
(1998) 12 BOM CK 0005

In the Bombay High Court

Case No : Criminal Writ Petition No. 1148 of 1998

Rajshekhar C. Hatture and Others

APPELLANT

Vs

Special Executive Magistrate and Others

RESPONDENT

Date of Decision : 23-12-1998

Acts Referred:

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

Citation : (1999) 101 BOMLR 506 : (1999) 1 MhLj 720

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Judgement

D.G. Deshpande, J.—Heard Mr. Kudle for the petitioners and APP for the State.

2. Petitioners have challenged the interim order dated 9.8.1998 passed by Special Executive Magistrate and Assistant Commissioner of Police, Zone-II, Solapur, calling upon the petitioners to furnish bond for good behaviour in proceedings u/s 107 of the Cr.P.C. (factually when this petition was filed the bonds were furnished by the petitioners). However, the legality and validity of this order is challenged in this petition.

3. It was contended by Mr. Kudle for the petitioners that the impugned order was passed by SEM without application of his judicial mind, without making an enquiry, without examining any witness/s and without satisfying himself as to the necessity of obtaining bonds from the petitioners. It was also contended by him that calling upon the petitioners to furnish bond for good behaviour in proceedings u/s 107 of the Cr.P.C., was contrary to the provisions of the law and lastly according to him in the proceedings u/s 107 of the Cr.P.C. no interim bond could be obtained by the SEM from the petitioners.

4. Of all these submissions, only one submission is acceptable and that is in proceedings u/s 107 of the Cr.P.C., bond for maintaining good behaviour cannot be obtained. Other submissions are required to be rejected. So far as this aspect is concerned, Mr. Kudle is supported by the proviso to Section 116 of the Cr.P.C.

which lays down that no person against whom proceedings are not being taken under Sections 108, 109 and 110 of the Cr.P.C. shall be directed to execute bond for maintenance of good behaviour. Admittedly, in the instant case proceedings against the petitioners have not been initiated under Sections 108, 109 and 110 of the Cr.P.C. and therefore they cannot be ordered to execute the bond for maintaining good behaviour. To that extent an order of the SEM is improper and illegal.

5. However, it cannot be said that in proceedings u/s 107 of the Cr.P.C. the SEM has no powers to ask for interim bond for maintenance of peace. Sub-section (3) of Section 16 empowers the Magistrate after the commencement and before the completion of an enquiry to obtain interim bond for keeping peace u/s 111, if according to him immediate measures are necessary for prevention of breach of peace and for that purpose if he records reasons in writing. The aforesaid provision is absolutely clear and it cannot be allowed to be contended that in proceedings u/s 107 the Magistrate has no powers to obtain interim bond.

6. So far as the other two submissions are concerned, namely, not holding enquiry and not examining witness/s or non-application of judicial mind. Exhibit "E" which is a copy of the interim bond itself shows that the SEM has considered the facts of the case and the seriousness of the allegations against the petitioners and has after applying his mind, he passed the impugned order. Section 116 does not contemplate recording of evidence before passing of impugned order because if a situation of emergency exist and if that such a situation exist on the date on which the complaint u/s 107 is made before the SEM then he is not supposed to record evidence as a condition precedent for passing interim order u/s 116(3) of the Cr.P.C. What is expected by him is that he should satisfy himself that the case of emergency exist and requiring him to take measures for prevention of breach of peace and secondly, thereafter to give reasonings in writing for passing the impugned order. All these conditions have been fulfilled by the Magistrate in the instant case.

7. For all these reasons though the impugned order of the SEM calling upon the petitioners to furnish bond of good behaviour in proceedings u/s 107 is required to be quashed and set aside. The proceedings cannot be quashed particularly looking to the seriousness of the allegations, namely, friends of opponents teasing one girl, namely, Kamrunnisa Maula Shaikh, who was studying in XIIth Std. and who was student of Haribhai Devakaran College. Such incidents are of rise in the society, and if they are brought to the notice of the authorities, necessary preventive orders are required to be passed. Hence, the order:

ORDER

Petition partly allowed. Impugned order so far as it relates to calling upon the petitioners to execute the bond of good behaviour in proceedings u/s 107 of the Cr.P.C. is set aside so also the bond furnished by the petitioners in compliance with that. It is clarified that the proceedings shall be continued against the

petitioners and the Magistrate will be at liberty to pass appropriate orders including orders u/s 116(3) of the Cr.P.C. and the other provisions of the chapter proceedings, if the situation, so requires.

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