
(1997) 01 PAT CK 0021

In the Patna High Court

Case No : Criminal Miscellaneous Case No. 20106 of 1996

Md. Saquib Ahsan and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 21-01-1997

Acts Referred:

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

Citation : (1997) 1 PLJR 317

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Raghieb Ahsan and Farooque Ahmad Khan, for the Appellant; Jagdish Prasad, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this application filed u/s 482 of the Code of Criminal Procedure the Petitioners have challenged the order dated 18.8.1996 passed by Sub-divisional Magistrate, West Muzaffarpur in case No. M-1468 of 1996, drawing a procedure against the Petitioners.

2. The validity of the aforesaid order has been questioned on various grounds including that the order does not set forth or contain the substance of information as required u/s 111 of the Code nor was disclosed anything as to how the Magistrate was satisfied that there was apprehension of breach of peace in respect of some land in dispute between the parties.

3. I have heard Mr. Raghieb Ahsan, learned Counsel appearing on behalf of the Petitioners and Mr. Jagdish Prasad, learned Additional Public Prosecutor, who have agreed that this application may be finally disposed at the admission stage.

4. Before appreciating the rival contentions of the parties it is necessary to look into the impugned order passed by the court below which is re-produced hereinbelow:

Fkkuk izHkkjh] eksrhiqj ds izfrosnu ls Li"V gksrk gS fd tehu lEcU/kh fookn ds QyLo:i fLFkfr rukoiw.kZ gS A eSa larq"V gwa fd ;fn f}rh; i{kksa ds fo:) /kkjk 107 n- iz- la- dh dk;Zokgh ugha dh tkrh gS rks fdlh {k.k "kkafr Hkax gks ldrh gS A vr% f}rh; i{kksa ds fo:) /kkjk 107 n- iz- la- dh izf?;k pyk;h tkrh gS rFkk dkj.k & i`PNk ekax dh tkrh gS fd ,d o"kZ dh vof/k rd "kkfUr cuk;s j[ks gsrq 5000-00 ? ikap gtkj ? #i;s dk cU/k & i= izR;sd lnL; ls vyx & vyx D;ksa ugha fy;k tk;s A

fnukad 25- 8- 96 dks miLFkfir djsa A

g- @ & vLi"V vuqeaMy n.Mkf/kdkjh] if"pe] eqt?Qjiqj

5. From perusal of the impugned order it is apparent that the learned Magistrate has not indicated the substance of acquisition or substance of information in his order. The impugned order also does not show as to under what manner the Petitioners are likely to commit breach of peace. Section 107 of the Code reads as under:

Section 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 peace or disturb the public tranquility or to do any wrongful act that may probably, occasion a breach of the peace or disturb the public tranquility 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 tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.

6. Section 111 reads as under:

Order to be made.--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.

7. From bare reading of the aforesaid two sections it is crystal clear that the Magistrate exercising power u/s 111 of the Code must record a satisfaction about the existence of breach of peace after recording the substance of accusation and the substance of information.

8. This Court repeatedly took the aforesaid views in a series of decisions. In the case of *Balkishun Sao v. Munno Khan* reported in 1969 PLJR 223, this Court held as under:

Under Section 107 of the Code, whenever a magistrate is informed that any person is likely to commit a breach of peace he may require such person to show cause as to why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for a period not exceeding one year. This has to be done in the manner provided in the subsequent sections and the manner is provided in Section 112 of the Code. That section requires a Magistrate to make an order in writing setting forth the substance of information received.

9. In the case of *Hasibuddin and 32 Ors. v. The State of Bihar* reported in 1971 PLJR 193, a Division Bench of this Court considering the same question had held as under:

There have been a number of decisions concerning this aspect of the matter, and I may refer to one of the earliest decisions on this point given by Fazl Ali, J. (as he then was) in (1) *Amanat Ali Vs. Emperor*, . I may quote the following few lines from his Lordship's judgment:

Besides in the proceeding u/s 107, that has been drawn up in this case, he has only re-produced the language of Section 107, Code of Criminal Procedure, without specifying in what way and with reference to what manner the Petitioner was likely to commit a breach of the peace and in what way he was likely to do a wrongful act which might occasion a breach of the peace. It is not difficult to see that a vague proceeding like this cannot be supported.

10. In the case of *State of Punjab v. Rattan Chand* reported in 1984 Cri. LJ NOC 153, a Bench of this Court reiterated the view and held that if the notice to show cause does not specify the overact nor particulars of house regarding which alleged apprehension of breach of peace was likely to arise then such notice and the proceeding u/s 107 of the Code of Criminal Procedure is liable to be quashed.

11. In the instant case, it appears from the order that the learned Magistrate has not stated the substance of the report of the police and in what manner the Petitioners were likely to commit breach of peace. It is also not stated as to with regard to which house there was apprehension of breach of peace. All these things have been left vague. The notice issued to the Petitioner, copy of which has been produced before me also shows that the notice is also totally vague and there is no mention in it. It is unfortunate that the requirements of Section 107 of the Code have become a dead letter and are not followed by the Magistrate. It should be borne in mind that the proceeding u/s 107/116 of the Code some time cause irreparable loss and unnecessary harassment to the public who run to the Court at the cost of their own vocation of life. Unless it is absolutely necessary, proceeding u/s 107/116 of the Code should not be resorted to. It has been seen that proceeding under Chapter VIII of the Code of Criminal Procedure particularly, proceeding u/s 107 of the Code of Criminal Procedure are conducted by the Magistrate in a most lethargic manner causing harassment to the public for no fault. The Magistrates, therefore, exercising power u/s 107/116 of the Code of Criminal Procedure must apply their minds and must record the

substance of accusation and the substance of information in their order initiating proceeding under the aforesaid Sections.

12. As noticed above, in the impugned order learned Magistrate has failed to apply its mind and passed the order in a mechanical way which is vitiated in law.

13. In the result, this application is allowed and the impugned order initiating proceeding u/s 107 of the Code of Criminal Procedure is hereby quashed.