, 4 and 5 do not reside in the disputed property. It will appear from the police report that there had been some dispute among the co-sharers of premises No. 18/1/D, Manohar Pukur Road and there had been alleged attempt of forcible possession of some rooms of that building. In view of the categorical allegation that petitioners 2 to 5 do not reside in that building, there is no basis for the Magistrate to draw up a proceeding against them. It is also significant to note that two of them are ladies who had been married to the other two petitioners. The only other petitioner is also a lady. On a perusal of the police report, it appears that there was some dispute between the co-sharers and there is a Civil suit pending in respect of the identical property. The learned Magistrate in drawing up a proceeding has not applied his mind properly to the police report and to the fact that there was civil suit pending between the parties over the identical property. The proceeding to our mind, has no basis and is liable to be quashed.

14. In the result, Cr. Revision Case No. 1685 of 1976 is allowed and the rule is made absolute and the proceeding drawn up by the Magistrate is quashed.

15. With regard to Cr. Revision Case No. 409 of 1974 the impugned order cannot be successfully challenged on the ground urged which we have discussed. It, however, appears that the order sheet of the Magistrate dated 15-3-1974 is to the effect that a proceeding be drawn up u/s 107/117(3) of the Cr. P. C, (old). The inclusion of Section 117(3) of the Cr. P. C. (old) is not warranted by law. That is the last stage of after enquiry is completed. In fact, however, the proceeding that was drawn up by the Magistrate was one u/s 107 of the Cr. P. C, and Section 117(3) of the Cr. P. C. (old) does not appear therein. The proceeding as drawn up does not therefore suffer from any illegality, though the order sheet was to the effect as indicated above. It will appear that the Magistrate made an order on the next day i. e. 16-4-1974 to the effect that the opposite parties appeared and they were taken to custody and released on bail of Rs. 300/- each. This order of the Magistrate dated 16-4-1974 was obviously purported to be made u/s 117(3) (old) of the Cr. P. C. The Magistrate has therefore made this order u/s 117(8) of

the Cr. P. C. (old) without holding an enquiry as contemplated in the preceding sections. This order dated 16-4-76 is certainly bad in law and is liable to be set aside.

16. In the result, Cr. Revision Case No. 409 of 1974 is disposed of in the following manner. The proceeding is not liable to be quashed as it is in accordance with law. The order dated 16-4-1974 is set aside. The learned Magistrate will proceed to dispose of the proceeding u/s 107 of the Cr. P. C. in accordance with law. Subject to this modification, the rule is discharged.

Anil K. Sen, J.

17. I agree.