

(1972) 08 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Revision No. 696 of 1971

Ram Lal and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 30-08-1972

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 112, 151

Citation : (1972) WLN 728

Hon'ble Judges : L.S. Mehta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

L.S. Mehta, J.—This is a revision-petition taken against the order of learned Sessions Judge, Bikaner, dated July 28, 1971.

2. The brief facts of this case are that Pema Ram Jat, son of Dungar Ram, resident of Malasar, lodged a complaint with the police station, Jamsar, with the averments that Luna Ram and the members of his family were antagonistic with him. Litigation had proceeded and prolonged in between them. Luna Ram and his party-men were threatening him with unpropitious consequences. At about 9 a.m. on January 10, 1971, he was on his field Soon after Ram Lal, Luna Ram, Ganga Ram, Mohan Lal and Hanwat Ram arrived there. They were armed with lathis, with projecting prongs and threatened him. Thereupon he raised an alarm, which attracted Uma Ram and others on the spot. Because of this eventually, he apprehended that there was danger to his life and that possibly some heinous crime was likely to visit. He, therefore, moved the local police for initiating proceedings u/s 107, Cr. P.C. The police inquired into the matter and made a complaint in the court of Sub-Divisional Magistrate, Bikaner (North), recommending that proceedings u/s 107/51, Cr. P.C. be taken. Learned Sub-Divisional Magistrate, Bikaner, issued notices u/s 112, Cr. P.C. calling upon Luna Ram and others to show cause why they should not be bound over in a sum of Rs. 2000/-, and to furnish a surety in the like amount to keep the peace for a

period of one year. The petitioners felt aggrieved by the above order, dated January 13, 1971, and approached the Court of Learned Sessions Judge, Bikaner, through a revision-application. That petition was dismissed by learned Sessions Judge, Bikaner: vide his judgment, dated July 13, 1971. Hence this revision.

3. The contention of learned Counsel for the petitioner is that the order of learned Sub-Divisional Magistrate, Bikaner, dated January 13, 1971, is not legal. The petitioners, namely, Luna Ram and Ganga Ram, were produced before learned Sub-Divisional Magistrate by the police on January 15, 1971. At that time it was incumbent on the Magistrate to draw up an order u/s 112, Cr. P.C. He could not have sent the above named 2 persons, to jail without doing so. Learned Counsel further submitted that the Magistrate could not have issued bailable warrants in a sum of Rs. 5000/-, against" the rest of the petitioners on January 15, 1971, without first drawing up an order u/s 112, Cr. P.C. which is of a mandatory character. Learned Magistrate realised the by gone error, counsel adds, and then he rectified it by drawing up an order u/s 112, Cr. P.C. The very basis of the impugned order is irrational and, therefore, it cannot subsist. Learned Deputy Government Advocate submitted that applicants Luna Ram and Ganga Ram, were arrested by the police u/s 151, Cr. P.C. and, therefore, their arrest was legal and when they were produced before the Magistrate on January 15, 1971 they could have been sent to jail as they failed to furnish sureties then & there. Learned State counsel further argued that as soon as the Magistrate realised that the order u/s 112, Cr. P.C. had not been read out to the petitioners he mended the laxity and drew up a proper order on January 28, 1971, and then started inquiry in accordance with the provisions of Section 117, Cr. P.C.

4. The first question that arises for decision is whether the police could arrest the petitioners u/s 107, read with Section 151, Cr. P.C. Section 151, Cr. P.C. says:

A police officer knowing of a design to commit any cognizable offence may arrest without order from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

The power conferred by the provision impinges on the liberty of an individual and, therefore, there should be strict compliance with the requirements of the law. Section 107, Cr. P.C. does not deal with any punishment. A person proceeded against under that section cannot be said to be prosecuted for an offence. What is required u/s 151, Cr. P.C. is that the police officer must know that the person to be arrested is designing to commit some cognizable crime. A mere apprehension that he may commit a crime is not enough. Apprehension is not the same thing as knowledge. The former is a mere feeling and the latter is a positive conclusion. Again, the possibility of the commission of" a cognizable offence does not mean that he is designing to commit a crime. In this case there is nothing on the record to show that it appeared to the police officer that commission of the offence could not otherwise be prevented. It is thus apparent that the arrest of Luna Ram and Ganga Ram u/s 107, read with Section 151, Cr.

P.C. was not in accordance with law.

5. It may also be stated here that there was" no room for invocation of Section (sic) or 91, Cr. P.C. Section 55 deals with the arrest of vagabonds, habitual robbers etc. and it cannot be made applicable to Chapter VIII Criminal Procedure Code. Section 91, Cr. P.C. deals with taking bond from a person for whose appearance or arrest the officer presiding in any" court is empowered to issue a summons or warrant. At, the most Section 91 may be available till the order u/s 112, is drawn up. After it is drawn up, the court has to proceed in accordance with Section 113 and 117, Cr. P.C. Then there is no room for Section 91, Cr. P.C.

6. The Scheme of Chapter VIII as contained in Sections 112 and 114, Cr. P.C., is that until an order contemplated by Section 112, Cr. P.C. is passed, the information received by a Magistrate remains only an information and it cannot provide any foundation for subsequent proceedings in the case. It is only after the Magistrate has passed an order u/s 112, Cr. P. C that he can proceed further. Thus, the provisions of Section 112, Cr. P.C. are (sic) in nature and not merely directory and their disregard cannot be treated to be a mere irregularity. Absence of order u/s 112, Cr. P.C. renders the Magistrate incompetent to take further steps under Chapter VIII and there is no question of granting bail in a proceeding u/s 107, Cr. P.C. In this connection a reference is made to Krishnaswami Thathachari v. Vanamamalal Shashiakar ILR 36 Mad 282 In that case it has been held by a Division Bench of the Madras High Court that proceedings in the case u/ s 107, Cr. P.C. cannot proceed without first issuing a notice u/s 112, Cr. P.C. The omission to issue a notice is a non-compliance with an express provision of the law and therefore, renders the subsequent proceedings invalid. The matter also received consideration of their Lordships of the Supreme Court in Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others, and it has been held therein that the first requirement for proceeding under Chapter VIII of the Criminal Procedure Coda is that the Magistrate must pass an order in writing setting forth the substance of the information received, the amount of the bond, the term for which it is to be in force and the number, character and class of sureties, (if any), required. That order may be passed in the presence of the person to be bound over and even in his absence. Section 113, Cr. P.C. deals with the situation when the person is present in the court, then the Magistrate must read over the order to him and if he so desires, the substance of it shall be explained to him. When the person concerned is not present in the court, the next section i, e Section 114, Cr. P.C. applies. Ordinarily, first a summon must issue. But in case his immediate arrest is necessary, the magistrate may issue a warrant. The section also envisages a situation in which the person is already in custody. In that case the Magistrate shall issue a warrant directing the officer having his. custody to produce him before the court. Whenever a summons or a warrant is issued u/s 114, Cr. P.C. a copy of the order made u/s 112, Cr. P.C. must be sent and delivered to the person: vide Section 115, Cr. P.C. Likewise, his Lordship Dua, J. has held in Banarsi Lal v. Neelam AIR 1969 Del 364 that the order u/s 142, Cr. P.C. is a condition precedent to take further steps under Chapter VIII, Cr. P.C.

and unless such an order is made, the order about the, issue of a notice u/s 207, Cr. P.C. is not sustainable. Here. I would also refer to the words read by his Lordship, Hegde, C.J., in Balraj Madhok v. Union of India AIR 1967 Del 31

Without such an order u/s 112, Cr. P.C. the Magistrate is incompetent to take further action.

I may also respectfully quote with approval some of the observations made by the Allahabad High Court in Kunwar Murli Manohar Vs. State of Uttar Pradesh and Others, . This is what his Lordship Bhargava, J. said:

Where there are proceedings u/s 107 or when proceedings under that provision are contemplated, the procedure to be adopted is laid down in Sections 112 to 118 Whenever proceedings u/s 107 are contemplated against any person the proceedings are to be initiated by preparing a notice u/s 112 of the Code and serving it on that person u/s 113 or 114. When the detenues were produced before the Sub Divisional Magistrate and the report of the police indicated that they had been taken into custody for the purpose of taking proceedings u/s 107, the Magistrate should have then and there prepared a written order u/s 112 and should have read over that order to these detenues and, if they so desired, should have explained the contents of that order to them. Until he had done so, his powers of remanding these detenues to custody under Sub-section (3) of Section 117 did not vest in him and could not be exercised by him.

In the present case when the two persons, Luna Ram and Ganga Ram, were produced before the Sub Divisional Magistrate, Bikaner (North), it was his duty to draw up an order u/s 112, Cr. P.C. and read over the same to them. The Magistrate should not have sent these persons to jail till they (sic) security. Similarly when the Magistrate issued bailable warrants against the rest of the petitioners, those warrants should have been accompanied by a copy of the order made u/s 112, Cr. P.C. But that has not been done. This shows that the Magistrate did not care to read the law and to inform himself about what he was to do. It may also be noticed here that before the Magistrate took action to call for an interim bond, he made no endeavour to enquire into the truth of the information as is required by Section 117(3) of the Code. The later proceedings, in the absence of the compliance with the essential provisions of law being illegal, are not maintainable. I am unable to agree with learned Deputy Government Advocate that the notice issued subsequently u/s 112, Cr. P.C. should be held to be sufficient as a preliminary to the Magistrate making an order u/s 107, read with Section 117, Cr. P.C. The party proceeded against u/s 107, read with Section 117, Cr. P.C. should have due notice of the facts on which the Magistrate proposed to proceed against them.

7. I may also mention here that the provisions of Chapter VIII, Cr. P.C are aimed at persons whose conduct is likely to lead to a breach of the peace or disturbance of the public tranquillity. This is an instance of preventive justice. These provisions are in aid of orderly society and they seek to nip in the bud, the

conduct subversive of the peace and public tranquility It is for this object that large judicial discretionary powers have been conferred upon the Magistrates for the preservation of public peace and order. The words appearing in Section 107 that action is to be taken "in the manner hereinafter provided" indicate that the Magistrate has to strictly follow the procedure so that liberty of the individuals concerned may not be jeopardised or may not be curtailed according to the whim of the Magistrate concerned.

8. In the result, I accept this revision-petition and quash the order of Sub-Divisional Magistrate, Bikaner (North) dated January 28, 1971, as also that of Sessions Judge, Bikaner, dated July 28, 1971.