

(1972) 06 OHC CK 0018
In the Orissa High Court
Case No : Criminal Revision No. 26 of 1972

Gouranga Rout and Others

APPELLANT

Vs

T. Jaganath Podhan and Others

RESPONDENT

Date of Decision : 30-06-1972

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 112, 117, 117(1), 117(3)

Citation : (1972) 38 CLT 836

Hon'ble Judges : G.K. Misra, C.J

Bench : Single Bench

Advocate : D.P. Mohapatra, for the Appellant; None, for the Respondent

Judgement

G.K. Misra, C.J.—The Petitioners are members, of the second party in a proceeding u/s 107, Code of Criminal Procedure pending in the Court of the Magistrate, 1st Class (Executive), Chatrapur. In course of that proceeding a notice was issued to the Petitioners on 16-8-71 u/s 117(3), Code of Criminal Procedure, calling upon them to show cause as to why they should not be required to execute interim bond for Rs. One thousand with one surety to keep peace pending conclusion of the inquiry. This notice was issued on the basis of the report of the officer-in-charge, Purusottampur police station, and on an application filed by one Jagannath Pradhan on behalf of the 1st party. The Petitioners showed cause on 13-9-1971. They challenged the allegations in the notice as being vague and untrue. The proceeding u/s 117(3) was also challenged as there was no apprehension of imminent breach of the peace.

On 13-10-1971 the Magistrate passed the impugned order directing the Petitioners to execute interim bonds u/s 117(3), Code of Criminal Procedure for Rs. One thousand with one surety for the like amount till the disposal of the case u/s 107, Code of Criminal Procedure. It is against this order that the Criminal Revision has been filed.

2. Mr. Mohapatra, on behalf of the Petitioners, urged a number of contentions,

the most important of which was that the impugned order is illegal and ultra vires, inasmuch as an order for furnishing interim bond u/s 117(3) cannot be passed except after commencement of the inquiry.

3. To appreciate this contention, Section 117(3), so far as is relevant, maybe extracted:

Section 117. Inquiry as to truth of information:

(3) Pending the completion of the inquiry under Sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquility, or the commission of any offence or for the public safety, may for reason to be recorded in writing, direct the person in respect of whom the order u/s 112 has been made to execute bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or in default of execution, until the inquiry is concluded.

Mr. Mohapatra places emphasis on the expression "pending the completion of the inquiry" as meaning that an order to furnish interim bond can only be passed "after" commencement and before "completion" of the inquiry. The Division Bench decision of this Court in *Mandalapu Sunder Narayan v. V.V. Chenulu* 36 C.L.T. 954 directly militates against this view. In that case the narrow view adopted by the majority of High Courts was not approved, and it was held that the expression brings within its sweep an inquiry which has not yet commenced, but which has been ordered u/s 112, Code of Criminal Procedure.

Mr. Mohapatra contends that the Division Bench decision is directly contrary to the decision in *Madhu Limaye and Anr. v. Ved Murty and Ors.* 1970 S.C.D. 975 wherein a Constitution Bench held that u/s 117(3) the inquiry must have commenced. In para 16 of the judgment their Lordships observed thus:

The Magistrate could only ask for an interim bond if he could not complete the enquiry and during the completion of the enquiry" postulates a commencement of the inquiry which means commencing of a trial according to the summons procedure. It was not given to the Magistrate to postpone the case and hear nobody and yet ask the Petitioners to furnish a bond for good conduct. The Magistrate should have made at least some effort to get a statement from Brij Mohan or Ved Murty Bhatt or any of the witnesses named in the Challan. Nothing of this kind was done. Therefore, the proceedings for asking for an interim bond were completely illegal.

The aforesaid Supreme Court Decision fully supports Mr. Mohapatra's contention, and on this point the view expressed by this Court in the aforesaid decision of

the Division Bench must be taken as not laying down good law and is to be overruled.

4. Reference is also made to Govinder Singh Verma and Another Vs. Mrs. Bachubhai T. Pestonji and Another, wherein the Supreme Court is said to have taken a different view. On examination of the facts of that case, it however, appears that the inquiry in that case had commenced by examination of witnesses. The case is, therefore, in line with the case in Madhu Limaye and Anr. v. Ved Murty and Ors. 1970 S.C.D. 975 and there is no inconsistency.

Both these Supreme Court Decisions were taken into consideration by my learned brother, R.N. Misra, J. In Sachit kanta v. Pravabati Pradhan 38 C.L.T. 524 and the ultimate conclusion reached by him is unassailable.

5. As in this case the inquiry has not commenced by examination of evidence, the order calling upon the Petitioners to furnish interim bond u/s 117(3) cannot be supported and the same is set aside.

It is, however, open to the learned Magistrate to follow the correct legal procedure and call upon the Petitioners to furnish interim bonds if there is apprehension of imminent breach of the peace. The case is pending for & long time and the learned Magistrate is directed to dispose of the case within two months from the date of receipt of records, with intimation to this Court.

In the result, the impugned order is set aside and the criminal revision is allowed. Records be sent down at once.