
(1984) 11 CAL CK 0005
In the Calcutta High Court
Case No : Criminal Rev. No. 1658 of 1981

Kedar Nath Shaw

APPELLANT

Vs

Sm. Narma Devi and State

RESPONDENT

Date of Decision : 28-11-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 107(1), 113, 116, 116(1)

Citation : 89 CWN 238

Hon'ble Judges : S.P. Das Ghosh, J

Bench : Single Bench

Advocate : G. Srivastava, for the Appellant; Sasanka Ghose for State A. Auddy and U.C. Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Das Ghosh, J.—This revisional application is directed against an order of the learned Additional Sessions Judge, 14th Court, Alipore in Criminal Appeal No. 77A of 1981, whereby an order of the learned Executive Magistrate, Sealdah in M. Case No. 123 of 1980 u/s 107 Cr. P. C. was set aside. The petitioner-first party filed a petition on 28-1-80 u/s 107 Cr. P. C. in the court of the Executive Magistrate, Sealdah on the allegation that the opposite party no. 1, Smt. Narma Devi, was a tenant in respect of one room under the petitioner at premises no. 23/14, Cossipore Road, P. S. Cossipore at a rent of Rs. 30/- per month. At about 10-45 on 23-1-1980, the opposite party no. 2, one Mr. Dogra was found inside the room of Narma Devi, who was a widow, when that room, which was chained from outside, was opened. It was alleged that the opposite, party no. 1 did not care for her dignity and used to bring various types of persons in her room, causing disturbance to the other femalefolk in the house. After the filing of that application, the Officer-in-Charge of Cossipore Police Station was directed to enquire and report by 28-2-80. On 29-4-80, the learned Magistrate drew up a proceeding u/s 107 of the Code against both the opposite parties (Narma Devi and M. Dogra) and directed them to appear on 26-5-80 for showing cause as to

why they should not be asked to execute a bond of Rs. 500/- each with a surety of like amount to maintain peace for a period of six months. The opposite party no. 1 entered appearance on 26-5-80 and showed cause on 23-7-80.

2. The case of the opposite party no. 1 was that the petitioner, being unable to evict the opposite party no. 1 from the house, started the proceeding u/s 107 of the Code. The opposite party no. 2 did not enter appearance. The case against him was dropped by an order dated 16-12-80. On the basis of the prayer of the petitioner by an application on 20-1-81 for extending the period of enquiry on the ground of inability of the petitioner to complete his witnesses within the statutory period of limitation, the learned Magistrate extended the period of enquiry up to 30-4-81 by an order dated 20-1-81. The examination of witnesses was completed by 10-4-81. The case was fixed for hearing arguments on 27-4-81. Subsequently, on 9-6-81, the learned Magistrate directed the opposite party no. 1 to execute a bond of Rs. 500/- for keeping peace for a period of six months from the date on which such bond would be executed.

3. Being aggrieved by this order, the opposite party no. 1 preferred an appeal, being Criminal Appeal No. 77 of 1981. The learned Additional Sessions Judge allowed the appeal and set aside the order dated 9-6-81 on holding that there was no special reason for extension of time for completion of the enquiry. He was of the opinion that the learned Executive Magistrate exceeded the period of limitation as the order dated 9-6-81 was a part of the enquiry within the meaning of section 116 Cr. P. C. On facts the learned Additional Sessions Judge held that the learned Executive Magistrate was not justified in directing the opposite party no. 1 to execute the bond.

4. Mr. Srivastava, appearing for the petitioner, has challenged these findings of the learned Additional Sessions Judge. His contention is that the learned Additional Sessions Judge acted illegally in holding that there was no special reason for extension of time for completion of the enquiry. Mr. Srivastava has submitted that the final order after enquiry on a petition u/s 107 of the Code is not a part of the enquiry and hence, the order dated 9-6-81 of the learned Executive Magistrate cannot be barred by limitation. He has further argued that the learned Additional Sessions Judge was not justified in holding that the learned Executive Magistrate did not act properly in directing the opposite party no. 1 to execute the bond.

5. Mr. Auddy, appearing for the opposite party no. 1, has submitted that the order of the learned Executive Magistrate dated 20-1-81 for extending the period of enquiry is bad in law for not recording special reasons, as contemplated in section 116(6) Cr. P. C. He has submitted that when u/s 311 Cr. P. C. any court has the power, at any stage of any enquiry, to summon any persons as a witness, or recall and re-examine any person already examined, it cannot be at all stated that the pronouncement of the order on 9-6-81 by the learned Executive Magistrate was not a part of the enquiry. He has further submitted that as there is no miscarriage of justice, this court will not enter into the facts of this

case in this revisional application.

6. Mr. Ghose, appearing for the State, has also argued that in the absence of any illegality or miscarriage of justice, the order of the learned Additional Sessions Judge should not be interfered with.

7. u/s 116(6) Cr. P. C., the enquiry u/s 107 Cr. P. C. has to be completed within a period of six months from the date of its commencement. The provisions of section 116 (6) Cr. P. C. show that if the enquiry is not so completed, the proceeding shall (emphasis supplied by me), on the expiry of the aforesaid period of six months, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs. The contentions of the learned Advocate for the petitioner and the opposite party no. 1 are that the enquiry commenced from 23-7-80 when the opposite party no. 1 showed cause. It is difficult to accept this contention when the opposite party no. 1 entered appearance in the court of the learned Magistrate on 26-5-80. u/s 116(1) Cr. P. C., the Executive Magistrate is to proceed to enquire into the truth of the information, upon which action had been taken u/s 107 Cr. P. C., when any person appears or is brought before him in compliance with, or in execution of, a summons or warrant issued u/s 113 Cr. P. C. As such, the date of commencement of the enquiry will actually be 26-5-80 when the opposite party no. 1 entered appearance in the court of the learned Executive Magistrate. Even assuming for the sake of argument that the date of commencement of the enquiry will be 23-7-80, when the opposite party no. 1 showed cause, the enquiry was to be completed within six months from 23-7-80 i.e., by 22-1-81. The order of the learned Magistrate dated 20-1-81 is as follows : -

F. P. prays for extension of the period of enquiry on grounds stated in the pent. Heard both the parties and F. P.'s prayer. Considered. The period of enquiry is extended upto 30-4-80. To 18-2-81 for G. D. evidence. Let copy of the order be sent to O.C. P.S.

8. No special reason was recorded for extending the period of enquiry up to 30-4-81 (wrongly written as 304-80). It is difficult to accept the contention of Mr. Srivastava that even though no special reason was recorded, the order dated 20-1-81 is to be read along with petitioner's application on that date for extending the period of enquiry. "When the statute has enjoined a duty on the learned Executive Magistrate to record special for extending the period of enquiry," the order dated 20-1-81 cannot be sustained. There is no question of estoppel against a statute which enjoins that the learned Magistrate should record special Reasons for such extension""; though such a plea was also raised on the ground that the opposite party no. 1 submitted to jurisdiction of the learned Magistrate.

9. The order of the learned Executive Magistrate dated 20-1-81 is illegal in the absence of any special reason to be recorded by him. "The enquiry into allegations in the petition u/s 107 Cr. P.C. is different from trial." Mr. Srivastava

has argued that when u/s 117 Cr. P.C. a final order: is passed "upon such enquiry", the final order is not a part of the enquiry and hence the learned Magistrate was justified in passing the final order on -9-6-81. This contention of Mr. Srivastava cannot be accepted. First, section 117 Cr. P. C. shows that the final order is passed, ""upon such enquiry", and not "after such enquiry". The use of the expression "upon such enquiry", instead of the expression, "after such enquiry "in section 117. Cr. P. C. shows that the final" order contemplated by section 117 Cr. P.C. cannot but be a part of the enquiry in section 116 Cr. P.C. Secondly, section 107 Cr. P. C. empowers a magistrate to order a person to execute, a bond for a period not exceeding one year.

10. u/s 116 (3) Cr. P. C. a magistrate has been empowered to pass interim order for execution of such bond till the conclusion of the enquiry. If actually the final order u/s 117 Cr. P. C. is taken not to be a part of the enquiry required to be completed within six months of its commencement u/s 116(6) Cr. P. C. any Executive Magistrate can violate the period of bond mentioned in section 107(1) or in section 116(3) Cr. P. C. with impunity by completing evidences of witnesses on both sides in a proceeding u/s 107 Cr. P. C. within six months from its commencement, after passing an interim order u/s 116(3) Cr. P. C. and thereafter adjourning the case for months after months for passing final order u/s 117 Cr. P. C. Such a position is not contemplated by sections 116 and 117 Cr. P. C. The contention of Mr. Auddy by referring to the provision of section 311 Cr. P. C. cannot, however, be accepted. The court has power u/s 311 Cr. P. C. at any stage of any enquiry to summon any person as a witness, or to recall and re-examine any person already examined. This power of the court is confined during the stage of enquiry. The learned Additional Sessions Judge went to the extent of stating that there was no special reason for extension of time as time for examination of witnesses does not fall within the category of special reasons for extension of time. It is difficult to accent this opinion of the learned Additional Sessions Judge. It was entirely for the learned Executive Magistrate to extend the period of enquiry, if he so liked, on the ground that the witnesses could not be examined within the period of six months from the date of the commencement of the enquiry. Be that as it may, the order dated 20-1-81 of the learned Executive Magistrate, extending the period of enquiry up to 30-4-81, is without jurisdiction as it was passed after expiry of six months mentioned in section 116(6) Cr. P. C. Even assuming for the sake of argument that the date of commencement of the enquiry should be taken as 23-7-80 when the- opposite party no. 1 showed cause, the order dated 20-1-81 is illegal as no special reasons were recorded. Even if the date of commencement of the enquiry be taken to be 23-7-80, the enquiry was not completed by 22-1-81 within a period of six months from the date of its commencement and hence the order dated 9-6-81 of the learned Executive Magistrate, asking the opposite party no. 1 to execute the bond was illegal, being violative of the provisions in section 116(6) Cr. P. C.

11. In the circumstances, there is nothing to interfere with the order of the

learned Additional Sessions Judge, setting aside the order dated 9-6-81 passed by the learned Executive Magistrate. So far as the facts of the case is concerned, the finding of the learned Additional Sessions Judge that the learned Executive Magistrate was not justified, on consideration of the evidence, to direct the opposite party no. 1 to execute the bond is not so manifestly perverse or patently erroneous as to justify interference in this revisional application. The result is that the revisional application is to fail. The revisional application is, accordingly, rejected and the Rule is discharged.