
(1977) 02 AHC CK 0005

In the Allahabad High Court

Case No : Criminal Misc. Application No. 3669 of 1976

Raghubar Dayal and Others

APPELLANT

Vs

The District Judge, Kanpur and Others

RESPONDENT

Date of Decision : 03-02-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 111, 112, 113, 116

Citation : (1977) ACR 331

Hon'ble Judges : J.M.L. Sinha, J

Bench : Single Bench

Judgement

J.M.L. Sinha, J.—This is an application u/s 482 of the Code of Criminal Procedure praying that the proceedings in the Court of Addl. City Magistrate, Kanpur, under Sections 107/117 Code of Criminal Procedure against the applicants may be quashed.

2. The facts leading to this application can very briefly be stated as under :

On receipt of a police report the Court below passed an order on 26th of June 1974 recording his satisfaction about there being an apprehension of breach of peace from the side of the applicants and calling upon them to show cause why they should not be required to furnish bonds. According to the learned Counsel for the applicants, the applicants put in appearance before the Magistrate on 27th of June 1974. According to the order of the learned Sessions Judge, however, they put in appearance on 15th of July 1974. According to the learned Counsel for the applicants a period of six months, from the date on which the applicants entered appearance in the Court below, expired latest by 15th of January 1975 and the proceedings, therefore, stood terminated on that date as provided in section 116(6). It was pointed out that a formal application was presented on behalf of the applicants in the Court of the Magistrate inviting his attention to section 116(6) of the Code of Criminal Procedure and praying for suitable orders being passed. The learned Magistrate, however, by an order dated 9th of April 1975, "rejected that application and held that the proceedings

did not stand terminated. Against the order passed by the learned Magistrate the applicants made an application before the learned Sessions Judge as provided in sub-section (7) of Section 116 Code of Criminal Procedure. The learned Sessions Judge also, however, concurred with the Magistrate and rejected the application vide his order dated 2nd of March 1976. Aggrieved against the order of the Magistrate dated 9th of April 1975 and that of the Sessions Judge dated 2nd of March, 1976, the applicants have come up before this Court.

3. The only contention raised before me on behalf of the applicants is that, in view of the provision contained in sub section (6) of Section 116 of the Code of Criminal Procedure, the proceedings stood terminated on the expiry of the period of six months from 15th of July 1974, on which date the applicants put in appearance before the Magistrate.

Sub-section (6) of section 116 reads as follows :

The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs.

4. From the above it would appear that the period of six months is to be counted not from the date of the appearance of the persons proceeded against but from the date of commencement of the inquiry. The question that, therefore, arises is as to on which date the proceedings in a case u/s 107 Code of Criminal Procedure should be deemed to commence. For this, reference may be made to Sections 111, 112, 113 and 116(1) of the Code of Criminal Procedure.

5. Section 111 says that when a Magistrate deems it necessary to require any person to show cause u/s 106, he shall make an order setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be enforced, and the number, character and class of sureties (if any) required.

6. Section 112 says that if the person in respect of whom such order is made is present in Court, it shall be read "over to him, or if he so desires, the substance thereof shall be explained to him.

7. Section 113, inter alia, says that if the person to be proceeded against is not present in Court, the Magistrate shall issue a summon requiring him to appear.

8. Section 116(1) states that when a person proceeded against is present in Court or appears or is brought before the Court in compliance with, or in execution of a summon or warrant, and the order u/s 111 has been read or explained to him as provided u/s 112, the Magistrate shall proceed to enquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

9. From the above it would appear that an inquiry u/s 107 cannot commence till the persons to be proceeded against appear or are brought before the Court and the order u/s 111 of the Code of Criminal Procedure is read over and explained to them.

10. It may not be out of place also to make a reference to sub-section (2) of Section 116 which states that the inquiry shall be made in the manner prescribed for conducting trial in summons cases. The procedure for conducting trial in summons cases is contained in Sections 251 - 259. Section 251 says that when in a summons case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make. It would thus appear that even according to Section 251 of the Code of Criminal Procedure an inquiry can commence only when persons to be proceeded against appear or are brought before the Court. Till all the persons to be proceeded against are not present before the Court, the inquiry cannot proceed.

11. In the instant case there is no controversy about the fact that one of the persons to be proceeded against did not appear till 26th of May 1975. Consequently the inquiry had not commenced. learned Counsel for the applicants, however, invited my attention to sub-section (5) of Section 116 and urged that in view of the provision contained in sub-section (6) of Section 116 it was obligatory on the part of the Magistrate to have split up the case of opposite party No. 6 who had not till then appeared in Court, and to have proceeded against the applicants. It was urged that the mere fact that one of the persons to be proceeded against did not appear before the Court cannot prevent the application of sub-section (6) of Section 116 of the Code of Criminal Procedure. I have given my careful thought to this argument but I regret my inability to accept the same. Sub-section (5) of Section 116 only says that where two or more persons have been associated together in matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just. Since a composite order u/s 111 of the Code of Criminal Procedure was passed against the applicants and opposites party No. 6, the Magistrate decided to proceed against all the persons jointly. If the applicants felt that on account of the non-appearance of opposite party No. 6 their case was being prejudiced, it was open to the applicants to make an application before the learned Magistrate to act under sub section (5) of Section 116 to split the case of opposite party No. 6 and commence the proceedings against the" applicants. No such application was made by the applicants. Consequently it cannot be urged that even though one of the persons to be proceeded against had not appeared before the Court, it should be deemed that the inquiry had commenced and, since a period of six months had expired by 15th of January 1975, the proceedings stood terminated.

12. In the above view of the matter, I find that this application has no substance and must fail. The application accordingly fails and is hereby dismissed. The stay order dated 9th of June 1976 is hereby vacated. Let the Court below be informed

of this immediately.