

**(1992) 10 BOM CK 0048**

**In the Bombay High Court**

**Case No :** Criminal Revision Application No's. 96, 97, 98, 99, 100, 101, 102, 103, 104 and 105 of 1992

The State of Maharashtra and Another

APPELLANT

Vs

Mangali Dewaiyya Pupalla

RESPONDENT

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**Date of Decision :** 16-10-1992

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 106, 107, 108, 109, 110

**Citation :** (1993) 1 BomCR 115 : (1993) 95 BOMLR 947 : (1994) MhLj 487 : (1994) MhLj 483

**Hon'ble Judges :** B.V. Chavan, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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**Judgement**

B.V. Chavan, J.—A short question that rises in this group of criminal revision applications is whether a Magistrate who is holding an inquiry u/s 116 of the Code of Criminal Procedure (the Code) is respect of an information led before him against a person u/s 107 of the Cri. P. C, acting under Sub-section (3) of Section 116 of the Code can pass an order directing such person to execute a Bond with or without surety for keeping the peace or maintaining good behaviour during the pendency of such enquiry till its conclusion.

2. Since this is the only question that arises in all these matters, they are being disposed by this common order.

3. Special Executive Magistrate, Chandrapur in proceedings u/s 107 read with 116 and 151 of the Code started on Istagasha, filed by the Police Inspector of Chandrapur, City Police Station, directed each of the persons in these cases to execute a P. R .Bond for Rs. 25,000/- with one or two solvent sureties in like amount pending the enquiry in the case registered on the Istagasha against each of them.

4. This order came to be challenged before the Second Additional Sessions

Judge, Chandrapur by filing different criminal revision applications. The learned Second Additional Sessions Judge, Chandrapur, came to the conclusion that the power under Sub-section (3) of Section 116 to direct a person to execute a Bond does not apply to a case arising u/s 107 of the Code and consequently the Special Executive Magistrate had no jurisdiction to pass such an order. Accordingly, he has set aside all these orders and directed the concerned Executive Magistrate to proceed with the enquiry.

5. The relevant provisions which require consideration are contained in Chapter VIII of the Code which relate to provisions regarding security for keeping the peace and for good behaviour. Section 106 provides for cases of persons who are directed to furnish security for keeping peace on conviction. Section 107 relates to cases where security for keeping peace is ordered in certain cases where person concerned is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. Section 108 contemplates cases where persons disseminating seditious matter are dealt with. Section 109 deals with cases of suspected persons, whereas Section 110 deals with cases habitual offenders. Sections 111 to 116 relate to the actual procedure to be undertaken by the concerned Magistrate in cases arising under sections 107, 108, 109 and 110. Section 111 which requires to be taken note of reads as under :

111. When a Magistrate acting u/s 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.

The next provision which requires consideration is Section 116 which reads as under :

116. Inquiry as to truth of information. [I] When an order u/s 111 has been read or explained u/s 112 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 113, 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) After the commencement and before the completion of the inquiry under Sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of the breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for the reasons to be recorded in writing direct the person in respect of whom the order u/s 111 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 a bond is executed, or, in default of execution, until the inquiry is concluded :

Provided that -

(a) no person against whom proceedings are not being taken u/s 108, Section 109 or Section 110 shall be directed to execute a bond for maintaining good behavior ;

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order u/s 111(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general reputation or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt within the same or separate inquiries as the Magistrate shall think just.

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless for special reasons to be recorded in writing the Magistrate otherwise directs :

Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry or a period of six months of such detention.

(7) Where any direction is made under Sub-section (6) permitting the continuance of proceedings, the Sessions Judge may, on the application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse.

6. The contention advanced by Shri Sinha, the learned Additional Public Prosecutor on behalf of the State is that inasmuch as Sub-section (3) of Section 116 which requires the Magistrate to pass an order directing a person to execute a bond for keeping peace or maintenance of good behaviour during the pendency of the inquiry in respect of a person of whom the order u/s 111 has been made, it clearly covers cases arising under sections 107, 108 and 110 of the Code for the simple reason that Section 111 includes all the cases arising under these four sections. His contention was that, since the power to obtain a bond during the pendency of the inquiry is a general power given to the Magistrate in respect of any person against whom an order u/s 111 has been made and since Section 111 includes also Section 107, it will have to be interpreted that this power under Sub-section (3) of Section 116 also includes cases arising u/s 107 of the

Code.

7. Shri Sinha would have been right in his contention if the provisions of Section 116 of Sub-section (3) had been there without the Proviso and particularly its Clause (a). Clause (a) of the proviso to Sub-section (3) specifically states that no person against whom proceedings are not being taken under sections 108, 109 and 110 shall, be directed to execute a bond for maintaining good behaviour. To put it in a positive form it means that the Magistrate is empowered to direct a person to execute a bond for maintaining good behaviour where proceedings are taken against such person under sections 108, 109 and 110 only. Thus Clause (a) of the proviso to Sub-section (3) of Section 116 has made a deliberate omission of Section 107. There appears also to be some reason and logic behind it. If we look at the relevant provisions of sections 107, 108, 109 and 110, it is at once clear that cases contemplated by Section 108, 109 and 110 are of more serious nature than those under sections 107 of the Code. That is why although by Sub-section (3) of Section 116 of the Code, a general power is conferred on the Magistrate holding the inquiry to ask a person to execute a bond for keeping peace or maintaining good behaviour, still by enacting Clause (a) of the proviso to Sub-section (3) an exception has been made in respect of cases arising u/s 107 of the Code. This is the only way in which Clause (a) of the proviso to Sub-section (3) of Section 111 can be interpreted and can be given meaning to it. To accept the contention of Shri Sinha would totally render Clause (a) of the proviso to Sub-section (3) of Section 116 otiose and according to the well accepted canons of construction, no provision of a Statute can be interpreted in a manner which will render it otiose if otherwise it can be given a meaningful interpretation. In my view, therefore, the correct interpretation of Clause (a) of the proviso to Sub-section (3) of Section 116 of the Code is that the power of the Magistrate to direct a person to execute a Bond for keeping the peace or maintaining good behaviour until the conclusion of the inquiry is restricted only to cases arising under sections 108, 109 and 110 of the Code. That being the correct position of law, the order passed by the Second Additional Sessions Judge, Chandrapur, in all these matters setting aside the order of Special Executive Magistrate, Chandrapur, directing the persons against whom cases are pending u/s 107 read with Section 116 of the Code is correct and does not call for any interference. Rule accordingly stands discharged and all the revision applications accordingly stand dismissed.

8. It is needless to say that it will be open to the Special Executive Magistrate, Chandrapur, to hold the inquiry in accordance with law, but subject to the objections, if any, raised by the non-applicant on the question whether the inquiry could be proceeded further in view of the bar under Sub-section (6) of Section 116 of the Code.