
(1987) 05 OHC CK 0015
In the Orissa High Court

Rama Chandra Jena and Others

APPELLANT

Vs

Muralidhar Onjha and Others

RESPONDENT

Date of Decision : 15-05-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 111, 482

Citation : (1987) 64 CLT 273 : (1988) CriLJ 218

Hon'ble Judges : L. Rath, J

Bench : Single Bench

Judgement

L. Rath, J.—This is a petition u/s 482 Cr. P.C. seeking quashing of a notice issued u/s 111 Cr.P.C. directing the petitioners to show cause as to why they should not execute a bond for Rs. 1,000/- with one surety for the like amount each to keep peace in the locality for a period of one year.

2. The petitioners have moved this Court alleging that there was absolutely no material before the Magistrate to be satisfied that any breach of peace was imminent at the instance of the petitioners or that public tranquillity was to be disturbed by them and that notice issued to them shows an apparent mechanical approach without any application of mind.

3. The notice issued to the petitioners has been produced before the Court and as it also appears from the records of the case called for, the notice is a cyclostyled one which may be reproduced herewith handwritten portions underlined:

Whereas it appears from the petition filed by the first party dt. 17-12-86, that, the members of the 2nd party are in hostile terms with the 1st party members due to party faction.

The members of the 2nd party have formed an unlawful combination and trying to harass the members of the 1st party by putting them into various troubles and threatening to assault.

I am satisfied on hearing of the parties that the members of the 2nd party have already committed certain overt acts and they are likely to commit further overt acts at any time. As such, there is apprehension of imminent breach of peace within the local limits of the jurisdiction of this Court and action u/s 107 Cr. P.C. is necessary against the members of the second party.

Accordingly, I do hereby require and direct the members of the 2nd party to appear in the Court on 3-1-87 and show cause as to why they should not execute bond for Rs. 1,000/- with one surety for the like amount each to keep peace in the locality for a period of one year.

Given under my hand and the seal of the Court, this the 17th day of December, 1986

Sd/- L. D. Sarangi 17-12-86 Executive Magistrate, Puri.

Forwarded to the O.I.C. Nimapara P.S. for execution and return before the date fixed.

4. From a perusal of the notice as above, it is apparent that the Magistrate was satisfied on the petition filed by the opposite parties of the fact that the petitioners are in hostile terms with them and that they have formed an unlawful combination for the purpose of harassing the opposite parties by creating various troubles for them as also threatening them to assault and that he was satisfied on hearing the parties that the petitioners have already committed certain overt acts and are likely to commit further overt acts for which the learned Magistrate entertained an apprehension of imminent breach of peace.

5. The petition filed by the opposite parties u/s 107 Cr. P.C. before the Magistrate reveals the allegations that the petitioners, who are illiterate persons, had formed an unlawful assembly and prevented the daily labourers of the locality from working for the opposite parties on threat of dire consequences for which the opposite party No. 1 was suffering great hardship and irreparable loss and that when the opposite party No. 1 requested the petitioners for refraining from such action, they called the entire villagers and abused the opposite party No. 1 in filthy language and humiliated him. It is further alleged that the petitioners were frequently threatening the opposite party No. 1 to commit homicidal death, watching his movements and on several occasion had entered inside his house and abused him and that they are rowdy and goonda elements.

5A. . On the petition, the learned Magistrate endorsed as follows:

Perused the petition and affidavit. I am satisfied that there is apprehension of breach of peace. Start a proceeding under" section 107 Cr. P.C. against the second party.

A comparison of the facts alleged in the petition and the notice issued would show that the notice never disclosed the substance of the information received by the Magistrate as is mandatorily enjoined u/s 111 Cr. P.C. The notice also does

not show the satisfaction of the Magistrate regarding the particular complaints against the petitioners. The notice stated that the Magistrate was satisfied on hearing the parties that the members of the second party have already committed some overt acts, but however as the endorsement on the petition u/s 107 Cr. P.C. shows, there was no hearing and the satisfaction was based only on the petition filed. It is too well settled that a notice issued under S. 111 Cr. P.C. is to disclose the substance of the information received by the Magistrate so as to enable the delinquent to explain the facts alleged against him and that this is not a mere formality. The very cyclostyling of the notice forms reveals that the satisfaction of the Magistrate noted therein is formally recorded and the notice is sealed with his signature in a mechanical manner. A notice under S. 111 Cr. P.C. can only be issued on the satisfaction of the learned Magistrate properly reached.

As was held in *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*, an order to execute a bond issued before the offence is committed though has the appearance of an administrative order, yet is judicial in character. Hence the satisfaction to be reached by the Magistrate is not an arbitrary one but is required to be a judicial satisfaction which is expected to stand the scrutiny of the higher Courts. The circumstances necessitating issuing of the notice under S. 111 Cr. P.C. will vary from case to case and hence a cyclostyled form cannot be expected to be of universal application to all circumstances and all facts. Adoption of such a course would always render a notice issued open to the charge of lack of judicial application of mind. The form itself does not show any requirement, space or provision to advert to the substance of the information received and hence it is apparent that as a general rule, issue of notice under S. 111 Cr. P.C. in (sic) being adopted to such forms which on the face of it does not provide for conveying the information against the delinquent/delinquents to him/them.

It is of course true that for initiating a proceeding u/s 107 Cr. P.C. and issue of notice under S. 111 Cr. P.C. to show cause against the execution of the bond, it is not necessary that the Magistrate must wait for a police report or that he cannot act only upon the information received from the persons who file the petition. But however it is expected that when the Magistrate desires to take action only upon the ex parte allegations made by a party, he should exercise a more rigorous test and great circumspection to reach the conclusion that there is in fact an emergent situation causing apprehension of breach of peace and threat to public tranquillity. The freedom of a citizen of this country is a highly cherished right and jealously protected under the Constitution which cannot be allowed to be interfered with in a light-hearted manner merely for the asking of it unless a judicial satisfaction is reached regarding the necessity to invoke action under the prohibiting powers and once the satisfaction is reached, the notice issued to the delinquent must disclose the substance of the information so that a full disclosure is made to him of the facts on which the Magistrate has reached his satisfaction. In a recent decision of this Court of Hon^{ble} Mr. Justice K. P. Mohapatra reported in (1987) 63 CLT 10 (*Bairagi Charan Jena v. State of Orissa*)

for such very reasons, the notice was quashed.

6. Mr. B. K. Nayak, the learned Counsel for the opposite parties however strenuously urged before me, while conceding that the notice issued to the petitioners did not satisfy the tests of S. 111 Cr. P.C., that-no prejudice having been shown to have been caused to the petitioners, the notice issued cannot be interfered with and that further one of the petitioners i.e. the petitioner No. 3 has already appeared before the Magistrate on 23-1-1987 and has furnished a bail-bond. It is of course true that a defective notice under S. 111 Cr. P.C, does not warrant setting aside of the same and would not ipso facto vitiate the proceeding without proof of prejudice and that the proceeding for such reason, would .not be one without jurisdiction but can be quashed if prejudice is shown to have occurred (Vide (1966) 32 CLT 515 (Dibakar Pradhan v. State) Mandalapu Sundar Narayan and Others Vs. V.V. Chenulu, and (1982) 53 CLT 38 : 1982 Cri LJ 154 (Purnananda Behera v. Sunakar Singh). But however when it is apparent that exercise of the power by the Magistrate is plainly an abuse of the process of the court, and it further comes to the notice of this Court that such abuse is being practised with impunity which is evidenced by the fact of issue of the cyclostyle notice, it can safely be concluded that apart from the question of prejudice, the very notice itself becomes vulnerable calling for quashing of it in exercise of the inherent jurisdiction of this Court. In Ram Narain Singh and Others Vs. State of Bihar, it was observed:

The underlying object of the section is preventive and not penal. The section is designed to enable the magistrate to take measures with a view to prevent commission of offences involving breach of peace or disturbance of public tranquillity. Wide powers have been conferred on the magistrates specified in this section and as the matter affects the liberty of the subject who has not been found guilty of an offence, it is essential that the power should be exercised strictly in accordance with law.

As such in view of such blatant abuse of the powers under Sections 107 and 111 Cr. P.C., it is but fit and proper for the ends of justice that the notice issued should be quashed.

7. In the result, the revision is allowed and the notice issued by the learned Magistrate is quashed. The records be sent back forthwith. It is made clear that it is open to the Executive Magistrate, Puri, if circumstances still exist, to proceed in accordance with law.