

(2007) 04 KAR CK 0005
In the Karnataka High Court
Case No : Criminal Petition No. 1490 of 2007

Sathi Sundaresh and Others	Vs	APPELLANT
The State and The Taluk Executive Magistrate		RESPONDENT

Date of Decision : 12-04-2007

Acts Referred:

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

Citation : (2007) 4 KarLJ 649 : (2007) 2 KCCR 1458

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : P.P. Hegde, for the Appellant; A.V. Ramakrishna, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Mohan Shantanagoudar, J.—Heard Sri P.P. Hegde, learned Counsel appearing for the petitioners and Sri A.V. Ramakrishna, learned HCGP appearing for the respondents and perused the material on record.

2. By the impugned order dated 6.3.2007, passed in MAG.2/CR/53/06-07, the Taluka Executive Magistrate, Moodigere Taluk, has directed the police to detain the petitioners in custody from 6.3.2007 to 12.3.2007 and to produce them before him on 12.3.2007.

3. The provisions of Section 107 of Cr.P.C. will have to be invoked by the Executive Magistrate only if he is of the opinion that there is every likelihood of breach of peace. The underlying object of Section 107 of Cr.P.C. 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 an individual who has not been found guilty of an offence, it is essential that the power should be exercised strictly in accordance with law as has been held by

the Apex Court in the case of Ram Narain Singh and Others Vs. State of Bihar, . The provisions of Chapter VIII may be easily made an engine of injustice and oppression and the High Court will exercise closest scrutiny to prevent the same. Section 107 of Cr.P.C. is not intended to afford the police a means of getting hold of a person against whom they cannot foist an offence or to enable them to detain him until they can work out a case against him. Section 107 of Cr.P.C. is mainly intended for persons who are of desperate characters and habitually disturbing the public peace. The proceedings u/s 107 of Cr.P.C. are concerning proper bonds to be taken from the concerned persons by way of security for keeping peace. These proceedings are popularly known as charter proceedings. There is no question of any person being accused of any offence in such proceedings. Definition of the word "offence" as per Section 2(n) of Cr.P.C. shows that the proceedings u/s 107 of Cr.P.C. cannot have anything to do with any accusation regarding any offence as such. It is also necessary to note that the Executive Magistrate in exercise of his power u/s 107 of Cr.P.C. cannot act as Judicial Magistrate.

4. The impugned order is purported to have been made in exercise of jurisdiction u/s 107 of Cr.P.C. by the Taluka Executive Magistrate. It is most unfortunate that the Taluka Executive Magistrate has totally ignored the provisions of Section 107 and Section 111 of Cr.P.C. before passing the impugned order.

5. The records in this matter would disclose that the petitioners were on strike on 6.3.2007 without prior permission of the concerned with a view to pressurise the local MLA and Health Department to provide infrastructure facilities to the M.G.M. Hospital at Moodigere. They had also demanded that the doctors with specialization should be appointed to the said hospital. As the petitioners had collected in front of the house of the local MLA during midnight of that day, the Sub-Inspector of Police came to the spot and arrested the petitioners by exercising his jurisdiction u/s 151 of Cr.P.C. The said fact is intimated to the jurisdictional Taluka Executive Magistrate on 6.3.2007 itself by the police. The Taluka Executive Magistrate has passed the impugned order in exercise of his jurisdiction u/s 107 of Cr.P.C. and directed the Sub-Inspector of Police to send the petitioners to judicial custody from 6.3.2007 to 12.3.2007. The said Magistrate further directed that all the petitioners be produced before him at 3.00 p.m. on 12.3.2007.

6. At the outset it should be mentioned that the Taluka Executive Magistrate has not at all passed the order u/s 111 of Cr.P.C., which is mandatory. By passing such order u/s 111 of Cr.P.C., the Executive Magistrate . should have required the petitioners to show cause u/s 107 of Cr.P.C. Such order should have been in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number, character and class of sureties, if any, required. Passing of such preliminary order u/s 111 of Cr.P.C. is sine qua non to proceed further. If such an order is not passed, the entire proceedings u/s 107 of Cr.P.C. vitiate. As the Taluka Executive

Magistrate has proceeded to detain the petitioners to judicial custody for six days without even passing the preliminary order u/s 111 of Cr.P.C., and without giving any opportunity to the petitioners to show cause as required under law, the proceedings initiated against the petitioners vitiate and the same are liable to be quashed.

7. The first requirement, as aforementioned is that the Magistrate must pass an order u/s 111 of Cr.P.C. Section 112 of Cr.P.C. deals with the procedure when the person is present in the Court. Then the Magistrate must read over the order to the person and if he so desires, the substance of it must be explained to him. When the person is not present in the Court, Section 113 of Cr.P.C. applies. The Magistrate shall then issue summons to him to appear and if he is in custody, the Magistrate shall issue a warrant to the person who has his custody to produce him before the Court. If there is need for immediate arrest of the person, then, the Magistrate on the report of the Police Officer or upon other information may issue warrant for the arrest of that person. Warrant of arrest can only be issued if there is reason to fear that the breach of peace cannot be prevented except by the arrest of the person. The summons, as well as the warrants issued to the persons will have to be accompanied by the copy of the order passed u/s 111 of Cr.P.C., which means that, the summons and warrant of arrest cannot be issued against any person unless the order u/s 111 of Cr.P.C. is made against such person. The enquiry as to the truth of information will be proceeded with as per the provisions of Section 115 of Cr.P.C. Under Sub-section (3) of Section 116 of Cr.P.C., a power has been conferred on the Magistrate to ask, for interim bond with or without sureties to keep peace pending completion of the enquiry. This power is used if the Magistrate considers that immediate measures are necessary for the prevention of breach of peace or commission or disturbance of public tranquillity. He does so for reasons to be recorded in writing and if the person does not execute such bond, the Magistrate is empowered to detain him in custody till the bond is executed or enquiry is concluded. After completion of enquiry, final order would be passed u/s 117 of Cr.P.C.

8. In this matter, as aforementioned, no proceedings u/s 107 of Cr.P.C. were drawn before the arrest of the petitioners. No preliminary order was passed u/s 111 of Cr.P.C. before the detention of the petitioners, The petitioners were arrested first and then taken to the Executive Magistrate with a view to have bond over. Even when the petitioners appeared before the Executive Magistrate, neither the order was passed u/s 111 of Cr.P.C. nor was it read over to the petitioners. The Magistrate had not taken any action to call for the interim bond by the petitioners and had not issued the warrant. Thus, the entire procedure of detaining the petitioners in custody without drawing any order u/s 111 of Cr.P.C. is bad in the eye of law. Without making order u/s 111 of Cr.P.C., and without making any enquiry, neither could the Magistrate order the petitioners to be detained in custody nor require them to execute a bond with or without surety. As aforementioned, the preliminary requirement to proceed with the provisions of Section 107 of Cr.P.C. is to pass an order u/s 111 of Cr.P.C.

9. Thus, it is clear from the scheme of Chapter VIII that the person, u/s 107 of Cr.P.C., can be arrested only if the Magistrate, under Section. 113 of Cr.P.C., based on the report of the police officer or upon other information (the substance of which report or information is to be recorded in writing by the Magistrate) was of the opinion that there is reason to fear the commission of breach of peace and that such breach of peace cannot be prevented otherwise than by immediate arrest of such person, the Magistrate may at any time after passing the order under Section. 111 of Cr.P.C., issue warrant of his arrest. Secondly, if a person refuses to execute interim bond as contemplated u/s 116(3) of Cr.P.C., the person may be detained in custody. Thirdly, if the bond is not executed by a person after full pledged enquiry as per the order of the Executive Magistrate, he may be detained in custody under Section. 122 of Cr.P.C.

10. As aforementioned, in this matter, the Sub-Inspector of Police in exercise of his power u/s 151 of Cr.P.C. arrested the petitioners. But no person arrested u/s 151(1) of Cr.P.C. could be detained in custody for a period exceeding 24 hours from the time of his arrest unless his further detention was required or authorised under any other provisions of Cr.P.C. or of any other law for time being in force, as is clear from Section 151(2) of Cr.P.C. The petitioners were produced before the Taluka Executive Magistrate within 24 hours of their arrest, but not before Judicial Magistrate. The detention of the petitioners could not have been continued by the Executive Magistrate either u/s 113 or u/s 116 (3) of Cr.P.C. as the Executive Magistrate has not passed any order u/s 111 of Cr.P.C. or under Section. 116(3) of Cr.P.C. Applicability of Section 167 of Cr.P.C. is also ruled out before Executive Magistrate. Under these circumstances, the Executive Magistrate had obviously no power, jurisdiction or authority to direct the Sub-Inspector of Police to send the petitioners to custody for six days.

Therefore, the order dated 6.3.2007 and the proceedings in MAG.2/CR/53/06-07, are liable to be quashed. Hence, the following order is made.

The impugned order dated 6.3.2007 passed in MAG.2/CR/53/06-07, pending on the file of Taluka Executive Magistrate, Moodigere, stand quashed. The proceedings are dropped. The copy of this order shall be sent to Taluka Executive Magistrate, Moodigere, for his guidance in future.

Criminal petition is allowed accordingly.