

(2005) 01 BOM CK 0081

In the Bombay High Court

Case No : Criminal Writ Petition No's. 1708 and 1709 of 2004

Pramila Navin Shah

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 19-01-2005

Acts Referred:

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

Citation : (2005) 4 RCR(Criminal) 437

Hon'ble Judges : R.M.S. Khandeparkar, J;P.V. Kakade, J

Bench : Division Bench

Advocate : M.K. Kocharekar, for the Appellant; P.H. Kantharia, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R.M.S. Khandeparkar, J.—Since common questions of law and facts arise in both these petitions, they were heard together and are being disposed of by this common order.

2. Heard. Rule. By consent, the rule is made returnable forthwith.

3. The petitioners challenge the impugned order passed by the authorities below, in the proceedings u/s 111 of the Code of Criminal Procedure, 1973 for execution of the interim bonds and further for quashing of such bonds obtained upon passing of such orders. The reliance is placed in that regard in the decision of the learned single Judge of this Court in State of Maharashtra v. Mangali Dewaiyya Pupalla, 1993(1) Bom CR 114 as also the decision of the Apex Court in the matter of Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others, .

4. It is not in dispute that pursuant to the issuance of and service of the show cause notices dated 16th August, 2004 u/s 107 of the Code of Criminal Procedure, 1973, the respondents insisted for execution of the interim bonds and obtained the same on the very day i.e. on 16th August, 2004 itself allegedly for the purpose of maintaining peace in the locality u/s 116(3) of the Code of

Criminal Procedure, during the pendency of the proceedings.

5. The provisions of law comprised u/s 116(3) of the Code of Criminal Procedure clearly read thus:

116(3) After the commencement, and before the completion of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary of the prevention of a breach of the peace or disturbance of the public tranquility or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order u/s 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:

Provided that-

(a) no person against whom proceedings are not being taken u/s 108, Section 109 or Section 110 shall be directed to execute a bond for maintaining good behaviour;

(b) the condition of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order u/s 111.

6. Apparently, the proviso (a) to sub-section (3) of Section 116 of the Code of Criminal Procedure clearly provides that the interim bond cannot be insisted upon in the proceedings other than those under Sections 108, 109 and 110. Admittedly, in the matter in hand, the proceedings were initiated consequent to the allegations against the petitioners of likelihood of breach of peace and the act on the part of the petitioners. Obviously, therefore, those proceedings are in terms of Section 107 of the Code of Criminal Procedure. Being so, considering the provisions of law comprised under the proviso)a) to sub-section (3) of Section 116 of the Code of Criminal Procedure, the respondents could not have insisted for execution of the interim bonds by the petitioners in the proceedings initiated against them. On that count itself, the orders directing the petitioners to execute interim bonds and further the interim bonds obtained consequently from the petitioners are liable to be quashed.

7. The learned single Judge of this Court while dealing with the similar issue had held that "the correct interpretation of Clause (a) of the proviso to sub-section (3) of Section 116 of the Code is that the power of the Magistrate to direct a person to execute a Bond for keeping the peace or maintaining of good behaviour until the conclusion of the inquiry is restricted only to cases arising under Sections 108, 109 or 110 of the Code". We are in respectful agreement with the said ruling of the learned single Judge in the matter of Mangali Dewaiyya Pupalla's case (1993 (1) Bom CR (114)(supra). Being so, the impugned orders directing the petitioners to execute interim bonds are liable to

be set aside/and the interim bonds obtained from the petitioners are liable to be quashed.

8. As regards the grievances of the petitioners for quashing and setting aside⁴ the impugned notices u/s 107 of the Code of Criminal Procedure, the learned Advocate for the petitioners fairly submitted that if the petitioners are given sufficient time to file necessary reply to the said notices, the petitioners would file the same before the authorities below, while reserving the petitioners' right to approach this Court in case any final order to be passed happens to be contrary to the interest of the petitioners.

9. In the result, therefore, the petitions succeed. The impugned orders dated 16th August, 2004 directing the petitioners to execute interim bonds and further the interim bonds obtained from the petitioners are hereby quashed and set aside. The petitioners to file reply to the said impugned notices dated 16th August, 2004 within a period of two weeks from today to the concerned authorities and the concerned authorities, after hearing the petitioners, to pass an appropriate order in accordance with the provisions of law. The rule is made absolute accordingly with no order as to costs. It is made clear that this Court has not expressed any opinion on the merits of the case.