

(1990) 07 GAU CK 0006
In the Gauhati High Court
Case No : Criminal Revision No. 235 of 1990

Reena Dutta

APPELLANT

Vs

Mukti Mukharjee

RESPONDENT

Date of Decision : 05-07-1990

Acts Referred:

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

Citation : (1990) 2 GLJ 186

Hon'ble Judges : S.N.Phukan, J

Bench : Single Bench

Advocate : D.K.Das, G.Kakati, Advocates appearing for Parties

Judgement

Petitioners No. 1 and 2 are sisters and petitioner No. 3, their brother who was a Pilot of Indian Airlines, but due to an accident he could not continue flying. At present petitioner No. 3 is in business. It is stated that petitioners are residing at Gauhati City and opposite party is residing in his house adjacent to the house of the petitioners. In the month of May, petitioners received an order from the learned Executive Magistrate, Gauhati requiring them to execute a bond of Rs. 1000/ for keeping peace and tranquility in the area. The order was purportedly issued under "Section 107 Cr. P. C. According to petitioners prior to issuance of the order, there was no incident and as such breach of public tranquility or peace by the petitioners cannot arise. Petitioners after obtaining copy of the impugned order has approached this Court for quashing the entire proceeding.

I have heard learned counsel for the petitioners and according to learned counsel, the order was passed in complete disregard to the provisions contained in sections 107 & 111 Cr. P.C. and as such is liable to be quashed.

Section 107 Cr.P.C. finds place in Chapter VIII of the Code under the heading Security for Keeping the Peace and for Good Behaviour. From reading the said provision it is absolutely clear that before asking a person to show cause under the said section the Executive Magistrate must be satisfied from information

received that a person likely to commit a breach or disturb public tranquility or to do any wrongful act that may probably occasion a breach of the public tranquility. The Magistrate must further be satisfied that there is sufficient ground for proceeding with the matter.

Section 111 Cr.P.C. provides that when an Executive Magistrate acting under the aforesaid section 107, or section 108, 109 and 110 deems it necessary to require a person to show cause under such section he shall make an order in writing setting forth the substance of information received, the amount of bond to be executed, term for which it is to be in force and the number, character and class of sureties (if any) required.

In support of his contention learned counsel for the petitioners has placed reliance in a decision of the Orissa High Court in *Ram Chandra Jena & others vs. Muraiidhar Onjha & others*, 1988 CrI. L.J.218 wherein it was held that notice under section 111 Cr.P.C. must disclose substance of information received by Magistrate on which he reached satisfaction before issuing notice.

The powers given under section 107 is to prevent apprehended breach of peace or public tranquility and it is not punitive in nature. So, such power can be exercised only in case of serious matter concerning peace or tranquility and not involving trivial quarrel between two parties. The Magistrate has to be careful that by invoking this power a party may not be allowed to feed fat his personal vendetta.

In *Madhu Limaye vs. SubDivisional Magistrate*, AIR 1971 SC 2486 it was held that an order to execute a bond issued before the offence is committed though has the appearance of an administrative order, yet it is judicial in character and therefore, the satisfaction to be reached by the Magistrate, not an arbitrary one, but it requires a judicial satisfaction which is expected to stand the scrutiny of higher Courts. From reading section 107&111 Cr.P.C. I find that two conditions are necessary for initiation of proceeding under the said section 107 viz formation of opinion and existence of sufficient ground for proceeding. As laid down by The Apex Court such satisfactions must be a judicial one and the order must disclose the materials for forming such satisfaction by the Magistrate, as such an order is expected to stand scrutiny of higher Courts.

The main portion of the order which was passed by the Executive Magistrate on 29.1.90 runs as follows :

"I am satisfied that there is likelihood of breach of peace between the parties and hence I now draw up a proceeding U/s 107 Cr.P.C. directing both the parties to appear before this Court on the next date fixed." (emphasis supplied)

Thus the impugned order does not disclose the material on the basis of which the learned Executive Magistrate was satisfied that it was a fit case for drawing up proceeding under section 107 Cr. P.C. On the top of that from the order it appears that the learned Magistrate was satisfied regarding likelihood of breach

of peace by the parties and in my opinion that is not sufficient to invoke section 107 Cr.P.C. The Magistrate must be satisfied that there is likely to be a breach of peace or disturbance of public tranquility in any locality or in any area. Mere breach of peace between the two parties is not sufficient to invoke section 107 Cr.P.C. As stated earlier this section is for security for keeping the peace and for good behaviour and not for settling private dispute between two parties.

I, therefore, find that the impugned order is bad in law and accordingly it is set aside. I, however, made it clear that if the learned Executive Magistrate is satisfied on further materials regarding breach of peace or public tranquility this order shall not prevent him to draw up a fresh proceeding.

In the result, the petition is accepted at the admission stage by setting aside the impugned order dated 21.1.90 passed by the learned Executive Magistrate, Gauhati in Case No. 18 M/80.