

Annegowda and ors. Vs. State of Mysore

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Court : Karnataka

Decided On : Jul-28-1966

Reported in : 1970CriLJ292

Judge : Narayana Pai, J.

Appellant : Annegowda and ors.

Respondent : State of Mysore

Judgement :

ORDER

Narayana Pai, J.

1. The Ex-Officio Magistrate at Chikmagalur issued a notice dated 20-6-1964 to the petitioners under Section 112, Crl. P. C. calling upon them to show cause why they should not be ordered to execute a bond for Rs. 500/- with one surety each for a like sum of Rs. 500/- for a period of one year to keep the peace. The said notice was issued by the Magistrate on receipt of a report from the Police. On receipt of the notice, the petitioners appeared before the Magistrate and contended that the information disclosed was insufficient to take any action under Section 112 and connected Sections and that the Magistrate should discharge the notice. Thereupon, the Magistrate called upon the Police to furnish further particulars, on receipt of which he issued a second notice, also purporting to be under Section 112, Crl. P. C. on 18-12-1965.

2. The petitioners, contending that the said procedure was irregular or illegal, moved the Sessions Judge at Chickmagalur to report the matter to the High Court for action under Sections 435 and 439 CrI. P. C. The Sessions Judge thought that the second notice was or may be regarded as in the nature of an amendment of the previous notice and that the Magistrate had same powers of amendment in regard to notice as a Criminal Court has with reference to actual charges, The other points considered by him bear on the merits of the case, partly relating to the nature of the information on the basis of which notices were issued and partly relating to the length of the period fixed for the bond under the second notice amounting to an extension of the original period. He found no substance in either of them and declined to report the matter to the High Court. The petitioners have therefore approached the High Court.

3. That the Magistrate took action on receiving the information from the Police under Section 107, CrI. P. C. admits of no doubt. Acting on the said information, he did issue a notice under Section 112 CrI. P. C. Having done so and the parties having appeared before him,, it was his duty to hold an enquiry as required by Section 117 to proceed further in the matter. It is not disputed that the petitioners served with notices having appeared there was a reading out of the notice in the eye of the law which was the starting point of the enquiry. The next stage contemplated by the Code is either to make the original order absolute under Section 118 if he is satisfied that the execution of the bond is necessary for maintenance of peace or to discharge the notice under Section 119 if he is not so satisfied. There is not any provision in the group of sections dealing with this topic enabling the Magistrate to act otherwise then on information received from the Police. Section 117 relating to the enquiry, however, enables the Magistrate to take further evidence if he thinks it necessary. The scheme therefore is complete and excludes the possibility of an argument that there is no difference in substance between the Police furnishing the Magistrate with information and the Magistrate calling for information from the Police. The initiative is necessarily left in the hands of the Police by the Code because primarily it is their duty to maintain law and order. It is unnecessary for the Magistrate to call upon the Police to lodge information with him, because if upon information lodged under Section 107 he feels the necessity for further information, he can do that by calling upon the

parties to adduce further evidence before him in the course of enquiry under Section 117.

4. I find therefore no basis in any of the relevant provisions of the Code of Criminal Procedure for the action taken by the Magistrate in this case in calling upon the Police to file further particulars or lodge fresh information with him and for the issue of a second notice by him on the basis of such additional or further information. The legal effect of his having done so is that on hearing the petitioners pursuant to the first notice, he did entertain the opinion that a positive order under Section 118, Crl. P. C. was not possible on the information already lodged, on the basis of which the first notice had been issued. Once he came to entertain such an opinion, the clear mandate of the law is that he should have discharged the notice under Section 119 of the Code.

5. There is therefore no alternative but to interfere in revision and set aside both the notices issued by the Magistrate, the first on the basis of his own opinion that it was not possible to act upon it without further information, and the second on the ground that the Code does not empower him to issue it. I order accordingly.