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**SooperKanoon Citation :** [sooperkanoon.com/372766](http://sooperkanoon.com/372766)

**Court :** Karnataka

**Decided On :** Sep-09-1959

**Reported in :** AIR1960Mys259; 1960CriLJ1348

**Judge :** N. Sreenivasa Rau, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 107, 113 and 117(3)

**Appeal No. :** Criminal Revn. Petn. No. 123 of 1959

**Appellant :** Rame Gowda and ors.

**Respondent :** State of Mysore

**Judgement :**

ORDER

(1) This is a revision petition against the order of the Ex-Officio First Class Magistrate, Hassan Sub Division. Hassan, directing the petitioners against whom proceedings had been instituted under S. 107 of the Code of Criminal procedure to execute interim security bounds under S. 117(3). It is urged that the order complained of was made without complying with the provisions of S. 113 of the Code of Criminal Procedure and without giving an opportunity to the petitioners to cross examine the Investigating Officer who had made an application for action under S. 117(3), and that, in any event, the learned Magistrate should have re-considered the order when the above infirmities had been pointed out to him.

(2) It is seen that the preliminary order under S. 112 was made on 29-10-1957 and that on 26-11-1957 the Sub-Inspector applied for obtaining interim bonds from the Petitioners under S. 117 and an order was made accordingly, even though before the making of the order one of the counsel appearing for the petitioners urged that orders may be passed after verifying the allegations made in the complaint's application. Later, the senior counsel appeared and moved for the setting aside of the order by a written application reinforced by arguments.

It was urged that the order was illegal as some of the accused were absent and therefore no steps could be taken in the case. It was also urged that such an order had to be passed after hearing the case of all the accused and after explaining the charge to the accused under S. 113 of the Code of Criminal Procedure. It was also requested that the accused be permitted to cross examine the Sub-Inspector who had moved for action under S. 117(3). On this the case was posted to 11-12-1957 to consider these matters.

Meanwhile, the order seems to have been kept in abeyance. On 3-2-1959 the order complained against was passed overruling the objections raised on behalf of the accused. The main ground for the decision appears to be that an order once made could not be reviewed, particularly when the previous order had been made by the predecessor in office of the learned Magistrate who passed the order in question.

(3) The main contention urged on behalf of the petitioners is that the reading over of an order under S. 112 and explaining the substance of it is a necessary condition precedent to making an order under S. 117(3) of the Code of Criminal Procedure. The sequence of the sections from 113 to 117 and of the sub-sections in S. 117 itself appears to justify this contention. It also stands to reason that before a serious step like an order for directing the accused to execute interim bonds is taken, they should be apprised by the Court of the terms of the order made against them under S. 112.

It has been held that the failure on the part of the Magistrate to read out the order under S. 112 or to explain its substance to the accused vitiates an order made under S. 117(3) of the Code of Criminal Procedure and such an omission is not a

mere irregularity and goes to the root of the proceedings. In the case on hand, the entry in the order sheet on 26-11-1977 does not at all make it clear that the order under S. 112 was read out to the accused or that the accused were asked whether they wanted it to be explained as required by S. 113.

On the other hand, it would appear that it was not so read out or explained when on that very day the accused, in their application, stated that it had not been read out or explained and nothing was mentioned about it by the learned Magistrate in the further entry in the order-sheet on that day. It seems to me, in these circumstances, that the order under S. 117(3) cannot be sustained. It is accordingly set aside with the direction that the learned Magistrate will consider the complainant's application for action under S. 117(3) afresh and dispose it of according to law.

(4) It may be mentioned that the proceedings were instituted as long ago as 25-9-1957 and they have not terminated even though almost two years have elapsed since then. This is hardly calculated to fulfil the object of the preventive provisions of the Code of Criminal Procedure. The learned Magistrate will, therefore, dispose of the case as expeditiously as possible consistent with giving reasonable opportunities to both the sides.

(5) Order accordingly.