

(1976) 03 PAT CK 0020

In the Patna High Court

Case No : Criminal Miscellaneous No. 4593 of 1975

Haruni Das and Others

APPELLANT

Vs

The State of Bihar and Ladoo Lal Das

RESPONDENT

Date of Decision : 18-03-1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116(3), 116(6)

Citation : (1976) 9 PLJR 475

Hon'ble Judges : Rameshwar Prasad Sinha, J

Bench : Single Bench

Advocate : Birendra Mohan Singh, for the Appellant; Ramnandan Prasad, for the Respondent

Final Decision : Allowed

Judgement

R.P. Sinha, J.—On the 2nd July, 1974, a petition was filed by opposite party no. 2 for starting a proceeding u/s 107 of the Code of Criminal Procedure (hereinafter referred to as the Code) against the petitioners, and the Subdivisional Magistrate, Begusarai, had called for a police report. While the police report was yet to come, on the 30th September, 1974, opposite party no. 2 filed a petition for taking action against the petitioners u/s 116(3) of the Code. The Subdivisional Magistrate thereupon issued notices to the petitioners to show cause why they should not be ordered to execute bonds for Rs. 1,000/- each with two sureties of the like amount, for maintaining peace for a period of one year. On the same date, another notice was issued to the petitioners, in similar terms, under the provisions of Section 116(3) of the Code. The petitioners, in response to the notices issued to them to show cause, appeared in court on the 11th October, 1974, and prayed for time to file their show cause and on the 11th November, 1974, a show cause was filed on behalf of the petitioners. It appears that the proceeding remained pending thereafter without any further progress, as it was adjourned from date to date. On the 21st June, 1975, opposite party no. 2 was directed to bring witnesses on the 10th July, 1975, but no witness was

produced on that date and the case was again adjourned to another date. On the 4th September, 1975, a petition was filed on behalf of the petitioners to the effect that under the provisions of Section 116(6) of the Code the proceeding had automatically stood terminated after six months of the commencement of the proceeding and hence the court had become functus officio. A similar petition was again filed on the 16th September, 1975, which was rejected by the learned Magistrate by his impugned order dated the 17th November, 1975.

2. The learned lawyer for the petitioners has submitted that since the commencement of the proceeding more than six months had elapsed when a petition was filed on their behalf that the proceeding had automatically stood terminated under the provisions of Section 116 (6) of the Code, but the learned Magistrate had tried to justify that the proceeding should be contained as there was apprehension of breach of the peace still in existence and that according to him the inquiry had commenced actually when he tried to enquire into the truth of the allegations on taking evidence. According to him, since the first witness was examined on the 4th September, 1975, there was sufficient time for the proceeding to continue.

3. The learned lawyer on behalf of the petitioners has relied on a decision of this Court in the case of (1) S.K. Roy V. The State of Bihar (1975 BBCJ 879). That was a case very similar to the present one. In that case, on the basis of a police report the Subdivisional Magistrate, Dhanbad, had drawn up a proceeding u/s 107 of the Code against the petitioner by his order dated the 16th September, 1974. On receipt of the notice relating to that proceeding, the petitioner appeared before the Magistrate on the 21st September, 1974, and subsequently showed cause. It appears that later the police submitted another report for taking action against the petitioner u/s 116(3) of the Code and the petitioner was asked to show cause why he should not be directed to execute interim bond. Subsequently, an order was passed directing the petitioner in that case to execute an ad interim bond. It was urged on behalf of the petitioner in that case that the order of the learned Magistrate directing the petitioner to execute ad interim bond was without jurisdiction inasmuch as the entire proceeding stood terminated by virtue of the provisions of Section 116(6) of the Code. It was held in that case that the Magistrate draw up the proceeding on the 16th September, 1974, and the petitioner appeared before him on the 21st September, 1974, in response to the notice issued against him in regard to that proceeding.

It was, therefore, clear that the proceeding u/s 116(1) of the Code commenced on the appeared of the petitioner on the 21st September, 1974. It was further held that in the circumstances, it should have been brought to a close within Six months of the 21st September, 1974. Relying on the decision referred to above, it has been submitted by learned lawyer for the petitioners in this case that the learned Magistrate by his order dated the 30th September, 1974, had issued notice to the petitioners to show cause why they should not be ordered to execute bonds for maintaining peace for a period of one year and also for

executing ad interim bonds, and the petitioners, in response to the notice appeared in court on the 11th October, 1974. So on the basis of the decision referred to above, the proceeding u/s 107 should be deemed to have been commenced on that date, or at least on the 11th November, 1974, when the petitioners filed their show cause. In any case, the proceeding had terminated long before the petitioner had drawn the attention of the Court to the provisions of Section 116 (6) of the Code by a petition filed on the 4th September, 1975, and again on the 16th September, 1975, as the inquiry had commenced at least on the 11th November, 1974, when show cause was filed by the petitioners, if not earlier on the 11th October, 1974, when they had appeared in response to the notice issued against them

4. Learned lawyer for the petitioners has referred to another decision of this Court in the case of (2) Nokha Singh and others V. Parvati Kuer and another (1974 BBCJ 460), wherein it has been held that when a person proceeded against appears in court in pursuance of the notice u/s 112, the stage of Section 117 is reached and Section 117 (1) does not lay down that an inquiry does not commence unless a witness has been examined or the person proceeded against has been further interrogated, [Section 117 of the old Code of 1898 is now Section 116 of the new Code of 1973, to which a Sub-section (6) has been added, which was not in the old section] In the aforesaid cast, their Lordships had taken into consideration the observations made in Madhu Limaye's case (A.I.R. 1971 SC 2481), and it was held that that decision does not lay down that even after the stage of Section 117 (1) is reached, it is necessary to examine the police officer or the person at whose instance order for ad interim bond is sought to be made.

5. In this case the simple question to be decided is as to when was the proceeding commenced and it has been held in the case of S.K. Roy (Supra) that the proceeding u/s 116 (1) commenced with the appearance of the petitioner. So in this case, on the basis of the decision aforesaid, it can be safely held that the proceeding commenced when the petitioners appeared in response to the notice served on them in regard to the proceeding and, in absence of any special reason recorded by the learned Magistrate before the proceeding had terminated, it must be held that under the provisions of Section 116(6) of the Code the proceeding terminated after the expiry of six months from the date of the commencement. In the result, this application is allowed, and the proceeding, which was initiated against the petitioners, having terminated under the provisions of Section 116 (6) of the Code, the impugned order of the learned Magistrate passed on 17-11-75 is quashed. It will, however, be open to the Magistrate to start a fresh proceeding in future, if the circumstances so require.