

(1977) 02 KL CK 0017
In the High Court Of Kerala

Edeyillon Kunhambu Nair and Another	APPELLANT
Vs	
State of Kerala and Others	RESPONDENT

Date of Decision : 16-02-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 111, 116, 397, 482

Citation : (1978) CriLJ 107

Hon'ble Judges : Kumari P. Janaki Amma, J

Bench : Single Bench

Judgement

Kumari P. Janaki Amma, J.—The petitioners were arrested on 15-12-1975 u/s 107 read with S. III of the Cr.PC and brought before the Sub Divisional Magistrate, Kasaragod along with a report counter-signed by the Asst. Superintendent of Police, Kasaragod to the effect that the counter-petitioners are likely to commit breach of the peace and are likely to do wrongful acts that may probably occasion a breach of the peace. A preliminary order u/s 107(1) read with S. Ill of the C.P.C. was issued to the petitioners calling upon them to show cause why they should not be ordered to execute a bond for Rs. 2000/- each with two sureties for like sums for keeping the peace for a period of one year. Before the enquiry against the petitioners commenced on 6-11-1976 the Sub Divisional Magistrate, Kasaragod issued another order u/s 116(3) of the Cr.PC Directing the petitioners to execute a bond with two solvent sureties for Rs. 10,000/- each for keeping the peace pending the enquiry, failing which, it is stated, they would be detained in custody until such bond is executed. The petitioners filed a revision petition before the Sessions Judge, Tel-lieherry challenging the above order. The learned Sessions Judge, held that the petition was barred u/s 397(2) of the CrIPC the order impugned being an interlocutory order passed pending the proceedings. The present petition is filed u/s 482 of the Cr.PC for quashing the order passed on 6-11-1976.

2. The order is impugned on the ground that it contravenes Section 116(3) of the Cr.PC The Magistrate, it is stated, directed execution of an interim bond before

the commencement of enquiry. This is contrary to the provisions of Section 116(3) and hence without jurisdiction. The second ground of attack is that the Magistrate omitted to consider whether there are really circumstances which justify the execution of an interim bond. The complaint of the petitioners is that the Magistrate merely based his decision on the report of the police officer and did not himself satisfy that there are grounds for calling upon the petitioners to execute bond. The petitioners would contend that no proper grounds are made out for directing the petitioners to execute the bond. The last objection is that there has been non-compliance of proviso (b) to Section 116(3).

3. There is weight in the contentions. The preliminary order was passed on 15-12-1975. The direction to execute interim bond in the instant case is seen issued on 6-11-1976 nearly eleven months after the preliminary order. It is not clear from the order whether enquiry has commenced. The Magistrate has only mentioned in the order that he has received a report from the Sub Inspector of Police "stating that the aforesaid counter-petitioners are on enemical terms and as a result some complaints are still being received against the above counter-petitioners for causing disturbance which may lead to an immediate breach of peace and disturbance of public tranquillity". The order does not show the nature of the complaints received or whether the Magistrate has applied his mind to the nature of the complaints and to the necessity for calling upon the petitioners to execute the interim bond in the light of the facts placed before him. An interim bond is to be executed only in emergent cases where there is real necessity for such a course. It is to be ordered only after the commencement of the enquiry. The order should not be made on a mere report by the police that there is likelihood of breach of peace. The Magistrate should enquire and prima facie satisfy himself about the truth of the information and record his reasons before calling upon a person to execute an interim bond.

4. Lastly, it is pointed out that the direction contravenes proviso (b) to Section 116(3) of the Cr.P.C. Under the said proviso, the conditions of the interim bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order u/s 111. In the instant case, the preliminary order u/s 111 mentions the amount for which the bond is to be executed as Rs. 2,000/- whereas the interim bond which has been directed to be executed by the petitioners is for an amount of Rs. 10,000/-. It is patent that the conditions of the interim bond are more onerous than the order issued u/s 111.

5. On behalf of the State, an objection was taken that the petition itself is not maintainable in view of the fact that the facts and circumstances of the case do not fall u/s 482 of the Cr.P.C. It is argued that the inherent powers of this Court are to be exercised only for the purposes mentioned in that section and these purposes can be classified into three: (1) to make such order as may be necessary to give effect to any order under the Code, (2) to prevent abuse of the process of any Court and (3) otherwise to secure the ends of justice. The

argument is that the words "otherwise to secure the ends of justice" are ejusdem generis with the other two clauses and that it is not open to this Court to go outside the categories mentioned in Section 482. For the purpose of this case, I need not interpret what is intended by the words "otherwise to secure the ends of justice" because the case falls directly under the second head to prevent abuse of the process of court. As stated in *In Re: Llewelyn Evans*, "inherent jurisdiction," "to prevent abuse of process," "to secure the ends of justice" are terms incapable of definition or enumeration, and capable at the most of test, according to well-established principles of criminal jurisprudence. "Process" according to the above decision is a general word, meaning in effect anything done by the Court. This interpretation has been followed in the decision in *Assistant Government Advocate Vs. Upendra Nath Mukerji*, . The framers of the Code could not have provided which all cases should be considered as abuse of the process of Court. It is for the Court to take a decision in particular cases. In the instant case, the direction by the court to execute a bond for Rs. 10,000/- is in flagrant disregard to the provisions of the proviso (b) to Section 116(3) Cr.PC. There cannot be doubt that the order deserves setting aside as an abuse of the process of Court. It is evident from Section 397(2) that no revision lies to this Court or to the Sessions Judge from an interim order passed by the Sub-Divisional Magistrate. Therefore the only method of setting right of the patently wrong direction made by the Sub-Divisional Magistrate is by invoking the provisions u/s 482 Cr.PC. Therefore, the preliminary objection has no leg to stand.

The order of the Sub-Divisional Magistrate is set aside for the reasons aforesaid. It is however open to him to pass orders afresh in accordance with law, if the conditions exist for directing the petitioners to execute interim bond u/s 116(3) of the Cr.PC.

The petition is allowed as above.