
(1978) 08 AHC CK 0082
In the Allahabad High Court

Kunwar Lal

APPELLANT

Vs

Bishwanath and Others

RESPONDENT

Date of Decision : 21-08-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 108, 109, 110, 111

Citation : (1978) AWC 673 : (1978) CriLJ 1818

Hon'ble Judges : S. Malik, J;M.P. Saxena, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

M.P. Saxena, J.—Bishwanath, Manbharl and Ram Naresh, opposite parties Nos. 1 to 3, moved an application before the Sub-Divisional Magistrate, Ghatampur, under Sections 107/116, Cr. P.C. (new) on 21-12-1976, alleging that the applicant and 34 others are members of the same party and are used to terrorise the public by committing illegal acts. They have old enmity with Bishwanath and by use of force they have illegally placed one Peeru in possession of certain property which has given rise to reasonable apprehension of breach of the peace. On the same day the S. D. M. passed the following order:

From the application and affidavit filed by Bishwanath and others I am satisfied that there is apprehension of breach of the peace from the side of the opposite parties to the applicants. I, therefore, order that notices under Sections 107/111 Cr. P.C. be issued against the opposite parties. Fix 5-1-1977.

2. In conformity with the said order summons accompanied by a notice containing all the information required by Section 111, Cr. P.C. were issued to the opposite parties. Only one of them, namely, Kunwar Lal, filed an application u/s 482 Cr. P.C. (new) for quashing the said proceedings on the ground that the order passed u/s 111, Cr. P.C. did not comply with the requirements of this section and as such proceedings were bad. When the matter came up for hearing before a learned single Judge this Court the applicants relied on the cases of

Nadar v. State 1964 All LJ 1103 and Gauri Shanker v. State of U.P. 1969 All LJ 412 . In support of his contention the learned Counsel for the opposite parties relied on the case of Zahir Ahmad Vs. Ganga Prasad, A.S.D.M., Ballia and Another, . Although the learned single Judge was of opinion that the notice sent with the summons conformed to the requirements of Section 111, Cr. P.C. and there was no defect in the proceedings yet in view of the conflicting decisions he referred the matter to a larger Bench. It is in these circumstances that the matter has come up before us.

3. The question which requires consideration is whether the defect in the order passed on the order sheet u/s 111, Cr. P.C. (new) is cured if the notice issued with the summons or warrants substantially complies with the requirements of this provision.

4. Before proceeding further it may be stated that Section 111 of the new Code, which corresponds to Section 112 of the old Cr. P.C. reads as follows:

When a magistrate acting u/s 107, Section 108, Section 109 or Section 110 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.

5. Obviously the order dated 21-12-1976 passed on the order sheet does not fulfill the requirements of S. 111, Cr. P.C. in as much as it does not set forth the substance of the information received, the amount of the bond to be executed, the terms for which it is to be enforced and the number, character and class of sureties. However, all these requirements are contained in the notice dated 24-12-1976 issued with the summons. The learned Counsel for the applicant has placed considerable reliance on the case of Nadar v. State 1964 All LJ 1103 (supra) decided by a single Judge of this Court. In that case the order passed on the order sheet was defective because it did not contain the requisite material required by Section 112 Cr. P.C. (old). The Magistrate, however, observed that the summons issued to the applicant u/s 115 of the Code contained all the particulars referred to in Section 112 and so the defect was cured. The learned single Judge observed that the provisions of Section 112 Cr. P.C. are mandatory and had to be strictly complied with. In the very nature of things Section 115 comes into operation after a valid and proper order has been made by the Magistrate in accordance with the provisions of Section 112. If so such order exists, there is no jurisdiction to issue a notice in terms of Section 115. It was further observed that it is a well-established principle of law that if an act is required to be done in a particular manner it has to be done in that manner or not at all. The fact that a duty has been cast u/s 112 on the Magistrate taking proceedings u/s 107 to act in the manner prescribed u/s 112 makes it obligatory on him to follow the mandate of the law. With respect we are unable to agree with this view. The same question came up for consideration before a Division Bench of this Court in Zahir Ahmad Vs. Ganga Prasad, A.S.D.M., Ballia and

Another, and it was held that the provisions of Section 112 Cr P. C. are no doubt mandatory and not merely directory in their nature and its disregard cannot be treated to be a mere irregularity but its requirement will be deemed to have been substantially complied with if the notice issued with the summons contains all the essentials of Section 112 Cr. P.C. (old). Thus view was based on the ground that the purpose is to enable the person being proceeded with to comply with the directions of the court and to indicate to them the substance of the allegations against them so that in the enquiry which is to follow they may be able to meet the case against them. In that case also the original order was defective but the notice sent with the summons contained all the information contemplated by Section 112, Cr. P.C. and the proceedings were held to be valid. It was urged on behalf of the applicant that a notice is distinct from an order passed in the order sheet u/s 112, Cr. P.C. The notice has to be in conformity with the order and if the necessary requirements are not present in the order itself their mention in the notice sent along with the summons will not cure the defect. This contention was negatived by the Division Bench on the ground that we should look to the substance rather than to the form. If the purpose of giving the information in the order is to inform the person proceeded with so that he may meet the allegations, the purpose is amply served if the allegations are contained in the notice which is sent to him along with the summons. This decision in the case of Zahir Ahmad v. Ganga Prasad (*supra*) is a complete answer to the question before us and we are respectfully in agreement with that view. It was not considered in the case of Nadar v. State (*supra*). The same view has been reiterated subsequently.

6. The learned Counsel for the applicant has also relied on a single Judge decision of this Court in Gauri Shanker v. State of U.P. 1969 All LJ 412. We have carefully gone through that case and we find nothing in it to substantiate the contention of the applicant. In the order passed on the order sheet there was absolutely no mention of the requirements of Section 112, Cr. P.C. The relevant portion of the notice issued in compliance with the order of the learned Magistrate setting forth the substance of the information was as follows:

On account of dispute regarding Mahapalika land situate near Naini Post office

The notice also did not satisfy the requirements of Section 112, Cr. P.C. Therefore, the learned single Judge rightly held that the proceedings were bad. There can be no manner of doubt that if the necessary material contemplated by Section 112 is neither contained in the order passed on the order sheet nor it is incorporated in the notice issued with the summons it leaves a very serious lacuna.

7. This question was considered at length in the case of Madhu Limaye and Another Vs. Ved Murti and Others, and Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others, . In both the cases their Lordships of the Supreme Court analysed the entire scheme of Section 107 to Section 117 of the old Cr. P.C. which corresponds to Sections 107 to 116 of the new Cr. P. C, The

only difference is that Section 111 of the old Cr. P.C. has been repealed. Their Lordships observed that Section 107 enables certain specified classes of Magistrates to make an order calling upon a 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 exceeding one year as the Magistrate thinks fit to fix. The condition of taking action is that the Magistrate is informed and he is of opinion that there is sufficient ground for proceeding that a person is likely to commit breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. This is an instance of preventive justice which the courts are intended to administer. This Section says that the action has to be taken in the manner hereinafter provided and this clearly indicates that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is very salutary because the liberty of the person is involved and the law is rightly solicitous that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned. The procedure begins with Section 112 (Section 111 new) which requires that the Magistrate acting u/s 107 shall make an order in writing setting forth the substance of the information received, the amount of the bond, the term for which it has to be in force and the number, character and class of sureties (if any) required. Since the person to be proceeded against has to show cause it is but natural that he must know the grounds for apprehending breach of the peace or disturbance of the public tranquillity at his hands. This order is the foundation of the jurisdiction and the word "substance" means the essence of the most important part of the information.

8. Sections 113 to 115 deal with the person's presence, Section 113 112 of the new Cr. P.C.) deals with the situation when the person is present in court. In such a case the order shall be read over to him and if he so desires, the substance of it shall be explained to him.

9. Section 114 (115 of the new Code) deals with a situation when the person is not present in Court. There the option is two-fold. The Magistrate shall either issue summons to him to appear and if he is in custody, the Magistrate shall issue a warrant to the person who has his custody, to produce him before the court. Whenever a summons or warrant is issued u/s 114 Cr. P.C. a copy of the order made u/s 112 must be sent and delivered to the person as provided by Section 115 (114 of the new Code). Then comes Section 117 (116 of the new Code) which relates to enquiry as to truth of information. As held in the case of *Madhu Limaye and Another Vs. Ved Murti and Others*, in all cases where the person is present in court or is brought thereby a warrant in the two cases mentioned or appears on summons and the order u/s 112 is read over to him or sent to him with the warrant, the Magistrate obtains jurisdiction over the person and he is then required to proceed u/s 117 Cr. P.C. It makes it clear that even if the order passed in the order sheet is not in conformity with the requirements of Section 111 Cr. P.C. (new), the proceedings will not be rendered defective if the

notice sent along with the summons issued u/s 115 contains all the requisite information. In the case of Zahir Ahmad Vs. Ganga Prasad, A.S.D.M., Ballia and Another, the order passed on the order sheet was defective but the notice sent with the summons contained all the required information. It was signed by the Magistrate. A person intended to be bound down is concerned with the allegations made against him and which are said to have given rise to reasonable apprehension for breach of the peace. If they are contained in the notice signed by the Magistrate, there is substantial compliance of Section 111 (112 old) Cr. P.C. In this connection the following observation made by the Division Bench in the case of Zahir Ahmad v. Ganga Prasad (supra) may be cited with advantage : (at pp. 26, 27)

As we have already pointed out, Section 112 of the code only mentions the order. In case the persons charged are present, that order is read out to them and that would amount to the notice and no further notice is required to be issued to them. In case, however, they are not present, then a copy of the order has got to be sent to them along with a warrant or a summons, as the case may be. From this it is clear that there has to be no separate notice from the order u/s 112 of the Code. In the present case, what has been done is that instead of there being one order on the order sheet or on a separate piece of paper in the file the Magistrate issued notices giving 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 required. All the notices that have been issued in the present case have been signed by the Magistrate. In fact if the words "notice u/s 107/112 Cr. P.C." are removed from the top what was sent to the petitioner and others jointly tried with him would be the order u/s 112, Cr. P.C. itself. In that view of the matter we are satisfied that in substance the provisions of Section 112 have been complied with.

10. We are, therefore, of the view that even if the order passed on the order sheet is defective but the notice sent to the person proceeded with along with the summons issued u/s 114 Cr. P.C. (new) contains all the information required by Section 111, Cr. P.C. (new), it would be substantial compliance with the requirements of this section and the proceedings will not be vitiated. The record of the case be returned to the Bench concerned with this finding.