
(2017) 01 MAD CK 0189

In the Madras High Court

Case No : Crl.O.P. No. 17684 of 2015 and M.P. Nos. 1 and 2 of 2015

M. Krishnamurthy

APPELLANT

Vs

Sub Divisional Magistrate-cum-Revenue Divisional Officer

RESPONDENT

Date of Decision : 24-01-2017

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, Section 111, Section 116, Section 482

Citation : (2017) 1 CTC 680 : (2017) 1 LW(Crl) 149 : (2017) 1 MLJCriminal 257

Hon'ble Judges : Mr. A. Selvam and Mr. P.N. Prakash, JJ.

Bench : Division Bench

Advocate : Mr. C.R. Malarvannan, Advocate, for the Petitioners; Mr. C. Emalias, Additional Public Prosecutor, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. P.N. Prakash, J. - The circumstances under which this Division Bench came to be constituted for deciding the issues arising in this reference require to be recapitulated, for which, it may be necessary to briefly state the factual matrix.

[a] On 24.05.2015, two groups, categorised as "A" party and "B" party, lodged complaints against each other before the Inspector of Police, Gandhikuppam Police Station, based on which, petition enquiries were being conducted in CSR Nos. 74 of 2015 and 75 of 2015. According to the members of "A" party, the land in Survey No.562/2AB measuring 1.38 acres belongs to them and the members of "B" party are contending that the said land belongs to Bharathamatha Temple and were asserting their right to hold the Mahabaratham festival. The police, apprehending a breach of peace, registered an FIR in Cr.No.202 of 2015 and forwarded a report to the Executive Magistrate-cum-Revenue Divisional Officer for initiating proceedings u/s 107 Cr.P.C. Based on the report submitted by the police, the Executive Magistrate-cum-Revenue Divisional Officer passed an order on 22.06.2015 u/s 111 Cr.P.C. calling upon the members of "A" party to show cause, either in person or through an Advocate, as to why they should not be

directed to give a bond for Rs. 10,000/- for a period of six months.

[b] Challenging the said order dated 22.0.2015, the members of "A" party filed Crl.O.P. No. 17684 of 2015. At the time of admission, the learned counsel for the petitioners placed reliance upon a judgment of this Court in *Rajaram Reddiar and 17 others v. State*, by Inspector of Police, Udumalpet, [1994 (1) LW (Crl.) 314], wherein, a learned single Judge has held that ".....One instance by itself cannot be occasion for initiating the proceedings u/s 107 Cr.P.C." The learned counsel also relied upon the judgment of a learned single Judge of this Court in *Somasundaram and 10 others v. the Revenue Divisional Officer, Dharapuram* and another [2002 (1) CTC 72], wherein, it has been held as follows:

".....6. An order passed under Section 111 of Cr.P.C. has to satisfy a double test: (1) It must set forth the substance of the information received as well as the amount of the bond to be executed, the terms of which it is to be in force and the number, character and class of sureties (if any required).

(2) Besides, the order must also reflect that the Magistrate has assessed the truth of the information and the need for taking action under Section 107 Cr.P.C. for preservation of peace and order"

[c] One of us [P.N. PRAKASH, J.], doubted the correctness of the aforesaid dicta and sought a reference to a Division Bench for an authoritative pronouncement on the issue, pursuant to which, this Bench was constituted by the orders of the Hon"ble Chief Justice. The questions of law formulated for consideration are as follows:

"(a) Is a previous incident a sine qua non for initiating Section 107 Cr.P.C. proceedings?

(b) Can proceedings under Section 107 Cr.P.C. be initiated even before an incident that is likely to disturb the peace or public tranquillity takes place?

(c) Should a show cause order issued under Section 107 Cr.P.C. reflect that the Magistrate has assessed the truth of the information and the need for taking action?

(d) Can a show cause order under Section 107 Cr.P.C. be per se subjected to judicial review?"

2. Heard Mr. C.R. Malarvannan, learned counsel for the petitioners, Mr. G. Karthikeyan, learned counsel who assisted the Court and Mr. C. Emalias, learned Additional Public Prosecutor appearing for the State.

3. Maintenance of public order and tranquillity had always received the utmost attention of the colonial powers even during the administration of India by the East India Company. This is evident from the preface to the A.D. 1802 Regulation XXXII (Madras Regulations), which reads as under:

"A REGULATION for prohibiting affrays respecting disputed boundaries in the

British Territories subject to the Presidency of Fort St. George.

It having been a practise of proprietors, and farmers of land, poligars, under-farmers, and ryots, to seize, or order their agents and dependants to take possession by force of disputed lands or crops, under a pretended claim of right thereto; and affrays having been in consequence caused, attended with bloodshed, and with the lots of lives; and recourse to these violent means either for enforcing or refitting such pretended claims of private right, being injurious to the peace of civil society, and contrary to good Government; the civil Courts of Judicature shall be competent to hear, try, and decide, causes to founded on disputed boundaries, and imperfect land-marks."

[refer to the link <http://www.hcmadras.tn.nic.in/MadrasRegulations.pdf>]

4. After the assumption of sovereignty by the Crown in 1858 (see Government of India Act, 1858), the Indian Penal Code was brought into force with effect from 01.01.1862 along with the Code of Criminal Procedure, 1861. The Penal Code devoted a separate Chapter, viz., Chapter VIII titled "Of offences against the public tranquillity", which meant that a mere gathering of five or more persons for an unlawful object was rendered punishable. Section 159 defined "Affray" and Section 160 prescribed the "Punishment for committing affray". The Penal Code, being a substantive law, could be enforced only after the commission of an offence. What ought to be done to prevent the commission of an act that would disturb the public tranquillity, was answered by Chapter XVIII titled "Of recognizance and security to keep the peace", of the Code of Criminal Procedure, 1861.

5. As unrest spread in the country, the Government of the day felt that the existing provisions under the 1861 Code were insufficient for maintaining peace. Therefore, in the Code of Criminal Procedure, 1872 which repealed the Code of Criminal Procedure, 1861, a separate part containing six chapters was explicated to expand the preventive jurisdiction of Magistrates. For the discussion at hand, suffice it to indicate that Section 491 of the 1872 Code empowered a Magistrate to call upon a person to enter into a bond to keep the peace. During the currency of the Code of Criminal Procedure, 1872, a doubt arose as to whether the provisions of the 1872 Code would apply in Presidency Towns. In order to put all lingering doubts to rest, the Governor General of India in Council passed the "Presidency Magistrates" Act, 1877 [Act No.IV of 1877], wherein, Section 215 was in pari materia with Section 491 of the 1872 Code. Thus, Act IV of 1877 enabled the Presidency Magistrates to call upon persons to show cause in cases where breaches of peace were apprehended within the territorial limits of the Presidency Towns. Subsequently, the Legislature repealed the 1872 Code and the "Presidency Magistrates" Act, 1877 and enacted a consolidated Code titled "Code of Criminal Procedure, 1882", for the whole of British India.

6. Section 107 of the 1882 Code became the subsequent incarnation of Section 491 of the 1872 Code relating to security for keeping the peace. It may be

interesting to note that in Section 107 of 1882 Code, the expression that was used was:

"to do any wrongful act that may probably occasion a breach of peace."

The Code of Criminal Procedure, 1898 replaced the 1882 Code and Section 107 was further amplified as follows:

"to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity".

7. The addition that was made to Section 107 is the expression "disturb the public tranquillity". The Constitution of India envisioned the separation of Judiciary from Executive (see Article 50) and reflecting the Constitutional ethos, the 1973 Code brought Sections 106 to 124 within the domain of the Executive by vesting the preventive jurisdiction under the Code with the Executive Magistrates. A small amendment was made to Section 107 by Act 45 of 1978, which is indeed very insignificant. The provisions, as they stand now, are as under:

"107. Security for keeping the peace in other cases.-

(1) When an Executive Magistrate receives information that any person is likely to commit a 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 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 exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

111. Order to be made.- When a Magistrate acting under section 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.

112. Procedure in respect of person present in Court.- If the person in respect of whom such order 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.

113. Summons or warrant in case of person not so present.- If such person is not present in Court, the Magistrate shall issue in a summons requiring him to

appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court : Provided that whenever it appears to such Magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

114. Copy of order to accompany summons or warrant.- Every summons or warrant issued under section 113 shall be accompanied by a copy of the order made under section 111, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

116. Inquiry as to truth of information.-

(1) When an order under section 111 has been read or explained under section 112 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons-cases.

(3) After the commencement, and before 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 tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 111 has been made 859 to execute a 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:

Provided that-

(a) no person against whom proceedings are not being taken under section 108, section 109, or section 110 shall be directed to execute a bond for maintaining good behaviour;

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111.

(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

(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:

Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.

(7) Where any direction is made under sub-section (6) permitting the continuance of proceedings, the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse."

8. Dwelling upon the larger public interest that the provision is intended to subserve, a Constitution Bench of the Supreme Court in *Madhu Limaye and another v. Sub Divisional Magistrate, Monghyr and others* [AIR 1971 SC 2486(1)], while upholding the constitutional validity of Section 107, has observed as follows:

"47. The gist of the Chapter is the prevention of crimes and disturbances of public tranquillity and breaches of the peace. There is no need to prove overt acts although if overt acts have taken place they will have to be considered. The action being preventive is not based on overt act but on the potential danger to be averted. These provisions are thus essentially conceived in the interest of public order in the sense defined by us. They are also in the interest of the general public. If prevention of crimes, and breaches of peace and disturbance of public tranquillity are directed to the maintenance of the even tempo of community life, there can be no doubt that they are in the interest of public order."

(emphasis supplied)

9. Bearing in mind the aforesaid essence of the provision, we now propose to deal with each of the questions of law formulated, in seriatim:

(a) Is previous incident sine qua non for initiating Section 107 Cr.P.C. proceedings?

A bare reading of Section 107 shows that the power to initiate proceedings

devolves on the Executive Magistrate when he receives information "that any person is likely to commit a breach of the peace." The expressions that are important are "any person" and "likely". The Section does not say that such a person must be a previous offender or a suspect. Even a lone wolf can create a breach of peace. The Section does not contemplate that a breach of peace must have occasioned earlier and that only in order to prevent a further breach of peace, can the Magistrate initiate proceedings under Section 107. Once a breach of peace has occurred, the provisions of the Indian Penal Code will apply and those responsible for it will be accordingly brought to justice. Section 107 is not required to take care of that contingency. It will lead to ludicrous results, if a condition that does not exist in the Section is forcibly read into it. The likelihood of a breach of the peace, by itself, is enough for the Magistrate to initiate proceedings under Section 107 Cr.P.C. To say that a Magistrate should have to wait for a breach of the peace to occur and only thereafter, he can proceed to take action in accordance with law under Section 107 to prevent further breach of the peace, is an absurdity ad nauseam.

10. In *Adimadavan and others v. State and another* [2004 (1) LW (CrL.) 54], a learned single Judge of this Court has held that even without any incident having taken place, if the Magistrate is of the opinion that there is a likelihood of breach of the peace, he is justified in initiating proceedings under Section 107. We have no hesitation in approving the aforesaid statement of law and we hold that it is not necessary for a previous incident of breach of peace to occur for initiating Section 107 Cr.P.C. proceedings. Ex consequenti, the judgment of the learned single Judge in *Rajaram Reddiar and 17 others v. State by Inspector of Police, Ulundurpet*, [(1994) 1 LW (CrL.) 314], will stand overruled.

(b) Can proceedings under Section 107 Cr.P.C. be initiated even before an incident that is likely to disturb the peace or public tranquillity takes place?

11. A fortiori in view of the aforesaid discussion, we answer the second question in the affirmative and hold that a proceedings u/s 107 Cr.P.C. can be initiated even before an incident that is likely to disturb the peace or public tranquillity takes place, provided that the Executive Magistrate has information before him, based on which he is of the opinion that there is sufficient ground for proceeding.

(c) Should a show cause order issued under Section 107 Cr.P.C. reflect that the Magistrate has assessed truth of there reflect that the Magistrate has assessed truth of there reflect that the Magistrate has assessed truth of information and the need for taking action?

12. The next question is whether the Executive Magistrate, while passing an order u/s 111, is under a statutory duty to enquire into the truth of the information laid before him at the stage of assuming jurisdiction u/s 107. Section 107 authorises an Executive Magistrate to assume jurisdiction u/s 107 and pass an order u/s 111 when he "receives information" of a likely breach of peace. The expression "receives information" must be contrasted with the expression used in

Section 116(1) which requires the Executive Magistrate to inquire into "the truth of information" placed before him. It is, therefore, clear that a probe into the truth of the information placed before the Magistrate is contemplated only upon the commencement of an enquiry u/s 116, and not before. We are fortified in taking this view in the light of the following observations of the Constitution Bench in Madhu Limaye's case (supra), which reads as under:

"42. In our opinion the words of the section are quite clear. As said by Straight J. in *Emperor v. Babua*, [ILR 6 All 132] the order under Section 112 is on hearsay but the inquiry under Section 117 is to ascertain the truth of the necessary information."

(emphasis supplied)

The law does not contemplate any preliminary enquiry u/s 111 Cr.P.C. to find out the truth of the information. The question of finding out the truth of the information will come only during the course of the enquiry, which is evident from Section 116, the heading of which reads, "Inquiry as to truth of information".

13. Alacrity is the need of the hour for preventing the breach of peace and the Executive Magistrate cannot weep over spilt milk after the breach has occurred. The opinion u/s 107 is a subjective opinion based on the information laid before the Executive Magistrate. The said opinion at the stage of Section 107 cannot be subjected to judicial review, because, this Court cannot step into the shoes of the Executive Magistrate and perform a post-mortem on the information. This has been very lucidly explained by a Full Bench of this Court in *In re : Muthuswami Chettiar and others* [(1940) 1 MLJ 11], as follows:

"11. There is no doubt that action taken under Section 112 constitutes a judicial act and therefore the Magistrate should not act arbitrarily. There must be information of a nature which convinces him that there is a likelihood of a breach of the peace. It is impossible to formulate a hard and fast rule with regard to the nature of the information on which a Magistrate should act. What is reasonably sufficient to satisfy a Magistrate must depend on the particular situation. The person who gives the information may not be in a position to give details, but the source of the may be sufficient to convince the Magistrate that a breach of the peace is likely, and if he is convinced law requires him to take action. We consider that Knox, J., aptly stated the position in *Jaguji Rai v. Emperor* (1918) 16 A.L.J. 567, when he said:

As I read this section, there may be cases in which a Magistrate of the first class is merely informed that a person is likely to disturb the public tranquillity without any information being given as to his intent to do wrongful acts. The Magistrate is responsible for the peace of the district. He acts upon this information and is required to set forth in writing the substance of the information received. In this case we are not told that the Magistrate has received any information of definite acts intended. Apparently from the information he received he was

satisfied that the persons concerning whom the information had been given were likely to commit some act which might occasion a breach of the peace. The reason given for this probability was that they were on terms of enmity with each other. Where the Magistrate can go into further particulars, he should certainly go into them. But it may well be that all the information he receives is that there will be a breach of the public peace, and if he considers that information to come from a reliable source, he has jurisdiction to make the order required by Section 112.

12. The High Court has undoubtedly power to quash proceedings where the notice issued does not comply with the requirements of Section 112, but before doing so it must be satisfied that there has been a failure to comply. It must be remembered that the issue of the notice is merely a preliminary step and no order can be passed under Section 107 unless the inquiry which follows the issue of the notice shows that the laying of the information was justified. The High Court can always interfere when the inquiry has not been held in accordance with the law or a wrong conclusion has been arrived at. Far too much stress has been laid in the past on the wording of notice and too little regard paid to the wording of notice and too little regard paid to the safeguards provided by the subsequent procedure."

(emphasis supplied)

It may be necessary to clarify here itself that Section 111 of the present Code is in pari materia with Section 112 of the 1898 Code. Thus, it is beyond any cavil that Section 111 of the Code alone contemplates an order to be passed by the Magistrate and not Section 107. The Magistrate is not required to record anywhere his subjective opinion because, at the outset, Section 107 itself does not mandate so. That apart, as pointed out by the Full Bench in *In re: Muthuswami Chettiar* (supra), the Magistrate may receive a very hazy information, but from a reliable source that there is likely to be a breach of peace, in which event he is perfectly justified in forming a subjective opinion in his mind and immediately proceeding to the next stage, viz., pass an order under Section 111. The fact that the Executive Magistrate has passed an order under Section 111 is by itself proof of the fact that he is of the opinion that a breach of peace is likely to occur. In other words, the order passed under Section 111 is the physical manifestation of the opinion formed by the Executive Magistrate.

14. Consequently, we hold that those line of judgments of learned single Judges including *Somasundaram and 10 others v. The Revenue Divisional officer* [2002 (1) CTC 72] which insist upon the Magistrate to assess the truth of the information while passing an order under Section 111 does not reflect the correct legal position. The truth of the information can be tested only in the Enquiry under Section 116.

(d) Can a show cause order under Section 107 Cr.P.C. be per se subjected to judicial review?"

15. The superior Court should loathe to interfere when a show cause notice is issued u/s 107 r/w 111 of the Code, because, any such interference at the threshold would clearly tantamount to putting spokes in the process initiated by the Executive Magistrate for preventing the breach of the peace. It is common knowledge that in the country side, after the annual village temple festival gets over, discontent among various factions will be simmering for one reason or the other. Each group will be wanting the scalp of the other. The police who have their ears to the ground would sense it and in order to avoid the situation to explode, the Station House Officer would lay the necessary information before the Executive Magistrate for appropriate action. In the State of Tamil Nadu, it is the practise for the police to send the report in the form of an FIR u/s 107 Cr.P.C. This has come for serious criticism on the ground that Section 107 Cr.P.C. is not a penal provision warranting registration of an FIR u/s 154 Cr.P.C. Of course, this argument may be legally appealing, but the practise that is prevalent in the State is that the FIR book is being used by the Police to send a report to the Executive Magistrate, as the State Government has not provided any other method of sending a report.

16. In our opinion, what is laid before the Executive Magistrate in the FIR format is only an information and not a First Information Report *stricto sensu* as contemplated u/s 154 Cr.P.C. This practise does not fall foul of any rule of positive law. In *Vinay Tyagi v. Irshad Ali* [(2013) 5 SCC 762], the Supreme Court has stated that the matters which are understood and implemented as a legal practise and are not opposed to the basic rule of law would be good practise and such interpretation would be permissible with the aid of the doctrine of *contemporanea expositio*. Therefore, we hold that it will be ideal, if the Station House Officer lays information by a report on a foolscap paper, but just because he had used the FIR format for laying the information, the same cannot vitiate the proceedings.

17. Reverting to the reviewability of the order under Section 111, it is self evident that the order is a show cause notice calling upon the persons stated therein to show cause as to why they should not be bound over. In *Union of India v. Vicco Laboratories* [(2007) 13 SCC 270], the Supreme Court held as follows:

"31. Normally, the writ court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show-cause notices have been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities is the normal rule.

However, the said rule is not without exceptions. Where a Show Cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show cause notice. The interference at the show cause notice stage

should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out.

(emphasis supplied)

18. An order u/s 111 Cr.P.C. is only an interlocutory order, because it does not determine the rights of the parties at that juncture. It only calls upon the party to show cause against proposed action. It is not a final order. Therefore, the order is not revisable u/s 397 Cr.P.C. in view of the bar u/s 397(2). Judicial review of the order passed u/s 111 Cr.P.C. is also very limited, inasmuch as Section 111 clearly states that the order in writing shall set 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. In other words, the order u/s 111 merely mandates the Executive Magistrate to give the substance of information that had led him to form an opinion to initiate proceedings u/s 107 Cr.P.C. This Section also does not contemplate that the Magistrate should record his opinion or give reasons for initiating proceedings. This is so because, Section 107 r/w 111 is not the be all and end all of the proceedings. As pointed out by the Full Bench in *In re : Muthuswami Chettiar* (supra), it is merely a preliminary step in the proceedings.

19. In our view, a show cause order under Section 107 r/w 111 can be subjected to judicial review under Section 482 Cr.P.C. or Article 226 of the Constitution of India, if on the face of it, the order does not satisfy the minimum requirements of Section 111 or that the same has been passed by a person who is not an Executive Magistrate and not otherwise. In other words, if the order does not contain 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, only then, can the High Court interfere and not otherwise. Factual adjudication of the satisfaction expressed by the Magistrate is ruled out in view of the decision of the Supreme Court in *Vicco Laboratories* (supra).

20. The expression "substance of the information received" has been explicated in paragraph 37 of *Madhu Limaye* (supra), which reads as under:

"Since the person to be proceeded against has to show cause, it is but natural that he must know the grounds for apprehending a breach of the peace or disturbance of the public tranquillity at his hands. Although the section speaks of the "substance of the information" it does not mean that the order should not be full. It may not repeat the information bodily but it must give proper notice of who was moved the Magistrate to take the action. This order is the foundation of the jurisdiction and the word "substance" means the essence of the most important parts of the information.

21. Many a time, the informant may be an illiterate person. Out of anxiety, that a

communal clash is likely to occur in his village, he may alert the Executive Magistrate. The Executive Magistrate also has a bounden duty to protect the identity of the informant, lest he should suffer elimination. Therefore, the order passed under Section 111 should contain that much of information that would be necessary for the noticee to refute the same in the enquiry under Section 116 and nothing more. That is why perhaps, the Constitution Bench has held that, ""substance" means the essence of the most important parts of the information."

22. The Court should bear in mind that if preventive action proceedings are not interfered at the threshold, there is every likelihood of tempers cooling down during the proceedings before the Executive Magistrate and consequently deter the warring groups from rioting and affray. Every riot and violence would leave an indelible scar in the psyche of those affected by it and would have a cascading effect by fuelling further animosity and violence. These provisions are predicated on the principle, "Prevention is better than cure", and bearing this in mind, the Court should be slow in interfering with an order u/s 111 Cr.P.C. The harm that would befall the Society will be more, if an order u/s 111 is needlessly interdicted u/s 482 Cr.P.C. on the justification of protecting an individual's right. As John Stuart Mill pointed out in his locus classicus "On Liberty",

"The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others."

The questions under reference are answered accordingly and the case will now be placed before the learned Single Judge for disposal.