
(2019) 07 CAL CK 0067

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 3406 Of 2018

Motilal Sikder & Others

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 18-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 107, 108, 109, 110, 111, 116(3), 397, 401, 410, 482

Citation : (2019) 07 CAL CK 0067

Hon'ble Judges : Madhumati Mitra, J

Bench : Single Bench

Advocate : Rajdeep Majumder, Moyukh Mukherjee, Abhijit Singh, Kamalesh Saha, S.G.Mukherjee, Faria Hossain, Baisali Basu

Final Decision : Allowed

Judgement

Madhumati Mitra, J

Â This is an application under Section 397/401 read with Section 482 of the Code of Criminal Procedure filed by the petitioners praying for quashing

of proceedings in connection with NGR Case No.359/18, under Section 107/116(3) of the Code of Criminal Procedure pending before the Court of the

Learned Special Executive Magistrate, Bidhannagar Police Commissionerate, Bidhannagar.

Facts which are essential for consideration of the prayer for quashing of the proceedings pending against the present petitioners are as under:-

On 03.07.2018, an application was filed by the opposite party no.2 under Sections 107/116(3) of the Code of Criminal Procedure before the Learned

Special Executive Magistrate, Bidhannagar, the said application was registered as NGR Case No.359 of 2018.

On 03.07.2018, Learned Special Executive Magistrate, Bidhannagar vide order dated 03.07.2018 directed the Inspector-in-charge of Bidhannagar

Police Station to enquire into the matter and submit a report by 17.07.2018. On 17.07.2018 the said report was not submitted by the Officer-in-charge

of Bidhannagar Police Station and on 10.08.2018 was fixed for submission of the said report. On 10.08.2018 report was submitted by the Inspector-in-

charge of Bidhannagar North Police Station. On that date Learned Magistrate issued notice upon the opposite parties i.e. the present petitioners and

fixed on 24.08.2018 for service return (S.R.).

From the copy of the notice, it appears that the said notice was issued under Section 107/116 of the Code of Criminal Procedure. The present

petitioners i.e. the opposite parties to the proceedings of NGR Case No.359/18 were directed to appear before the Learned Special Executive

Magistrate, Bidhannagar Police Commissionerate, at North Bidhannagar Police Station on 24.08.2018 in connection with the proceeding i.e. NGR

Case No.359/18 and to show-cause as to why they should not be directed to execute a bond of Rs.1,000/- with one registered surety of like amount

for keeping peace till one year.

The order of issuance of show-cause notice dated 10.08.2018 is under challenge.

Learned Advocate appearing for the petitioners has forcefully submitted that the impugned order was issued by the Learned Magistrate in ignorance

of mandatory requirements of law as contained in the Code of Criminal Procedure. Impugned order has been assailed by the Learned Advocate

appearing for the petitioners on the ground that the order passed by the Learned Magistrate does not contain the substance of the information

received, the amount of the bond, the period for which it was to be in force and the number, character and class of sureties (if any).

In support of this contention, Learned Advocate for the petitioners has placed his reliance on the following decisions:

1978 SCC Online Cal 109; 1978 CHN 479; 1978 Cri LJ 1171 (Paresh Chandra Hati & Anr. Versus Ahitosh Panda & Anr)(;2 012)1 Supreme Court

Cases (Cri) 873; (2011)13 Supreme Court Cases 329 (Rajender Singh Pathania and Others Versus State (NCT of Delhi) and Othe;r sand AIR 1971

Supreme Court 2486 (Madhu Limaye V. S.D.M., Monghyr).

On the other hand, Learned Advocate appearing for the opposite party no.2 has

contended that the impugned order has been rightly passed by the Learned Magistrate. In support of his contention he has invited the attention of the Court to the copy of police report and the copy of the notice issued to the opposite parties i.e. the present petitioners. According to his contention, the Learned Magistrate issued the notice of show-cause to the opposite parties on being satisfied that the opposite parties would likely to commit a breach of the peace or disturb the public tranquility. He has drawn the attention of the Court to the information received by the Learned Magistrate and contended that the report which had been submitted before the Magistrate clearly indicated that there was apprehension of breach of peace and public tranquility. He has further contended that the Learned Magistrate issued the notice on being satisfied that there was apprehension of breach of peace and public tranquility. Learned Advocate for the opposite party no.2 has contended that the prayer of quashing of the proceeding is devoid of merit and liable to be dismissed.

I have carefully considered the submission and rival submission advanced by the Learned Counsel appearing for the parties, the relevant provisions of law and the decision cited at Bar.

It appears that the Learned Magistrate passed the impugned order after receipt of the information/report called for by him. The impugned order does not contain the substance of the information/report received by him, nature of the bond, number of sureties, period of bond, etc.

Section 111 of the Code of Criminal Procedure provides that: "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."

It appears that the impugned order was not in conformity with the mandatory provisions as contained in Section 111 of the Code, and the proceeding was drawn up without recording the satisfaction of the Learned Magistrate that there was sufficient ground for proceeding. Section 111 of the Code of Criminal Procedure speaks about an order in writing. From the language used in Section 111 of the Code of Criminal Procedure, it is clear that the

order must be self-contained.

No written order was passed in term of Section 111 of the Code of Criminal Procedure in the instant case. It has been contended on behalf of the

opposite party no.2 that the report of police had clearly indicated there was apprehension of breach of peace and on being satisfied, Learned

Magistrate drew the proceeding. He has also contended that the copy of the notice mentioned the number of surety, the amount of bond, nature of

bond and the period of bond. It is his specific contention the requirements under Section 111 of the Code have been substantially complied with.

In the instant case the Learned Magistrate called for a police report. The impugned order does not mention anything as to whether that police report

was considered by the Learned Magistrate. There is no whisper in the impugned order that the Learned Magistrate formed an opinion on the basis of

the information that there was sufficient ground for proceedings against the petitioners. Notice which was issued to the petitioners had mentioned the

nature of bond, number of surety/and the period of bond. But the order passed by the Learned Magistrate is not self-contained.

In a proceeding under Section 107 of the Code of Criminal Procedure, the notice is required to be issued in accordance with the order. Lacuna in the

order cannot be filled up by the contents of the notice. Again non-mentioning of the substance of the information received by the Magistrate in the

order of drawing up proceeding cannot be supplemented by saying that the police report has been placed on record and that report has indicated there

are sufficient grounds for proceeding. Satisfaction of the Learned Magistrate is required for proceeding under Section 107 of the Code and the said

satisfaction is required to be reflected in the order itself. An order for drawing up proceeding must be complete one and must be self contained.

Lacuna in the order cannot be supplemented by the contents of notice or contents of police report or information. Notice is required to be issued on

the basis of order and substance of the information or police report must be reflected in the order to show the Magistrate is satisfied for proceeding

under Section 107 of the Code.

Having regard to the facts and circumstances of the present case, I am of the view that the impugned order was passed without complying with the

mandatory requirements of law. Impugned order dated 10.08.2018 is not

sustainable in law and liable to be set aside. The proceeding drawn up on the basis of said order is also liable to be quashed.

Accordingly, the application under Sections 397/410 read with Section 482 of the Code of Criminal Procedure is allowed.

The impugned order dated 10.08.2018 is hereby set aside. The proceeding drawn up on the basis of that order is hereby quashed.

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance with all necessary formalities.