
(2007) 04 PAT CK 0044

In the Patna High Court

Case No : Criminal Miscellaneous No. 44789 of 2006

Madan Mishra and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 19-04-2007

Acts Referred:

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

Citation : (2007) 4 PLJR 309

Hon'ble Judges : Ghanshyam Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ghanshyam Prasad, J.—This application u/s 482 of the Code of Criminal Procedure has been filed to quash the order dated 4.9.2004 passed by the Sub-Divisional Magistrate, Vaishali at Hajipur in case No. M67/2004 thereby and thereunder the learned Magistrate has directed the petitioners to execute the interim bond as well as its revisional order dated 29.5.2006 passed by the 1st Additional Sessions Judge in Criminal Revision No. 280/04. Heard learned counsel for the petitioners. No one appears on behalf of Opposite Party No. 2 in spite of service of notice.

2. On perusal of the entire order-sheet it appears that on 10.7.2004 the petitioners were granted as last indulgence for filing show-cause in a proceeding initiated u/s 107 of the Code of Criminal Procedure. However, the petitioners did not file their show-cause and accordingly vide order dated 4.9.2004 the learned Magistrate directed the petitioners to execute interim bond. The learned Additional Sessions Judge also dismissed the Revision Application filed by the petitioners against the order of the learned Magistrate.

3. It is submitted on behalf of the petitioners that the order dated 4.9.2004 has been passed in complete violation of Section 116 of the Code of Criminal Procedure. There is no provision in Section 116 of the Code of Criminal Procedure

to ask the Opposite Parties to execute interim bond without entering into inquiry contemplated under the Code. It is further submitted that there is no material on record to show that there was immediate danger of peace and tranquility at the hands of the petitioners. Mere non-filing of show-cause does not give jurisdiction to the Magistrate to ask the petitioners to execute the interim bond without specifying the amount of bonds.

4. Considered the submission of learned counsel for the petitioners and perused the impugned order. It is quite clear from the facts that the order in question has been passed in complete violation of Section 116 of the Code of Criminal Procedure. There is no provision under the Code to ask the Opposite Party to execute interim bond in a case he did not file show-cause. In any event the court has to enter into inquiry as to truth of information as contemplated u/s 116 of the Code of Criminal Procedure and only thereafter the question of executing interim bond arise. In the present case there is also no material to show that there was immediate danger of breach of peace. The learned Magistrate has passed the interim order without entering into the inquiry as to the truth of the allegations. Under the circumstances this application is allowed. The orders of both courts are hereby set aside. The petitioners are directed to file show cause within one week of receipt of this order and thereafter the court below shall proceed to inquire into the matter in accordance with Section 116 of the Code of Criminal Procedure.