
(1981) 06 GUJ CK 0001
In the Gujarat High Court

Divyajit Mehta

APPELLANT

Vs

S.S. Katara and Others

RESPONDENT

Date of Decision : 16-06-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 111, 116, 151, 167

Citation : (1983) CriLJ 315 : (1982) 2 GLR 136

Hon'ble Judges : B.J. Divan, C.J;S.B. Majmudar, J

Bench : Division Bench

Judgement

S.B. Majmudar, J.—The petitioner has challenged in this petition under Articles 226 and 227 of the Constitution of India, an order passed by the learned Executive Magistrate, Ahmedabad City calling upon three persons produced before him by the police to furnish bail in the proceedings u/s 107 of the Criminal P. C.

2. In order to appreciate the nature of controversy raised for our consideration, it is necessary to glance through a few relevant facts.

3. During the recent agitation with respect to reservation of seats in medical colleges, one Narendra Chandrashanker Jha along with one Jayeshbhai Dhanandebhai Shukla and Bharatbhai Arvindbhai Dave was sitting at about 9-30 a. m. on 26-3-1981 at the foot of the statue of Mahatma Gandhi located under the Income Tax cross-roads in the city of Ahmedabad. It was alleged that these three persons were shouting slogans. The police-sub-inspector, Navrangpura police station, who is respondent No. 1 in this petition arrested these three persons at about 10 a. m. on that very day, in exercise of his power u/s 151 of the Cr. P.C., 1973. Respondent No. 1 thereafter produced them before the Executive Magistrate for Ahmedabad city who is respondent No. 2 in the present proceedings. Respondent No. 1 submitted before respondent No. 2 that proceedings be commenced against these three persons u/s 107 of the Cr. P.C. and proper sureties be taken from them. Respondent No 2 instead of releasing these three persons sent them with respondent No. 1 with a direction to send

them to Sabarmati Jail as per his impugned order.

4. It is the case of the petitioner that the petitioner and his advocate who were present at the relevant time were informed that these three persons will be produced next day and thereafter they will be released on bail. On the next day, i.e. on 27-3-1981 in the morning, the petitioner went to court of second respondent and at about 11 a.m. he learnt that the said three persons were not to be produced on that day and they were to be produced before the second respondent on 30-3-1981. The aforesaid order of the second respondent has been challenged in the present petition.

5. The aforesaid facts of the case are not in dispute. Respondent No. 1 and respondent No. 2 have filed their affidavit-in-reply. Respondent No. 1 in his affidavit-in-reply has stated that on 26-3-1981, he was attached to a mobile van which was meant for the purpose of attending to emergency work, and he was at the relevant time working at the Navrangpura Police Station. He stated, that he had arrested the concerned three persons on the day of occurrence in exercise of his power u/s 151 of the Cr. P.C. He further stated that, thereafter, he took these persons to Navrangpura police station and a criminal complaint u/s 107 of the Cr. P.C. was recorded by him against all the three persons bearing case No. 20 of 1981 at Navrangpura police station. Thereafter these persons were produced with relevant papers before the Executive Magistrate Shri R.R. Shukla at 9 a.m. and as they refused to offer any bail, the Executive Magistrate was pleased to direct the first, respondent to take them to Jail and, therefore, they were taken to Sabarmati Central Jail. Respondent No. 2, Executive Magistrate for Ahmedabad City in his affidavit-in-reply states that at 9 p.m. on 26-3-1981, respondent No. 1 had produced the three persons viz. Mr. Jha, Mr. Shukla and Mr. Dave at his residence and he had come along with a complaint that was made u/s 107 of the Cr. P.C. That an inquiry was made from those three persons as to whether they were willing to be released on bail, but they refused to be released on bail and, therefore, the only alternative that was left to him was to send them to jail. That, all the times, he was willing to release them on bail, but they refused. On 27-3-1981, Mr. Dave and Mr. Shukla represented by their advocate made a request to release them on bail and, therefore, they were released on personal bond and surety of Rs. 1,500.

6. Mr. B. C. Patel, learned Advocate appearing for the petitioner has seriously disputed the aforesaid posture adopted by the first and second respondents especially respondent No. 2. Mr. Patel submitted that even though the first respondent might have arrested the concerned three persons in exercise of his powers u/s 151 of the Cr.P.C., he could not have detained them for a period exceeding 24 hours. While so far as the second respondent, the Executive Magistrate, was concerned, in a complaint before him u/s 107 of the Cr. P.C., he had no power to ask the concerned persons to furnish bail or otherwise to direct them to be sent to jail.

7. The aforesaid submission of Mr. Patel appears to be well founded. It is true

that the first respondent in exercise of his power u/s 151 of the Cr. P.C. arrested the concerned three persons, but as provided by Section 151(1) of the said Code, no person arrested under- Sub-section (1) of Section 151 could be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention was required or authorised under any other provisions of this Code or of any other law for the time being in force. Under these circumstances, when the concerned three persons were produced before the second respondent who was an Executive Magistrate and before whom proceedings u/s 107 of the Cr. P.C. were not initiated, no question of second respondent releasing these three persons on bail at that stage could ever arise for consideration. It is necessary to note in this connection that the proceedings u/s 107 of the said Code are concerning proper bonds to be taken from the concerned persons by way of security for keeping peace. These proceedings are popularly known as chapter proceedings. There is no question of any person being accused of any offence in such proceedings. Definition of the word "offence" as per Section 2(n) of the Code shows that proceedings u/s 107 of the Code cannot have anything to do with any accusation regarding any offence as such. It is also necessary to note that the Executive Magistrate in exercise of his power u/s 107 was not acting and could not have acted as a judicial Magistrate. Applicability of Section 116(3) of the Code could obviously not arise for consideration as the Executive Magistrate had not passed any order u/s 111 of the Code. Applicability of Section 107 was also ruled out before the Executive Magistrate. Similarly, applicability of the provisions of Section 436 or Section 437 also equally got ruled out of consideration. Under these circumstances the second respondent had obviously no power jurisdiction or authority to direct the first respondent to send the concerned three persons to jail unless they could furnish bail. The impugned order passed by the second respondent, therefore, obviously was without jurisdiction and null and void and on this limited ground only, this petition will have to be allowed.

8. Mr. J. U. Mehta, learned public prosecutor appearing for the respondents invited our attention to a decision of the Kerala High Court in the case of A.K. Gopalan v. State of Kerala AIR 1902 Ker 215 : 1962 Cri LJ 72. The learned Judges of the Kerala High Court construed the provisions of Section 151 of the Cr. P.C. 1890 read with Section 107, especially Section 167(2) of the Code of 1898, and in that connection, observed as under:

It cannot be said that the power u/s 167(2), Cr. P. C, cannot apply to cases of persons arrested u/s 151 of the Cr. P.C. The conditions required to attract the section are that there must be a person arrested and detained in custody and that it must appear to the police officer that he has to conduct an investigation and that the investigation against the arrested person cannot be completed within twenty-four hours. Whether the arrest was u/s 151 or u/s 54 is not relevant for the purpose of remanding the accused u/s 167.

It is obvious that the aforesaid decision cannot be of any real assistance to Mr.

Mehta in the present case, as applicability of Section 167 of the old Code or any corresponding provisions of the new Code is out of question, as in the present case the Executive Magistrate was invited to invoke his power u/s 107 of the Code and obviously he was not a judicial Magistrate at all. In that view of the matter, the ratio of the aforesaid decision cannot be of any avail to Mr. Mehta.

9. In the result, this special criminal application will have to be allowed. Rule is accordingly made absolute. The order passed by the second respondent as mentioned in para 2 of the affidavit-in-reply of the second respondent, is quashed and set aside. Rule is made absolute with no order as to costs. Interim bond executed by the petitioner pursuant to the interim order of this Court dated 29-3-1981 shall stand cancelled.