
(1984) 05 P&H CK 0040
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 660 of 1983

Kalyan Singh

APPELLANT

Vs

Shankar Lal and anr.

RESPONDENT

Date of Decision : 15-05-1984

Acts Referred:

Citation : (1984) AICLR 740

Hon'ble Judges : B.S.Yadav, J

Advocate : D.S. Bali, R K. Handa, H.L. Sibal, Advocates for appearing Parties

Judgement

B.S. Yadav, J.

1. The facts leading to this Criminal revision petition are that on 30th October, 1980 Kalyan Singh PW 1 and some other residents of Rewari filed an application before the Station House Officer. Rewari alleging therein interalia that the respondent Shankar Lal was a quarrelsome type of character and of criminal antecedents and was a sort of nuisance to the public at large, since he often intimidated them and threatened violence. The application was marked to Head Constable, Dhani Ram for investigation. During investigation. Head constable Dhani Ram found that the respondent was a problem chap The respondent did not cooperate in the investigation and tried to assault Kalyan Singh in his (Dhani Ram's) presence. Head Constable Dhani Ram thereupon arrested the respondent under section 107 read with section 151 of the Criminal Procedure Code (hereinafter referred to as 'the Code'). The police presented calendera in the Court of SubDivisional Magistrate on 31st October, 1980 alongwith the respondent. On that day the learned Sub Divisional Magistrate released the respondent on his executing bond (for appearance) in the sum of Rs. 5000/ and adjourned the case to 11th November, 1980. On this adjourned date, notice under section 111 of the Code was served upon respondent and he was made to understand its contents and the case was adjourned to 25th November, 1980. It is not material to refer to the other dates to which the case adjourned. The prosecution evidence was closed on 28th April, 1981. The case was adjourned to

4th May, 1981 for the respondent's evidence. On 4th May, 1981 no defence evidence was present and the case was adjourned to 8th May, 1981. On the said date, the learned Sub Divisional Magistrate passed the order which when translated in English somewhat reads as follows :

"Respondent present. Respondent wants time to present his defence. On behalf of the prosecution an application has been filed to extend the period of enquiry. Therefore, in the interest of justice the period of trial is extended for a period of 6 months. The case to come up for defence evidence on 29.5.1981.

8.5.81.

Sd/ SDM,

Rewari"

Proceedings continued before the Sub Divisional Magistrate, but in the mean time the respondent filed a revision petition which came up for hearing before the learned Additional Sessions Judge, Narnaul. He stayed further proceedings in the case vide order dated 19th September, 1981. When copy of the said order was received by the Magistrate, he adjourned the proceedings sine die vide order dated 22nd September, 1981.

2. Revision petition filed by the petitioner was dismissed on the ground that it had been filed beyond the period of limitation." The learned trial Court revived the proceedings on 28th May, 1982 and after recording remaining evidence, vide order dated 6th July 1982 ordered the respondent to execute a bond in the sum of Rt. 1000/ for a period of six months" to keep peace and be of good behaviour during that period.

3. Feeling aggrieved against the aforesaid order, the respondent filed an appeal which was heard by the learned Additional Sessions Judge, Narnaul. He did not go into the merits of the case. He accepted the present respondent's contention that the trial Court had extended the period of enquiry without giving sufficient reasons. That objection was raised in view of section 116 (6). of the Code, the relevant portion of which reads as follows :

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs?"

The learned Additional Sessions Judge held that the Magistrate did not satisfy as to what were the particular reasons as to why the inquiry could not be concluded within the statutory limitation and as to what was the peculiar occasion to extend its scope or duration. Accordingly, he accepted the appeal and set aside the order of the trial Court. Feeling aggrieved, Kalyan Singh complainant has come to this Court in this revision.

4. The learned counsel for the petitioner vehemently argued that under section 116 (6) of the Code, the trial Magistrate conducting the inquiry under Chapter 8 of the Code, has been empowered to extend the period of inquiry, though for special reasons to be recorded in writing, if the inquiry cannot be completed within the period of six months from the date of its commencement. According to him the special reasons have to be interpreted with respect to the facts of a particular case. He pointed out that in the present case the respondent had not brought his defence evidence on 4th May, 1981 and on his request the case had to be adjourned to 8th May, 1981, on which date he again made a request for producing defence evidence and as it is settled principle or criminal jurisprudence that an accused or respondent in criminal proceedings should be given full opportunity to defend himself. The learned Sub Divisional Magistrate was justified in granting another adjournment to the respondent for producing his evidence and as the period of six months was expiring, the prosecution filed an application for the extension of time for the conclusion of the inquiry and it was to extended by the Sub Divisional Magistrate vide his order dated 8th May, 1981 for a period of six months. I am of the opinion that the above arguments have force. Whether there were special reasons for extending the period of enquiry have to be determined with reference to the facts of an individual case. In the present case the respondent himself was responsible for not producing the evidence and he was seeking adjournment after adjournment. Therefore, on his request the learned Magistrate granted the adjournment and extended the period of enquiry. The respondent cannot have any grievance against the said order.

5. The learned counsel for the respondent did not dispute the fact that for special reasons the Executive Magistrate could extend the period of enquiry, but he argued that the period could extended only before the expiry of six months from the date of commencement of the enquiry. According to him in the present case the enquiry commenced on 31st October, 1985 when the respondent was produced before the Magistrate alongwith Calendra and. therefore, six months expired on 30th April, 1981 and, thus on 8th May, 1981 the learned Magistrate had no jurisdiction to extend the period of limitation. Therefore, the question that arises for consideration is that from which date the enquiry had commenced in the present case. It will not be out of place to mention that before the learned lower Appellate Court it was not contended by the respondent that the period for enquiry was extended, after the expiry of. the statutory period of limitation from its commencement. On the other hand. it was taken as an admitted fact in that Court that the proceedings commenced on 11th November, 1980 when notice under Section 111 of the Code was served upon the respondent.

6. Before I proceed further it will be relevant to make a reference to the relevant provisions contained in Chapter 8 of the Code. Section 107 lays down that when an Executive Magistrate receives information that any person is likely to commit the breach of peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding he may in the

manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period not extending one year as he thinks fit. The manner in which the preliminary order is to be made is provided in section 111 of the Code, which lays down that when a Magistrate acting under sections 107, 108 and 109 or 110 of the Code, deems it necessary to require any person to show cause under such section he shall make an order in writing setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number, character and class of sureties (if any) required. Section 112 of the Code lays down that if the person in respect of whom such order under section 111 of the Code is made is present in Court it shall be read over to him or if he so desires, the substance thereof shall be explained to him. Section 113 of the Code deals with the contingency when such person is not present in Court. It empowers the Magistrate to issue process, requiring the person concerned to appear before him. Section 114 of the Code lays down that the process issued under section 113 of the Code shall be accompanied by the copy of the order under section 111 of the Code, and such copy shall be delivered by the officer serving or executing the process to the person served with the same. Section 116 of the Code deals with the conduct of the enquiry when a person against whom order under section 111 of the Code has been made, appears or brought before it.

7. A reading of the above provisions clearly shows that the proceedings under section 116 of the Code cannot commence till the Executive Magistrate draws up the preliminary order under section 111 of the Code and thereafter the person proceeded against appears or is brought before him. In the present case, on 30th October, 1980 when the respondent appeared before the Court he did not apply his judicial mind to the case. The only order passed by him was about the release of the respondent who was in the detention and adjourned the case to 11th November, 1980 for further proceedings. Thus, in these circumstances of the case it is difficult to say that the proceedings against the respondent had commenced on 31st October, 1980.

8. In support of his argument that the enquiry commenced when the respondent was produced by the police before the Sub Divisional Magistrate on 31st October, 1980, the learned counsel for the respondent relied on the following passage occurring in *J.C. Mehta v. State*, 1982 CrL. L.J. 1488 :

"In my view therefore, the act of asking the person proceeded against to show cause against the proposed action is in itself a step in the inquiry contemplated by Sec. 116 (1) of the Code. It is only when the person concerned does not admit the truth of it that an inquiry shall have to be made into the truth or the information upon which action has been initiated. If this interpretation were not to be accepted the Magistrate may at his sweet will go on postponing the commencement of inquiry by not reading or explaining the preliminary order made under Sec. 111 to the person concerned. I do not think that can be the

intendment of the legislature, especially in view of the recent innovation of section 116(6) of the Code which determines the very life of the inquiry as six months. So, the letter and spirit of the foregoing provisions would warrant the conclusion that the date on which the person sought to be proceeded against appears or is brought before the Magistrate is the date when the latter is supposed to proceed with the enquiry as contemplated in Sec. 116 (1) of the Code".

The above observations clearly show that the inquiry will be deemed to commence when the person proceeded against is asked to show cause against the proposed action, i.e., when the order under Sec. 111 of the Code is drawn up. In Fact, the learned counsel for the respondent wants to have the above observations read out of context. In the earlier part of the para in which the above observations occur it was remarked :

"Section 111 of the Code envisages the very first stage when a Magistrate on getting information of the kind specified in Secs. 107, 108, 109 or 110 of opinion that there is sufficient ground for proceeding. The first thing he has to do on forming such an opinion is to pass a preliminary order in writing as contemplated under Sec. 111 setting forth the substance of information received. the amount of the bond to be executed, the term for which it is to be in force and the number, character and class of sureties, if any, required. He thus initiates the proceedings under Secs. 107, 108, 109 or 110 as the case may be. The next stage is contemplated in Sec. 112 which lays down that if the person in respect of whom an order under Sec. 111 is made is present in Court, it shall be read over to him or if he so desires, the substance thereof shall be explained to him. Obviously, the purpose of doing so is to apprise the person, sought to be proceeded against, of the contents of the preliminary order drawn up under Sec. 111. In case the person concerned is not present before the Magistrate on the day when the order is made he has to proceed in accordance with the procedure laid in S. 113 and issue a process for the appearance of the person concerned and read out or explain the contents of order under Section 111 to him when he appears or is brought before him in compliance with or in execution of a summons or warrant issued under Sec. 113".

Thus, it is clear that the words "appears or is brought before the Magistrate occurring in the earlierquoted passage, have been used in relation to sections 113 and 114 of the Code when the process is issued to the person against whom preventive action is sought to be taken and it is served upon him. Necessarily that stage will arise after the preliminary order has been drawn up under section 111 and it is ordered to be served upon the abovesaid person.

9. In *Prafulla Kr. Dutt v. Ajit Kr. Datta*, 1978 Cri. J. 316, the proceedings against the person proceeded against were drawn up on 5th September, 1974. The petitioner appeared before the learned Magistrate on 19th September, 1974. The order extending the time of six months under section 116 of the Code was made by the magistrate on 15th May, 1975. That order was challenged on the ground

that six months" period elapsed in March, 1975 and that the proceedings automatically terminated in that month as the Magistrate did not extend the period before the lapse of the period of six months and the extension made after six months was illegal. That objection was upheld and it was remarked.

"Under S. 273, Cr.P.C. "explanation" the word "accused" includes a person in relation to whom any proceeding under Chap. VIII has been commenced under this Code.

Under S. 116 (2), it is provided that such enquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases.

If in the summons case the trial starts when the accused appears before the Magistrate, then I see no reason to hold why the "enquiry" envisaged in Section 116 (1) should commence when the recording of evidence is started by the learned Executive Magistrate, as submitted by the learned Advocates for the State and the Opposite Party.

The first appearance being on 19.9.1974. the order dated 15.5.1975 being long after expiry of the period from the date of first appearance of the 2nd Party is bad being contrary to the provisions of S. 116 (6) The extension should be made before the statutory period expires or also the proceedings will be deemed to be terminated. It must be remembered that these are preventive measures provided by the Legislature in case of immediate apprehension of breach of peace and if within six months of the starting of the enquiry no further apprehension or breach of peace is reported the proceedings should not continue.

As the notice under S. 111, Cr.P.C. serves the purpose of a charge, the appearance of the 2nd Party after receipt of such notice. is the starting point of the enquiry and hence within six months the enquiry except as provided in Section 116 (6) must be completed".

From the above observations also it is clear that the starting of the enquiry is to be taken when the notice under section 111, Cr.P.C. is served upon the person proceeded against and he puts in appearance before the Magistrate after receipt of such a notice.

10. I may also quote here the majority view expressed by a Full Bench in *Sitaram Singh v. State of Bihar*, AIR 1980 Patna 257 as follows :

"When a Magistrate has issued notice calling upon a party to show cause why he should not be called upon to execute bond for a particular period to keep the peace, there are only two attitudes which a party noticed may take. Firstly, that he has, committed the acts alleged against him and he is prepared to execute bond to keep the peace and secondly, that the allegations made against him are untrue or false and that there is no reason for calling upon the party noticed to execute bond. In my short experience I have not come across any case in which the Party noticed has appeared in court to say that he is prepared to execute the

bond. In every case under Chapter XII the party noticed appears to refute the allegations made against him and for discharging the notice. When a Party refutes the allegations what are the alternatives left to the Court ? The only course that a Magistrate can adopt is to call upon the parties to adduce evidence in order that it may be decided as to who is acting wrongfully which has caused apprehension of breach of the peace. Thus the question of application of judicial mind at that stage must be considered axiomatic. If a party appears in answer to a notice the Magistrate has no option, but to proceed to test the correctness of the allegations. The recording of evidence may not start immediately that very day but it may be adjourned to some subsequent date or dates. But it is obvious that when a party has appeared in court the Magistrate when he adjourns the proceeding, he does so for the purpose of proceeding with the inquiry. Thus the forming of conclusion to proceed to enquire into the allegations takes place on the very day the party noticed appears in court. Thus, it is futile to look for some other date or dates for the formation of the necessary intention of the Court. That takes place necessarily on the day the party noticed appears before the Magistrate".

Hence it is held that in the present case 31st October, 1980, cannot be taken as the starting point of the commencement of the enquiry for the purposes of section 116 (6) of the Code. On the other hand the enquiry will be deemed to have commenced on 11th November, 1980 when the preliminary order under Sec. 111 was drawn up and read over and explained to the respondent. Thus, in the present case the learned Magistrate extended the period of enquiry before the expiry of six months

11. The learned counsel for the respondent next argued that the enquiry was not concluded within the extended time. As noticed earlier, the proceedings were stayed by the Appellate Court and the Magistrate adjourned the case sine die on 22nd September, 1981. The proceedings were revived on 28th May, 1982 and the final order was made on 6th July, 1981. If the period during which the proceedings remained stayed is excluded then it is clear that the enquiry was concluded within the extended period.

12. The learned counsel for the respondent further pointed out that the order of the Sub Divisional Magistrate is bad in law and, therefore, no useful purpose will be served by remanding the case to the lower Appellate Court. He argued that the Sub Divisional Magistrate has nowhere held that the respondent was "likely to commit the breach of peace or disturb the public tranquillity. "This argument has also no force. After discussing the evidence the learned Sub Divisional Magistrate held that the prosecution case had been proved. The prosecution case has been narrated by him in the earlier part of his order. If the Magistrate has not used the exact language occurring in section 107, Cr.P.C., it does not mean that the order is bad on that account.

13. For the foregoing reasons I accept the present petition and quash the order of the learned Additional Sessions Judge Narnaul and remand the case for

deciding the appeal on merits. The parties, through their counsel, have been directed to appear in that Court on 11th June, 1994. Records of the case be sent immediately to that Court.