

(2008) 09 KL CK 0034

In the High Court Of Kerala

Case No : Criminal R.P. No. 2191 of 2008

Shameer and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 22-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 111, 111(1), 112, 113

Citation : (2008) 09 KL CK 0034

Hon'ble Judges : Sasidharan Nambiar, J

Bench : Single Bench

Advocate : B.H. Mansoor, for the Appellant; P. Raveendra Babu, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Sasidharan Nambiar, J.—The short point for consideration is whether an inquiry commenced u/s 107 of Code of Criminal Procedure in the absence of a special reason to be recorded by the Executive Magistrate could be continued beyond the period of six months as provided under Sub-Section 6 of Section 116 of the Code of Criminal Procedure.

2. The records of Executive (Subdivisional) Magistrate, Fort Kochi in M.C. 27 of 2006 show that based on the report submitted by the Sub Inspector of Police, North Parur Police Station dated 1-2-2006, Subdivisional Magistrate passed an order on 3-4-2006 exercising the powers provided under Sections 107 and 111 of Code of Criminal Procedure, directing Petitioners and others to appear before him Court on 23-5-2006, to show cause why they should not be required to enter into a bond for Rs. 10,000 each and also to furnish security by a bond with two sureties for the like sum to keep peace for a term of one year. Petitioners appeared before Subdivisional Magistrate on 11-7-2006. As per order dated 28-2-2007, Subdivisional Magistrate passed a final order as provided u/s 116 directing Petitioners to execute a bond with two sureties for a sum of Rs. 10,000 each for a term of one year, within two weeks from that day. This petition is filed

under Sections 397 and 401 of Code of Criminal Procedure challenging the order.

3. Learned Counsel appearing for Petitioners and the learned Public Prosecutor were heard.

4. Learned Counsel relying on the Division Bench decision of this Court in Muhammedkutty @ Thomas v. State of Kerala 2007 (2) K.L.D. 99 argued that as provided under Sub-Section 6 of Section 116, on the day of expiry of six months from the date on which the accused appeared before Subdivisional Magistrate, the proceedings stood terminated as no special reasons were recorded by the Magistrate and therefore the impugned order is illegal and is to be set aside.

5. Section 107 of the Code of Criminal Procedure enables a Magistrate if he is of the opinion that there is sufficient ground for proceeding on the basis of the information received, that any person is likely to commit a breach of peace or disturb public tranquility or to do any wrongful act that may probably occasion a breach of peace or disturb public tranquility, to require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping peace for such period not exceeding one year. Section 111 enables a Magistrate to issue an order in writing setting forth the substance of the information received, the amount of the bond to be executed and the term for which it is to be in force, and the number, character and class of sureties, if any, required. u/s 112, if the person in respect of whom such an order is made is present in Court, it shall be read over to him, and if he so desires, substance thereof shall be explained to him. If such person is not present in Court, Magistrate shall issue a summons as provided under the Section requiring him to appear. Section 114 provides that every summons or warrant so issued shall be accompanied by a copy of the order made u/s 111. Section 116 provides the mode of inquiry to be conducted by the Magistrate. Under Sub-section (1), when an order u/s 111 has been read or explained u/s 112, to a person present in Court, or when he appears or is produced in answer to the summons or warrant issued as provided u/s 113, the Magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and shall take such further evidence as may appear. Sub-section (2) to Section 116 provides that recording of evidence is to be done as in a summons case. Sub-section (6) mandates that the inquiry under the section shall be completed within a period of six months from the date of commencement, and if such inquiry is not so completed, the proceedings under the Chapter shall stand terminated on the expiry of the said period, unless for special reasons to be recorded in writing, Magistrate otherwise directs. Therefore, if the Magistrate for special reasons to be recorded in writing directs otherwise, if an inquiry is not completed within six months from the date of its commencement the inquiry shall stand terminated on the expiry of six months period.

6. The impugned order does not show that Subdivisional Magistrate has recorded any special reason to extend the period beyond the six months. The records called for also does not show that any such special reason was recorded. As held

by the Division Bench of this Court in Muhammedkutty's case (supra), inquiry u/s 116 commences as soon as the accused appears before the Court and the period of six months is to be computed from that date. The order passed u/s 111 on 3-4-2006 directs the accused to appear on 23-5-2006. According to Petitioners they appeared before the Magistrate on 11-7-2006. Records also establish the fact. If so as provided under Sub-Section 6 of Section 116, inquiry should have been completed before the expiry of six months from 11-7-2006. As the inquiry was not completed on or before 11-1-2007, as provided under Sub-Section 6, inquiry stood terminated as no special reasons are recorded. It is more so when by Sub Divisional Magistrate has not extended the period of inquiry as provided under Sub-Section 6 of Section 116 recording reasons for doing so. Moreover, the very order passed u/s 111 is to execute a bond for a period one year, i.e. from 3-4-2006. Even that one year period expired much prior to the date of final order. In such circumstances the impugned order is set aside and it is declared that inquiry stood terminated on the expiry of six months from 11-7-2006, as provided under Sub-Section 6 of Section 116 of Code of Criminal Procedure. Revision petition is disposed accordingly.