

(1979) 11 PAT CK 0009

In the Patna High Court

Case No : Criminal Miscellaneous No's. 2724 of 1975 and 403 of 1976 and
Criminal Revision No. 69 of 1976

Sitaram Singh and Others, etc.

APPELLANT

Vs

State of Bihar and Another, etc.

RESPONDENT

Date of Decision : 19-11-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 112, 116(6), 117, 251

Citation : AIR 1980 Patna 257 : (1980) PLJR 227

Hon'ble Judges : K.B.N. Singh, C.J;Uday Sinha, J;Lalit Mohan Sharma, J

Bench : Full Bench

Advocate : Afatab Alam, S.N. Jha, No. 2 and G.P. Jaiswal, Jr, for the Appellant;
A.B. Mathur, for Opposite Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

Uday Sinha, J.—These three applications have been heard together and will be governed by this common judgment. When does "inquiry" in a proceeding u/s 107 of the Code of Criminal Procedure (hereinafter referred to as "the Code") commence ? That is the point falling for consideration in these three applications. The commencement of inquiry in a proceeding u/s 107 of the Code has assumed importance under the new Code, as Section 116(6) has determined the life of a proceeding as six months from the commencement of the inquiry,

2. These three applications have been placed before the Special Bench in view of an apparent conflict of views in two Division Bench decisions of this Court, Considering the importance of the question involved H.L. Agrawal and P.S. Sahay, JJ. directed that the matter be considered and set at rest by a larger Bench. That is how these cases are before this Full Bench.

3. The facts in Criminal Miscellaneous No. 2724 of 1975 are that a proceeding u/s 107 of the Code was initiated against the petitioner on 13-6-1974. They appeared in court in answer to notice on 24-7-1974 and prayed for time to show

cause. Before the petitioners could show cause, on 14-9-1974 the learned Magistrate directed the petitioners to show cause against execution of ad interim bonds to keep the peace. The petitioners showed cause in the main proceeding on 29-10-1974. It appears that the proceeding dragged on for some months. On 11-2-1975 the learned Magistrate directed the first party (opposite party No. 2) to produce his witnesses in support of the allegations. On 12-5-1975 while the main proceeding was pending, the learned Magistrate directed the petitioners (second party) to execute ad interim bonds to keep the peace in terms of Section 116(3) of the new Code. On 16-6-1975 the petitioners filed an application before the learned Magistrate to drop the proceeding, as six months had already expired without coming to a conclusion. That prayer of the petitioners was rejected by the learned Magistrate. Thereafter, they filed the present, application for quashing the entire proceeding.

4. In Criminal Miscellaneous No. 403 of 1976 also the petitioners had been called upon to execute ad interim bonds. The proceeding u/s 107 of the Code had been initiated on 14-3-1975 and had not come to a conclusion till 2-1-1976. On 3-2-1976 the petitioners of this application moved this Court for quashing the proceeding, as according to them, it had lapsed by efflux of six months from the date of commencement of the proceeding. In this application the petitioners were the second party to the proceeding and Shyam Singh, the Opposite party was the first party. The opposite party of this application and some others are petitioners in Criminal Revision No. 69 of 1976. Both the parties having been called upon to execute ad interim bonds, they have moved this Court for quashing the proceedings against them on the same ground, namely, lapse of the proceeding by efflux of time.

5. Section 116 of the new Code with some alterations is equivalent to Section 117 (3) of the old Code. Section 116(5) provides the span of life of a proceeding u/s 107 of the Code. It lays down that an inquiry u/s 116 shall be completed within a period of six months from the date of commencement and if not completed it shall stand terminated unless directed otherwise by a Magistrate and that too for special reasons. The Code itself is silent in regard to the point of time at which inquiry into a proceeding u/s 107 of the Code must be deemed to have commenced. The expression "commencement of the inquiry" finds place in Section 116(3). In order to appreciate the point at which an inquiry u/s 107 of the Code commences, it will be useful to recapitulate the course a proceeding takes. When a Magistrate is satisfied that breach of the peace is apprehended, he shall record his satisfaction and order issuance of notice to the person proceeded against to show cause against the execution of bond. The recording of such satisfaction and calling upon the party proceeded against to show cause is done in terms of Section 111 of the Code. In cases where the person proceeded against happens to be present in court before the Magistrate, the order recorded in terms of Section 111 must be read or explained to him (Section 112). Section 113 deals with the situation where the person sought to be proceeded against is not before the Court. In that situation, summons shall be issued calling upon

such a person to appear in court. If that person is in police custody, a warrant shall be issued to the officer to bring the person proceeded against before him. If that person is not in custody and there is reason to fear the commission of a breach of the peace which cannot be prevented otherwise than by immediate arrest of that person the Magistrate may issue a warrant for his arrest (Section 113. The next stage is when the person proceeded against appears before the Magistrate in answer to the summons issued in terms of Section 113) or is produced under arrest, the Magistrate shall enquire into the truth of the allegations against the persons proceeded against. The provision for this stage is to be found in Section 116(1) of the new Code. Section 116(2) lays down that the procedure for such inquiry shall be the same as that provided for trial in summons cases. Thus the commencement of inquiry in a proceeding u/s 107 has necessarily to be interpreted in terms of commencement of a summons trial provided for in Chapter XX of the Code. Section 251 in Chapter XX makes it absolutely clear that a summons trial commences when the accused appears or is brought before the trial court and the particulars of the offence are stated or read out to him. In AIR 1943 36 (Nagpur) Niyogi, J. observed as follows :--

"The trial begins in a case exclusively triable by Court of Session, only after the charge is framed by the committing Magistrate; see (ILR 1909 Mad 218 : 9 Cri LJ 146 (Palaniandy Goundan v. Emperor) and in a warrant case when the accused is called upon to plead to a charge; (1913 9 Nag LR 42; (14 Cri LJ 230) (Manna v. Emperor). In a summons case the trial may be said to begin when the accused is brought before the Magistrate."

And again, C. J. Grille agreeing with Niyogi, J. observed in the same case at p. 69 as follows:--

"Now the trial in a Sessions Court or in a warrant case begins after the charge, and in a summons case when the accused is brought before the Magistrate."

It admits of no doubt that the moment the accused has appeared and the substance of the accusation is explained to him, a summons trial has commenced. The point of commencement of a proceeding u/s 107 of the Code must, therefore, be determined in the same terms. Section 112 provides for the reading over or explaining the substance of the accusation and the satisfaction of the Magistrate. Section 112 thus is akin in content to that of Section 251. If a summons trial commences with the reading out the particulars of the offence to the accused, which must be held to be so, a proceeding u/s 107 also must necessarily be deemed to have commenced with the reading over the substance of the information received. That was the view taken in Jagdish Prasad Verma and Others Vs. The State, . It cannot be contended for a moment that a summons trial commences from the stage contemplated by Section 255 of the Code. Thus I see no reason to take a different view of the matter in regard to commencement of inquiry u/s 116(1) of the Code.

6. The point in regard to commencement of inquiry in a proceeding u/s 107 of

the Code came up for consideration in a pointed manner in *Nokha Singh v. Parvati Kuer*, (1974 BBCJ 461). The facts of that case need be stated in some detail. In that case notice was issued to the persons proceeded against to show cause. In pursuance thereof they appeared on the 17th March, 1972. On that date they prayed for time for filing their show cause. It must be assumed that on that very day the substance of the information must have been read over to them and thereafter time was granted to them to file their cause which they had to show. The third thing that happened on that very date was that an application was filed by the opposite party requesting the Magistrate that the persons proceeded against be directed to execute ad-interim bonds to keep the peace. The proceeding was adjourned on the 17th March, 1972 to 28th March, 1972 for filing show cause. On the 28th March, 1972 the proceedees filed their show cause. The proceeding on two successive dates thereafter was adjourned. On the 26th May, 1972 after hearing the parties and after perusing another subsequent police report the Magistrate directed the proceedees to execute ad-interim bonds. The proceedees being aggrieved by the order for execution of ad interim bonds moved this Court for quashing the proceeding on the ground that the inquiry into the proceeding had not commenced, as no evidence had been recorded till the 26th May, 1972 and, therefore, the order for execution of ad-interim bonds was illegal and fit to be quashed. The Division Bench after an elaborate discussion of the law on the subject, laid down the law as follows:

"Therefore, when the person proceeded against appears in court in pursuance of the notice u/s 112, as in the instant case, the stage of Section 117 is reached, Section 117(1) does not lay down that inquiry does not commence unless a witness has been examined or the person proceeded against has been further interrogated, as urged by Mr. Roy, It may be adjourned for the absence of parties proceeded against or for similar reasons but nevertheless the stage as contemplated u/s 117(1) of the Code begins. The postponement of the proceedings on a few occasions will not vitiate the order in question and the Supreme Court does not lay down any such proposition of law that the proceeding u/s 107 cannot be postponed for valid reasons. The question whether adjournment of the proceeding was proper or not will depend on the facts of each case and no hard and fast rule can be laid down in that regard."

I am in respectful agreement with the law laid down in *Nokha Singh's* case in regard to commencement of inquiry u/s 117(1) of the old Code which is equivalent to Section 116(1) of the new Code.

7. A slightly different note was struck by another Division Bench of this Court in *Nathan Yadav v. State of Bihar*, (1977 BBCJ (HC) 357). In that case again the stage of commencement of a proceeding u/s 107 of the Code came up for consideration. The facts of this case were that a proceeding under Sec. 107 of the Code was drawn up against the petitioners of that case on 10-5-1974. In pursuance of notice served on them they filed their show cause on 5-9-1974. It must be assumed that the recording of evidence was postponed. On 17-10-1974

the learned Magistrate on the request of the parties fixed 2-11-1974 for producing their witnesses. For some reason or the other evidence was not recorded till 1-3-1975, when an application was filed on behalf of the petitioners that the proceeding not having concluded within six months of its commencement, it lapsed in terms of Section 116(8) of the Code. On those facts the petitioners of that case moved this Court for quashing the proceeding. One of the questions posed by their Lordships in this behalf was as follows :--

"(i) When an inquiry as envisaged by Section 116(1) of the Code commences? Does it commence only when evidence is led in the proceeding, or it commences if the person against whom an order is made u/s 111 of the Code is present in court at that time and the order is read over to him as required by Section 112 of the Code or if he is absent, when he appears or is brought before the court in compliance with or in execution of summons or warrant issued u/s 113 of the Code, or a third alternative is also possible and the inquiry commences when the Magistrate applies his mind to the fact of the case in presence of the person against whom an order is made u/s 111 of the Code."

S.P. Singh, J. with whom N.P. Singh, J. agreed rejected it outright that the contention "inquiry" under Chapter XVIII of the Code does not commence unless evidence of witnesses had been recorded. Their Lordships also did not accept the position that a proceeding u/s 107 of the Code commences when the person proceeded against appears or is brought before the Court in seisin of the case. Their Lordships' view of the law on the subject was spelt out in the following expressions :--

"My considered opinion, therefore, is that an inquiry as envisaged by Section 116 of the Code commences only when the Magistrate applied his mind to the facts of the case in presence of the person against whom an order is made u/s 111 of the Code. On the facts of the present case, I am of the opinion that in this case the inquiry commenced on 17th of October, 1974, when the Magistrate fixed a date for production of the witnesses by the parties."

The above view does appear to be slightly different from the view taken by K. B. N. Singh, J., as he then was with whom S. N. P. Singh, J. was in full agreement. The case of *Nokha Singh* (1974 BBCJ 461) (supra) and of *Nathan Yadav* (1977 BBCJ (HC) 357 (supra) must, therefore, be considered to ascertain which view lays down the correct law.

8. In my view, the view taken in *Nokha Singh's* case (supra) is a more rational and certain basis for holding the stage at which an inquiry must be deemed to have commenced. The test of application of judicial mind for the purpose of proceedings with an inquiry u/s 117 is much too ethereal and is likely to cause confusion in the minds of subordinate courts. I am unable to agree with the view propounded in *Nathan Yadav's* case (supra). My reasons for coming to that conclusion are set out hereinafter. When a Magistrate has issued notice calling upon a party to show cause why he should not be called upon to execute bond

for a particular period to keep the peace, there are only two attitudes which a party noticed may take. Firstly, that he has committed the acts alleged against him and he is prepared to execute bond to keep the peace and secondly, that the allegations made against him are untrue or false and that there is no reason for calling upon the party noticed to execute bond. In my short experience I have not come across any case in which the party noticed has appeared in court to say that he is prepared to execute bond. In every case under Chapter XX the party noticed appears to refute the allegations made against him and for discharging the notice. When a party refutes the allegations what are the alternatives left to the court? The only course that a Magistrate can adopt is to call upon the parties to adduce evidence in order that it may be decided as to who is acting wrongfully which has caused apprehension of breach of the peace. Thus the question of application of judicial mind at that stage must be considered axiomatic. If a party appears in answer to a notice, the Magistrate has no option, but to proceed to test the correctness of the allegations. The recording of evidence may not start immediately that very day but it may be adjourned to some subsequent date or dates. But it is obvious that when a party has appeared in court, the Magistrate when he adjourns the proceeding, he does so for the purpose of proceeding with the inquiry. Thus the forming of conclusion to proceed to enquire into the allegations takes place on the very day the party noticed appears in court. Thus, it is futile to look for some other date or dates for the formation of the necessary intention of the court. That takes place necessarily on the day the party noticed appears before the Magistrate. When the person proceeded against appears in court in answer to notice issued u/s 107 of the Code of Criminal Procedure and prays for grant of adjournment, the very fact of prayer for time necessarily implies that the Magistrate has decided to proceed with the inquiry I would have appreciated the view point in Nathan Yadav's case (supra), if the Magistrate had any option in the matter of proceeding with the inquiry,

9. It was contended on behalf of the opposite party in these applications that the view propounded in Nathan Yadav's case 1977 BBCJ (HC) 357 (supra) is a better view for the reason that until cause has been shown and the Magistrate has decided to proceed with the inquiry, the inquiry contemplated by Section 116(1) and (6) cannot be said to have commenced. I regret, I have some difficulty in accepting this submission. The difficulty that I feel in accepting this view is that if that view were to be accepted, the party proceeded against would be free to postpone showing cause and continuing with his activities which might create breach of the peace. Upon that view, until the noticed party has shown cause, no order could be passed for execution of interim bond, thus, leaving him ad lib to pursue his nefarious and mischievous acts and the court looking like a helpless spectator, for it is now well settled that after a person has appeared in court in answer to a notice, no warrant can be issued against him. The second difficulty in accepting this submission is that after notices have been issued in terms of Section 107, there is no scope for application of mind to proceed with the inquiry. The stage for application of judicial mind in regard to proceeding with the inquiry

is contemplated in Section 107 itself. A notice shall issue only when a Magistrate is satisfied that there is sufficient ground for proceeding. Once a Magistrate has come to the conclusion that there is sufficient ground for proceeding; there is no scope for application of judicial mind to proceed with the inquiry after the person proceeded against appears in court in answer to the notice. The stage for application of judicial mind thereafter arises only at the conclusion of the proceeding. The Magistrate has no option at that stage, but to proceed with the inquiry. If the Magistrate has to proceed with the inquiry to its ultimate conclusion irrespective of the attitude of the party proceeded against, then the filing of the show cause and application of judicial mind cannot be taken as a significant step in the journey of a proceeding u/s 107. But as my view is that a Magistrate has no such option after a party has been noticed, a Magistrate has to proceed to enquire into it whatever may be the cause shown. The application of judicial mind at that stage is implicit. The concept of application of judicial mind at that stage propounded in Nathan Yadav's case (supra) does not appear to be sound. I am definitely of the view that when a party appears in answer to notice in terms of Section 111 and the Magistrate adjourns it to the next date, the adjournment is for the purpose of examining witnesses. It is another matter that the witnesses may not be examined on the adjourned date because the Magistrate is busy otherwise or because the parties have failed to produce witnesses or because the parties want more time to get possession of all relevant documents. But the inquiry must be deemed to have commenced on the day the party appears and the case is adjourned to next date. In my considered opinion, therefore, Nokha Singh's case (1974 BBCJ 461) (supra) appears to be a better view. It is also a view which the courts below will be able to follow better and give effect to the spirit of Section 116(6). It is tempting to take a view which might extend the point of commencement of inquiry so that the period of six months contemplated by a Section 116(6) may be lengthened and thus avoid lapse of the inquiry. But the temptation must be resisted. The law desired the inquiry to be a short affair and not to be dragging Its feet for years. Every endeavour should be made by Magistrates to complete the inquiry as soon as possible. That can be done only by limiting the number of adjournments. Magistrates would be well advised to call upon the party at whose instance the proceeding has been initiated to be present with his witnesses on the date fixed for appearance of the opposite party.

10. Learned counsel for the opposite party in the three applications placed reliance upon Madhu Limaye and Another Vs. Ved Murti and Others, to contend that until witnesses have been examined the inquiry u/s 117(1) does not commence. On the special facts of that case their Lordships observed that it was not given to the Magistrate to postpone the case and hear nobody and yet ask the petitioner to furnish a bond for good conduct. But the ratio, however, of that case is, as mentioned in paragraph 16 that Magistrate can only ask for interim bond, if he cannot complete the inquiry and the expression of "completion of inquiry" meant inquiry according to the procedure prescribed for summons trial.

Summons trial commences on the day the accused appears or is brought and the substance of the accusation is explained to him. In my view, it is not the import of Madhu Limaye's case (supra) that the inquiry contemplated by Section 117 does not commence unless and until the examination of witnesses on oath has commenced. Such an interpretation of Madhu Limaye's case (supra) has not found approval either in Nokha Singh's case (1974 BBCJ 461) (supra) or in Nathan Yadav's case (1977 BBCJ (HC) 357) (supra), nor has it been accepted by another Division Bench in Surendra Singh v. State of Bihar (1978 BLJR 656). I am fortified in the view that I have taken by the case of Dwarkanath Ramchandra Angachekar v. State of Maharashtra (1977 Cri LJ 120 (Bom)). Paragraph 26 of that judgment quoted below sums up the position succinctly :--

"Having regard to the provisions of Section 112 and Sub-section (1), Section 116, and the fact that a summons procedure is prescribed for an enquiry by Sub-section (2) of Section 116 it would appear that in the case of a person who is present in Court when the order u/s 111 is passed, the said order must be read over to him and the substance thereof explained to him if so desired by him, on that very day, and, therefore, the inquiry in his case shall be deemed to have commenced on that very day irrespective of the fact whether the Magistrate records his plea or not. In the case of an opponent who is not present in Court when the order made u/s 111 is passed, but whose presence is secured by a summons or a warrant, as provided u/s 113, it would appear that since there is nothing to prevent the Magistrate from reading the accusations to him and recording his plea on the very day when he so appears or is brought before the Magistrate and on the other hand there is a legislative mandate to proceed to inquire into the truth of the accusation on the happening of such an event it would appear that, irrespective of the fact whether the Magistrate records the plea of the opponent or not, and irrespective of the fact whether the Magistrate proceeds with the inquiry or not, the inquiry in the proceedings must be deemed to have commenced against such a person on the very day when his presence is thus secured on the day fixed by the Court."

I am in respectful and complete agreement with the view taken by the Bombay High Court. A view similar to the view taken by the Bombay High Court referred to above was taken by a Bench of the Madhya Pradesh High Court in Gopal Das Mahore and Others Vs. The Executive Magistrate, . It was explicitly stated by C.M. Lodha, J. that it is not necessary for the Magistrate to actually record any evidence before passing an order under Sub-section (3) of Section 116. It was also observed in that case that all that was necessary was that the Magistrate should come to the conclusion that the matter needed to be enquired into and should have taken some steps in that direction. I should, however, hasten to add that Gopal Dass Mahore's case (supra) also fits in with the ratio propounded by S. P. Singh, J. in Nathan Yadav's case (supra) because the day he party proceeded against had appeared before the Magistrate, the latter had examined him and when he refused to sign the order, the Magistrate thought it fit to proceed with the case instead of dropping the proceeding. View different from

the one I have taken of the law on the subject was laid down by a Division Bench of the Orissa High Court in *Uchhaba Jena and Others Vs. Kunjabehari Rautary and Another*, . R.N. Misra, J. laid down that the inquiry referred to in Sub-section (6) is with reference to the stage when the Magistrate, after both parties appear before him, proceeds to inquire with reference to the evidence as to whether the delinquencies alleged are established. I am in respectful disagreement with the law laid down by the Orissa High Court.

11. In all the three cases under consideration before us the petitioners had appeared before the learned Magistrate more than six months prior to the passing of the impugned orders and no order for continuing those proceedings had been passed within six months of the commencement of the inquiry. In the view that I have taken, therefore, it is patent that six months from the date of commencement of inquiry has been completed in all the three cases and thus the proceedings have lapsed in terms of Section 116(6). The learned Magistrates, therefore, had no jurisdiction to pass orders for execution of ad interim bonds by the petitioners. The orders for execution of ad interim bonds are, therefore, quashed. All the three applications are accordingly allowed. It will, however, be open to the Magistrate concerned to take action u/s 107 of the Code of Criminal Procedure by fresh proceedings if there is an apprehension of breach of the peace.

K.B.N. Singh, C.J.

I agree

Lalit Mohan Sharma, J.

12. I regret my inability to agree with the view expressed by brother Uday Sinha, J. with whom the Hon^{ble} the Chief Justice has agreed. In my opinion, an enquiry u/s 116 of the Code of Criminal Procedure (hereinafter referred to as "the Code") does not commence as soon as an order made u/s 111 of the Code against a person present in court is read over to him, as required by Section 112 of the Code, or if he is absent when he appears or is brought before Court in compliance with a direction u/s 113 of the Code. The enquiry commences only on the Magistrate applying his mind to the facts of the case in presence of the person concerned. I will briefly state my reasons.

13. The enquiry mentioned in Section 116 of the Code has to be held for ascertaining the truth of an information against a person upon which an action has been taken earlier; and no occasion for the same arises until the order u/s 111 of the Code has been read over to him, as required by Section 112, if he is present in Court or when he appears or is brought before the Magistrate in compliance with an order u/s 113. It is only after this stage is over that Sub-section (1) of Section 116 of the Code enjoins the Magistrate to "proceed (emphasis is by me) to enquire into the truth of the information upon which action has been taken and to take such further evidence as may appear necessary." The plain language of the section, therefore implies that the

Magistrate has to formally decide to proceed to enquire into the truth of the information and, as a result thereof, an enquiry is held. The application of the mind of the Magistrate, therefore, comes into play, immediately before the commencement of the enquiry. I am, therefore, in respectful agreement with the view expressed in Nathan Yadav's case (1977 BBCJ (HC) 357), referred to in paragraph 7 of the judgment of Uday Sinha, J.

14. The view expressed in Nokha Singh v. Parvati Kuer, (1974 BBCJ 461) does not appear to be consistent with the decision of the Supreme Court in Madhu Limaye and Another Vs. Ved Murti and Others, . In Madhu Limaye's case, the question was whether enquiry had commenced so that an order u/s 117(3) of the Code could have been passed. The relevant facts may be chronologically stated as follows:

9-8-70-- Madhu Limaye arrived at Varanasi and the other petitioners were going to receive him when they were arrested and were produced before a Magistrate. The order made u/s 111 of the Code was read over to them as envisaged by Section 112. The petitioners refused to accept the notice, The case was adjourned to the following day. (See paragraphs 9 to 12 of the judgment).

10-8-70-- Another report by police of this date was filed which was ordered to be kept on the file. The Magistrate adjourned the proceeding to 17-8-70 for the examination of the petitioners without summoning the witnesses in support of the information, "He however asked the petitioners to furnish an interim bond or go to jail." (Last sentence of paragraph 15. See also paragraph 19):

The last mentioned order requiring furnishing of interim bond was set aside by the Supreme Court, inter alia, on the ground that the enquiry u/s 116 of the Code had not commenced at all and an interim bond can be asked for, under Sub-section (3) only after an enquiry is commenced. The following observations in the judgment unmistakably lead to this conclusion:

(a) "The Magistrate could only ask for an interim bond if he could not complete the enquiry and "during the completion of the enquiry "postulates a commencement of the enquiry, which means commencing of a trial according to the summons procedure" (Paragraph 16).

(b) "Having the petitioners before him and having read to them the order u/s 112 it was his duty either to release them unconditionally or to ask them to give an interim bond for good conduct but only after he has started inquiring into the truth of the information" (Emphasis is by me) (Paragraph 19)

(c) "It will be noticed that before the Magistrate took action to call for an interim bond, he did not make any efforts to enquire into the truth of the information....." (Paragraph 13)

It is true that the steps taken against the petitioners were deprecated by the Supreme Court on other grounds also. But for that reason, the decision of the Supreme Court on the question involved in the cases before us cannot be

ignored. One of the reasons, and to me it appears as the main reason, on which the Supreme Court interfered in the matter was that an interim bond could not have been asked for until an enquiry had actually commenced and it had not commenced till 10th August, 1970. It is to be remembered that the order passed u/s 111 had been read as envisaged by Section 112 to the petitioners on the 9th August itself and if it were correct to say that an enquiry automatically commences on the reading of the order to the person concerned, 1970 (sic) which is directly contradicted by the judgment of the Supreme Court.

15. I do not, however, subscribe to the view that the enquiry does not commence until witnesses are actually examined, as has been held by some of the High Courts. But in view of the majority judgment of my learned brothers in the present cases, I do not consider it necessary to deal with the various decisions of the other High Courts on this aspect, with reference to the facts of the cases before us. Before, closing, however, I would like to mention that the analogy of a summons trial does not appear to be of much help in the present context. It is only the "manner" in which an enquiry is required by Section 116(2) of the Code to be made in accordance with a summons trial, but I would assume that the two proceedings should be held to be conterminii. Still the illustration is not helpful as the exact stage at which a summons trial must be held to have commenced is itself not free from difficulty and it does not appear to me to be safe to make any assumption in that regard. I also do not agree that if the view taken by Nathan Yadav's case (1977 BBCJ (HC) 357) is accepted as correct, the party proceeded against would be free to postpone showing cause and to continue with his undesirable activities. It is not at the sweet will of a person concerned that the Magistrate has to go on postponing the proceeding and the Magistrate can commence the enquiry even without waiting for the person who does not show cause in time or does not show cause at all. If a person is not present in court and the Magistrate is satisfied that there is reason to apprehend the commission of breach of peace, he can issue a warrant of arrest in appropriate cases under the proviso to Section 113. Besides, there are other methods open to the authorities to deal with the nefarious activities of an undesirable person and it cannot be assumed that the law will be rendered helpless unless the view in Nokha Singh's case (1974 BBCJ 461), is accepted.