

(2020) 05 CAL CK 0009

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 513 Of 2019

Dipu Singh @ Hulo

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 19-05-2020

Acts Referred:

Police Regulations, Bengal, 1943 — Rule 289, 290, 401

Code Of Criminal Procedure, 1973 — Section 106, 107, 108, 109, 110, 112, 113, 116, 116(2), 117(3), 123, 482, 489A, 489B, 489C, 489D

Citation : (2020) 05 CAL CK 0009

Hon'ble Judges : Jay Sengupta, J

Bench : Single Bench

Advocate : Rajdeep Mazumder, Moyukh Mukherjee, Arushi Rathore, Abhijit Singh, Kishore Datta, Saswata Gopal Mukherjee, Swapan Banerjee, Suman De

Final Decision : Disposed Of

Judgement

Jay Sengupta, J

1. This is an application challenging a proceeding under Section 110 of the Code in NGR (S) Case No. 770/18 pending before the Learned Special Executive Magistrate, Serampore, Hooghly including the order dated 04.12.2018 passed therein.

2. Mr. Rajdeep Mazumder, learned counsel appearing on behalf of the petitioner, submitted as follows. The petitioner was an accused in a number of cases although he had not been convicted in any of the cases. Rather, he was acquitted in a few. The present proceeding under Section 110 of the Code was also drawn up against him. The initial order passed by the learned Special Executive Magistrate was relaxed to furnishing of one surety of a Gazetted Officer with a bond of Rs. 50,000/- for three years. Thereafter, a Gazetted Officer agreed to act as a surety. But, he withdrew after the Learned Executive Magistrate initiated an enquiry into his antecedents and consequently, a police officer visited him. Then the present application was moved before this Court. After hearing the parties,

on 05.07.2019 this Court passed an interim order modifying the impugned order dated 05.02.2019 passed by the Special Executive Magistrate and directed the petitioner to furnish an interim bond for good behaviour with two local sureties of Rs. 1,00,000/- each, for three years. After some delay, this Court's order was ultimately given effect to. On merits, first, Section 110 could not be invoked in the instant as the petitioner was in custody at the relevant point. Section 112 of the Code contemplated a presence in Court while the proviso to Section 113 clarified a production from custody. Reference was made to Black's Law Dictionary on the definition of 'habitual offender'. There it was defined as one who had committed a crime, especially one who had been convicted of a crime. By this standard, the present petitioner could not be termed as a 'habitual offender'. In fact, the instant proceeding was initiated when the petitioner was on the verge of an acquittal in a case under the NDPS Act. On the question of 'habitual offender', reliance was further placed on (i) Lalookhan Haideralikhan Versus M.M. Kamble, Special Executive Magistrate, 1996 Cri. LJ 801 and (ii) Nepu Giri Versus State of West Bengal, CRR 3249 of 2018. In this regard, references were made to relevant portions of the Punjab Police Rules, 1934, the Tamil Nadu Restriction of Habitual Offenders Act, 1948, the Bombay Habitual Offenders Act, 1959 and the Kerala Habitual Offenders Act, 1960. On the question of scope of the inquiry under Section 116 of the Code, reliance was placed on (i) Madhu Limaye And Another Versus Ved Murti And Others, (1970) 3 SCC 739 and (ii) Paresh Chandra Hathi And Another Versus Ahitosh Panda And Another, 1978 CrLJ 1171.

3. Mr. Kishore Datta, Learned Advocate General, submitted as follows. The present petitioner was arraigned as an accused in as many as 26 cases although it was true that no conviction could be obtained in any of these cases till date. In order to gauge the true import of Section 110 of the Code, the entire scheme of the Chapter had to be looked into. Section 106 of the Code related to convicted persons, Section 107 dealt with some other cases, Section 108 related to seditious matters and Section 109 was concerned with suspected criminals. Section 110 of the Code, on the other hand, dealt with a 'habitual offender'. Therefore, Section 110 would very much be applicable to the petitioner in the present case. Section 123 of the Code provided for an alteration of an order by the High Court and not for setting aside of the order. Therefore, the petitioner had to approach the concerned District Magistrate for setting aside the impugned order. On the issue of 'habitual offender', reliance was placed on (a) Dhanji Ram Sharma Versus Superintendent of Police, North District, Delhi Police And Others, AIR 1966 SC 1766, (b) R Kalavathi Versus State of T.N. And Others, (2006) 6 SCC 14 and (c) Raichurmatham Prabhakar And Another Versus Rawatmal Dugar, (2004) 4 SCC 766. A reference was also made to Rules 289, 290 and 401 of the Police Regulations, Bengal, 1943. As such, the impugned proceeding ought not be inferred with.

4. In his brief reply, Mr. Mazumder submitted as follows. The cases relied on by the State were clearly distinguishable on facts. Among other things, Dhanji Ram

Sharma (supra) and R Kalavathi (supra) related to definition of 'habitual offender' in the respective State laws, which were not present in the Code.

5. I heard the submissions of the learned counsels representing the parties and went through the revision petition and the affidavits filed.

6. As regards Section 123 of the Code, the same only enables different Courts in different circumstances to reduce the amount of security or the number of sureties or the time for which the surety has been required. But, in my view this cannot act as a fetter on the inherent powers of this Court, as contained in Section 482 of the Code, to intervene in a proceeding under Section 110 of the Code for the ends of justice.

7. It further appears that the petitioner had been in custody for not being able to furnish security for quite some time. The allegation of police interference with the proposed surety was also unwarranted. It is settled law that such an onerous condition should not be imposed as would delay or defeat a release from custody. Moreover, similar relaxations have been directed by two Hon'ble coordinate Benches of this Court in two other matters, as had been brought to the notice of this Court.

8. Now, so far as the contention of the petitioner that no proceeding under Section 110 of the Code can be initiated when the petitioner is in custody is concerned, I find no provision of law precluding such possibility. There have been instances where incarcerated individuals were able to commit offences while in custody or abet commission of offences outside.

9. In the present case, the whole issue about sustainability of the impugned proceeding under Section 110 of the Code, therefore, boils down to whether for being termed as a 'habitual offender', one is required to have a previous conviction in a criminal case.

10. First, I find it appropriate to quote Section 110 of the Code as under:

"Section 110: Security for good behaviour from habitual offenders. - When [an Executive Magistrate] receives information that there is within his local jurisdiction a person who -

(a) is by habit a robber, house-breaker, thief, or forger, or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under Section 489A, Section 489B, Section 489C or Section 489D of that Code, or

(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets the commission of, -

(I) any offence under one or more of the following Acts, namely:

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);

[(b) the Foreign Exchange Regulation Act, 1973 (46 of 1973)]

(c) the Employees' Provident Funds [and Family Pension Fund Act, 1952 (19 of 1952)]

(d) the Prevention of Food Adulteration Act, 1954 (37 of 1954)

(e) the Essential Commodities Act, 1955 (10 of 1955);

(f) the Untouchability (Offences) Act, 1955 (22 of 1955);

(g) the Customs Act, 1962 (52 of 1962)

(h) The Foreigners Act, 1946 (31 of 1946); or

(II) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit."

11. Although dictionaries may not always place a particular word in the particular or special context in which it has been used in a statute, one can fairly refer to a law lexicon as an external aid, especially when a definition is not available in the particular Act or in related laws, which pertain to the same context and are in *pari materia*. Let us first venture to trace the meaning and purport of a 'habitual offender' from relevant pieces of legislations, even if the same are subordinate or delegated ones.

12. I agree with the contention of the learned counsel for the petitioner that the above referred Rule of Punjab and the Act of Tamil Nadu as referred to in Dhanji Ram Sharma (*supra*) and R Kalavathi (*supra*), respectively, contain more expansive terms, which are not incorporated in the Code in such clear terms. But, whether the said decisions can be distinguished on facts would also depend on the existence of any other connected legislation that may remain operative in West Bengal in this regard.

13. This prompts me to refer to the Police Regulations, Bengal, 1943 as referred to by the Learned Advocate General. Relevant portions of Rule 290 may be quoted as under.

"290. Evidence in Proceedings under Section 110, Criminal Procedure Code.

[Section 12, Act V, 1861]. - (a) In cases under Section 110, Code of Criminal Procedure, evidence of general repute must form the main basis of the prosecution. Under Section 117 (3) of the Code evidence of general repute is admissible to prove that a person is a habitual offender.

(b) The points to bear in mind in connection with evidence of repute are -

(i) That the witnesses should themselves be of good repute and in a position to know the reputation of the accused.

(ii) That they should be drawn, if possible, from different classes of the community and not only from the village of the accused, but also from neighbouring villages.

(iii) That they should be free from any suspicion of grudge against the accused. In particular, if party faction exists in the village, it must be made clear that the evidence against the accused is not due to faction.

(iv) That the witnesses should be of their own belief and not that of other people, and that their belief carries little or no weight unless it is based on some reasonable ground.

(c) Evidence of general repute may be corroborated by proof of -

(i) Previous convictions.

(ii) Want of any known means of livelihood, or manner of living in excess of such means.

(iii) Association of the accused with other bad characters.

(iv) Absence of the accused from his house, especially at night.

(v) Occurrence of crimes at or near the place visited by the accused, coincident with such absence."

14. A careful reading of the relevant provisions of the Police Regulations, Bengal, 1943, will make it abundantly clear that a previous conviction is only one of the criteria for corroborating the general repute of a purported habitual offender. Thus, a necessary corollary is that such general repute can be corroborated by other means and not necessarily by a previous conviction. It is further clarified that in cases under Section 110 of the Code, evidence of general repute must form the basis of prosecution. Therefore, one can fairly infer that a previous conviction is not a sine qua non for maintaining a proceeding under Section 110 of the Code.

15. Now, coming to the facts of the present case, it appears that an inquiry was indeed initiated in terms of Section 116 (2) of the Code as would be evident from the orders passed by the Learned Trial Court. I do not find any infirmity on this

issue.

16. However, the condition imposed by the Learned Executive Magistrate directing the petitioner to submit good behaviour bond with two gazetted officers was too onerous. The relaxed condition of furnishing bond by one gazetted officer was also quite onerous, especially in view of the rather strange action taken by the Learned Executive Magistrate subsequently in inquiring into the antecedents of the gazetted officer. On this, reliance was placed on the decisions of this Court passed in CRR No. 236 of 2019 and CRR No. 250 of 2019 and the condition was relaxed on 05.07.2019 and later modified on 02.08.2019, inter alia, to furnish an interim bond for good behaviour with two local sureties of Rs. 1 lakh each for period of three years.

17. In view of the above discussions, I reject the petitioner's prayer for quashing of the impugned proceeding. However, in the interest of justice, I make the interim order passed by this Court earlier on 05.07.2019 and as modified on 02.08.2019, thereby altering the condition of bond, absolute. Thus, the interim bond furnished by the petitioner earlier by the petitioner shall be treated as a final bond and the period of three years shall be counted from the date on which such interim bond was executed.

18. With these observations, the revisional application is disposed of.

19. There shall, however, be no order as to costs.

20. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.