
(1962) 11 GUJ CK 0009
In the Gujarat High Court

The State of Gujarat

APPELLANT

Vs

Sama Kasam Sidhik and Others

RESPONDENT

Date of Decision : 01-11-1962

Acts Referred:

Civil Procedure Code, 1898 — Section 112, 117(3)
Criminal Procedure Code, 1898 (CrPC) — Section 112, 117(3)

Citation : (1963) CriLJ 663 : (1963) GLR 490

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

V.B. Raju, J.—The learned Sessions Judge of Kutch. has, made this reference stating that the orders passed by the Taluka Magistrate, Khavada, should be set aside. The learned Taluka Magistrate, Khavada, passed an order u/s 112, Cr.P.C. against five persons, and below that order he passed an order u/s 117 (3), Cr.P.C. The learned Sessions Judge feels that the learned Taluka Magistrate has no jurisdiction to pass an order u/s 117 (3), Cr.P.C. on the same sheet of paper as an order u/s 112, Cr.P.C. He also feels that the learned Taluka Magistrate has passed an interim order u/s 117 (3), Cr.P.C. merely requiring sureties and without requiring the execution of a bond. For this reason also the learned Sessions Judge feels that the order of the Taluka Magistrate is improper. The learned Sessions Judge also feels that the learned Taluka Magistrate has not given reasons for passing the order u/s 117 (3), Cr.P.C. For these three reasons, he has made a reference recommending that the order passed by the Taluka Magistrate be set aside.

2. Section 112, Cr.P.C. reads as follows:

When a Magistrate acting under Section 107, Section 108, Section 109 or Section 110 deems it necessary to require any person to show cause under such section, he shall make an order 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.

Sub-sections (1), (2) and (3) of Section 117, Cr.P.C. read as under:

(1) When an order u/s 112 has been read or explained u/s 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued u/s 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases.

(3) Pending the completion of the inquiry under Sub-section (1) the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order u/s 112 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution until the inquiry is concluded.

Sub-section (3) of Section 117 does not prescribe any procedure to enable the Magistrate to pass an urgent order pending the completion of the inquiry. The section which prescribes the procedure is Section 117 (1) and Section 117 (2), Cr.P.C.

3. Sometimes it may happen that an urgent order is necessary even before the inquiry is completed, and a provision for such an urgent order is made in Sub-section (3) of Section 117, Cr.P.C. The words used are "pending the completion of the inquiry" and not "after the inquiry has commenced and pending the completion of the inquiry". In some cases, the Taluka Magistrate concerned may find it necessary to pass an urgent order even before the person appears or is brought before him in compliance with an order u/s 112, Cr.P.C. the whole object of Sub-section (3) of Section 117 is to provide for emergency. This scope of the section cannot be whittled down by holding that it applies only after the inquiry has started under Sub-section (1) of Section 117, Cr.P.C. This was, however, the view taken in Jagdish Prasad Verma and Others Vs. The State, , where it was observed as under:

It is only when the person is present in Court or has been brought before the Court, that a Magistrate can take into consideration whether circumstances do exist for taking immediate measures and, when he is fully satisfied that such circumstances do exist, then only he can direct the execution of an ad interim bond, but, before taking recourse to Section 117 (3) he has to put his reasons

In writing. It is manifestly clear that Section 112 and Section 117 provide two different procedures for two different ends and, therefore, a Magistrate has no jurisdiction to pass an order u/s 117 (3) along with one u/s 112. An emergency order u/s 117 (3) can only be made when the Magistrate has started to enquire into the truth of the information u/s 117 (1), and, in the course of that enquiry, he considers that immediate measures are necessary.

With great respect to the learned Judges of the Patna High Court, it is difficult to construe the words "pending the completion of the inquiry" as meaning "after the inquiry has started and pending its completion". The words merely mean that before the inquiry is completed they would also empower the Magistrate to pass an order even before the Inquiry has started. The inquiry which has not started is also an inquiry which is not completed. If we put a restricted meaning on the expression "pending the completion of the inquiry", the Magistrate would not have powers to pass an urgent order in times of emergency. The expression "pending the completion of the inquiry" means "pending the completion of the inquiry which has been ordered in pursuance of Section 112, Cr.P.C. It means either pending the completion of the inquiry which has started in pursuance of an order passed u/s 112 or pending the completion of the inquiry which has been ordered u/s 112 but which has not been started. It is, therefore, not advisable to place a restricted construction on the phrase "pending the completion of the inquiry". I, therefore, hold that even if the inquiry is not started u/s 117(1), Cr.P.C. it is open to a Magistrate to pass an order u/s 117(3), Cr.P.C. provided the other requirements of that sub-section are satisfied.

4. The learned Sessions Judge is also of the view that the Magistrate has not given reasons as required by Sub-section (3) of Section 117, Cr.P.C. The Magistrate has given reasons by observing that for the reasons given in the complaint he has passed an order under Sub-section (3) of Section 117, Cr.P.C. There is no doubt whatsoever that an order can be passed u/s 117(3) only after an order has been passed u/s 112, Cr.P.C. In the instant case, the learned Magistrate has of course passed an order u/s 112, Cr.P.C. before passing an order u/s 117(3), Cr.P.C. although he has passed both the orders on the same sheet of paper. But he has passed the order u/s 112, Cr.P.C. first, and then he proceeded to pass an order u/s 117 (3), Cr.P.C. We can, therefore, treat the Magistrate as having passed one order after another, albeit on the same sheet of paper. This does not mean that he passed an order u/s 117(3) before passing an order u/s 112, Cr.P.C. I am, also, not prepared to treat the order passed by the Taluka Magistrate as an order passed without giving reasons.

5. The learned Sessions Judge also seems to think that In the order passed by the learned Taluka Magistrate u/s 117(3), Cr.P.C. there is no order requiring the execution of a bond but there is only an order requiring a surety. The order is in Gujarati and it practically means that the persons concerned should execute a bond and provide sureties. The view of the learned Sessions Judge is, therefore, not correct.

6. The reference is therefore, rejected.