
(1972) 11 PAT CK 0018

In the Patna High Court

Chit Narain Choudhary and Others

APPELLANT

Vs

Kedar Nath Jha and Others

RESPONDENT

Date of Decision : 23-11-1972

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 112

Citation : (1973) CriLJ 895

Hon'ble Judges : G.N. Prasad, J

Bench : Single Bench

Judgement

G.N. Prasad, J.—The petitioners, who are the members of the first party to a proceeding u/s 107 of the Code of Criminal Procedure (hereinafter referred to as the Code), have filed this application, praying that the proceeding which has been drawn up in pursuance of the order of the Subdivisional Magistrate of Supaul dated the 26th May, 1970 should be quashed.

2. The impugned order is in the following terms:

Whereas I am satisfied from the report of the Officer Incharge Raghapur P.S. that the above named members of the opposite party are on inimical terms with the first party due to land dispute and as such they are bent upon to commit offence taking law in their own hands which may lead to serious breach of peace which cannot be averted unless members of both parties are run down u/s 107, Cr.P.C.

You are therefore directed to execute a bond of Rs. 1000/- with two sureties of the like amount each to keep peace for a period of one year or to show cause, if any, by 10.6.1970.

3. The contention of Mr. Sanyal who appears in support of this application is that the above order suffers from the same infirmity that was dealt with by a Bench of this Court in Hasibuddin v. State of Bihar 1971 Pat LJR 1931 namely that it does not comply with the requirements of Section 112 of the Code which enjoins that before calling upon any person to show cause why action should not be taken against him u/s 107 or any of the next three following sections, the

Magistrate must, among other particulars set forth "the substance of the information" which has led him to come to the conclusion that there is sufficient ground for proceeding under the relevant section of the Code, Mr. Sanyal has also brought to my notice the observations of their Lordships of the Supreme Court in *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*, . The relevant passage reads thus:

The procedure begins with Section 112. It requires that the Magistrate acting u/s 107 shall make an order in writing, setting forth the substance of the information received, the amount of the bond, the term for which it is to be in force and the number, character and class of sureties (if any) required. Since the person to be proceeded against has to show cause, it is but natural that he must know the grounds for apprehending a breach of the peace or disturbance of the public tranquillity at his hands. Although the section speaks of the "substance of the information" it does not mean the order should not be full. It may not repeat the information bodily but it must give proper notice of what has moved the Magistrate to take the action. This order is the foundation of the jurisdiction and the word "substance" means the essence of the most important parts of the information.

4. It is no doubt true that the impugned order does not fulfil the requirements of Section 112 of the Code. But the question which is of importance at this stage is as to whether on that ground alone the proceeding should be quashed. In my judgment, the observations of their Lordships of the Supreme Court, Quoted above, indicate that the true requirement of Section 112 is that the person to be proceeded against or called upon to show cause must get proper notice of what has weighed with or moved the Magistrate to take the action. Such proper notice of what has moved the Magistrate to take action should normally be given by setting forth in the initial order itself the substance of the information which the Magistrate has received and on the basis of which he v has formed the opinion that sufficient ground for proceeding under the relevant section of the Code exists. But there is nothing sacrosanct about the words "substance of the information" and these words do not preclude the Magistrate from giving proper notice of what has moved him to take action by furnishing to the person sought to be proceeded against the information in full or in its entirety. Therefore, in a case where the Magistrate does not incorporate in his initial order the substance of the information which has moved him to take action, u/s 107 of the Code proper notice of what has moved the Magistrate to take the action can as well be given by furnishing the Person or persons proceeded against with a copy of the police report or any other material which is the source of the information received by the Magistrate deciding to initiate the proceeding. If, therefore, the copy of the police report which had moved the Sub-divisional Magistrate in the instant case to take action u/s 107 of the Code were furnished to the petitioners they would undoubtedly get proper notice of what has moved the Sub-divisional Magistrate to take the action against them. Having regard to the aforesaid considerations. I am of the opinion that the proper order to be passed at this

stage would be that the learned Sub-divisional Magistrate should first satisfy himself as to whether the apprehension of the breach of the peace in regard to which the report had been made to him in May, 1970 is still subsisting and if he is satisfied that such apprehension of the breach of the peace still exists, then he must furnish to the petitioners a true copy of the police report or any other material on the basis of which he has decided to take action u/s 107 of the Code because unless such a step is taken by him the petitioners cannot be called upon to show cause as contemplated by Section 112 of the Code.

5. For the aforesaid reasons, instead of quashing the proceeding in its entirety. I would set aside the impugned order which is dated the 26th May, 1970 with a direction that the learned Sub-divisional Magistrate should deal with this case in the manner indicated by me above. The application is accordingly allowed.