

(1958) 10 AHC CK 0009

In the Allahabad High Court

Case No : Criminal Miscellaneous No. 2215 of 1958

Mohammad Yusuf Abbasi

APPELLANT

Vs

The District Magistrate and Another

RESPONDENT

Date of Decision : 29-10-1958

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1898 (CrPC) — Section 112, 117, 117(3)

Citation : AIR 1959 All 346 : (1959) 29 AWR 122 : (1959) CriLJ 672

Hon'ble Judges : H.P. Asthana, J;B. Mukerji, J

Bench : Division Bench

Advocate : Faujdar Rai, for the Appellant; H.N. Seth, A.G.A, for the Respondent

Final Decision : Dismissed

Judgement

H.P. Asthana, J.—These are two writ petitions under Articles 14 19 21 and 22 of the Constitution of India and Section 491 of the Code of Criminal Procedure by Mo-hammad Yusuf Abbas and Sheo Murat Singh for the issue of a writ of habeas corpus directing the release of the petitioners from the District Jail, Ghazipur, where they are lodged at present. They arise out of similar facts and we, therefore, propose to decide both these writ petitions by one judgment.

2. It appears that the petitioners were arrested on 11-9-1958 in pursuance of a warrant issued by a Magistrate of the 1st Class u/s 114 of the Code of Criminal Procedure on the ground that there was an immediate apprehension of the breach of the peace from their side. After their arrest they were produced before the Magistrate.

Notice u/s 112, Cr. P. C. was read out to them and before further proceedings could be taken against them Sheo Murat Singh made an application to the Court that further proceedings be stayed as he intended to apply for the transfer of the case to some other Court, Thereupon the proceedings were stayed and the petitioners were remanded to jail custody during the pendency of the inquiry.

3. It has been contended before us on behalf of the petitioners that the order of remand passed by the learned Magistrate for the detention of the petitioners in Jail and the consequent detention of the petitioners in jail, was illegal on the ground that the notice u/s 112, Cr. P. C. had not been read out to the petitioners nor after their arrest by the police they were produced before a Magistrate.

It, was further contended that even if it was accepted that the petitioners after their arrest were produced before a Magistrate and the order u/s 112, Cr. P. C. was read over to them there was not sufficient compliance of the provisions of Section 112 because the substance of the information on which the learned Magistrate apprehended that there was an immediate apprehension of the breach of the peace had not been, mentioned in the order u/s 112, Cr. P. C. and, as such, the order was illegal.

It may be mentioned here that the allegations in the affidavit filed on behalf of the petitioners that they were not produced before any Magistrate after their arrest by the police and that the order u/s 112, Cr. P. C. had not been read over to them, has been denied on behalf of the State in the counter-affidavit and we have seen no satisfactory reason to disbelieve that part of the allegation contained in the counter-affidavit.

4. In view of the fact that an inquiry u/s 117(3), Cr. P. C. had to be held against the petitioners and it was at the request of one of them, namely, Sheo Murat Singh, who was also a party to the case, that the entire proceedings had to be stayed, we have not been able to find as to what was to be done to the petitioners when they had refused to offer bail and when according to the police report there was an immediate apprehension of the breach of the peace from their side. Learned counsel for the petitioners contended that in the absence of any definite finding by the learned Magistrate till the inquiry u/s 117(3), Cr. P. C. was pending against them, they should have been released after the notice u/s 112 had been read out to them even if the allegations in the counter-affidavit to that effect were to be accepted.

We are afraid we are not able to accept this contention on behalf of the petitioners. In our opinion the learned Magistrate was quite justified in remanding the petitioners to jail custody during the pendency of the inquiry under Section 117(3), Cr. P. C. particularly when the petitioners did not choose to offer bail for their release during the pendency of the inquiry. This view of ours finds support from a decision of a Bench of this Court of which one of us was a member in the case of Vasu Deo Ojha and Others Vs. State of Uttar Pradesh and Others,

5. Coming now to the question that the substance of the information was not given in the order passed by the Magistrate u/s 112, Cr. P. C. we are of opinion that it at the most amounted to an irregularity and it cannot be said that the learned Magistrate who passed the order u/s 112, Cr. P. C. had no jurisdiction to pass order, even though he was prima facie satisfied that there was an

immediate apprehension of the breach of the peace. We are of opinion that a Court in exercise of its Writ jurisdiction will mainly consider whether the Court which passed the order had the jurisdiction to pass that order. In Halsbury's Laws of England, Volume II, 1955 Edition, page 32, the following passage may be quoted with some advantage :

"Upon the return to a writ of habeas corpus in a case of alleged irregularity in the commitment the Court exercises its jurisdiction as follows. If it appears clearly that the act for which the party is committed is no crime, or that it is a crime but he is committed for it by a person who has no jurisdiction, the Court discharges him."

6. We have already said above that this is not a case where there was want of jurisdiction, or an illegal exercise of jurisdiction, on the part of the Magistrate who passed the order u/s 112, Cr. P. C. and who granted the remand against the petitioners. In the circumstances we do not see any force in these petitions and reject them.

7. Parties will bear their own costs.