

(1922) 03 PAT CK 0003

In the Patna High Court

Maharaj Kumar Nand Kishore Nath Sahi Deo and Others

APPELLANT

Vs

Emperor at the Instance of Garg Brothers and Co.

RESPONDENT

Date of Decision : 21-03-1922

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 112

Citation : AIR 1922 Patna 209 : 77 Ind. Cas. 417

Hon'ble Judges : Ross, J

Bench : Single Bench

Judgement

Ross, J.—By this application the petitioners seek that proceedings drawn up against them u/s 107 of the Criminal Procedure Code may be quashed or in the alternative that the case be transferred from the Magistrate who is trying it.

2. There are five petitioners. The first is the son of the Maharaja of Chota Nagpur and is Khorposhdar of Diwarkhand Pargana in the District of Ranchi, the second is a Barrster who has obtained a prospecting lease from the first, the third is the Tahsildar and the fourth is a Barahil of the first petitioner, and the fifth is a lessee under him. The opposite party arc Messrs, Garg Brothers and Co. who have taken a prospecting lease for coal from the Maharaja. The proceeding drawn up by the Magistrate recites that it appears from the report of the Sadar-Inspector of Police that the second party, that is, the petitioners, a re likely to commit a breach of the peace or do a wrongful act which may occasion breach of the peace inasmuch as the first and second petitioners personally and through their servants, the other petitioners and other men employed, by them, are using threats of violence to the men of the first party. It further alleges that the petitioners Nos. land 2 are believed to have instigated various offences. This second allegation refers apparently to a series of cases set forth in the Police report, in all of which, except one which is still under trial, the petitioners have been acquitted or discharged. It is conceded by the learned Government Advocate who opposed this application that this affords no basis for a proceeding u/s 107 of the Criminal Procedure Code and the question is, therefore, restricted

to the first ground.

3. It is contended on behalf of the petitioners that this ground is too vague; it does not give the necessary details which are required to inform the petitioners of the accusation that they have to meet and does not satisfy the tests laid down in the matter of Jaiprakash Lal 6 A. 26 : (1883) CWN 208 : 3 Ind. Dec. 641 (F.B.) and In re Nagireddy Kondareddy 41 Ind. Cas. 990 : 41 M 246 : 18 CriLJ 878. It is also contended that it does not comply with the provisions of Section 112 of the Criminal Procedure Code and that the proceeding is, therefore, bad. The learned Government-Advocate relies on the last paragraph of the Police report in which it is stated by the Police Officer that on recent enquiries he had come to learn that the servants of the Garg Brothers and others assisting them in their prospecting operations, including witnesses Nos. 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 17 and 18 have been threatened with violence on afferent occasions by the petitioners. It is arrived that, if the petitioners have not received due notice of the acts of intimidation alleged against them in the proceeding, they can apply to the Magistrate for further particulars. But it appears that this very objection was taken in the written statement filed by the petitioners and that the Magistrate nevertheless did not amend the proceeding. Now it appears that there was an earlier proceeding drawn up on the 4th of August 1921 which, was quashed by the High Court on the 30th of September last. It was pointed out by the learned Judge of this Court in dealing with that earlier proceeding that "the responsibility of issuing notice u/s 112 is of the Magistrate." The proceeding drawn up in that case was discussed and it was found that it did not show that there was any information before the Magistrate entitling him to act u/s 107. Now the Magistrate has been informed by the judgment of the High Court in that earlier case of the necessity of showing that there was information before him entitling him to act u/s 107. But the present proceeding can hardly be said to be more definite than the last or to show any definite ground for proceeding against the petitioners. The Police report, if it can be referred to in this connection, is little better. It does not give any details nor does it allege any recent acts of intimidation. It is too indefinite to be met and the petitioners are necessarily prejudiced by being called upon to meet vague allegations of this kind. It is difficult to avoid the conclusion that when the Magistrate, after having had his attention drawn by this Court to the necessity of setting out the specific allegations to be met, has nothing more definite to say than what is contended in this proceeding, the proceeding in itself is without substance. The proceeding in this case does not satisfy me that there are any genuine tangible grounds for calling upon the petitioners to show cause why they should not be bound down to keep the peace and it must be set aside.

4. There is one other matter to which I. ought to refer in connection with the application for transfer although that question no longer falls to be decided. In paragraph 13 of the affidavit it is alleged that the Magistrate at the suggestion of the Pleader of the first party got the chamber of Mr. Basu, Barrister-at-Law petitioner No. 2, and also the chamber of the Counsel appearing for the accused

searched to find out the petitioner, Jawahir. Now the Magistrate has dealt with the other allegations contained in this paragraph, but has said nothing about this alleged search. This may be due to an oversight, but if it is to be construed as an acknowledgment of the truth of the allegation then I must say that the Magistrate acted with grave impropriety and on this ground alone the case would have had to be transferred from his file.