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Court : Allahabad

Decided On : May-30-1951

Reported in : 1954CriLJ1377

Judge : P.L. Bhargava, J.

Appellant : Suraj Prasad and ors.

Respondent : State

Judgement :
ORDER

P.L. Bhargava, J.

1. This is a reference by the learned Seasons Judge, Sitapur in the following circumstances : A criminal case was pending in the Panchaiti Adalat between Suraj Prasad and Mukta Prasad. Suraj Prasad made an application for transfer of the case from the Panchaiti Adalat. The application for transfer came up for hearing before the Sub-Divisional Magistrate of Misrikh at Sitapur, When the application was taken up for hearing by the Magistrate, Suraj Prasad & Mukta Prasad began to exchange hot words in court. Ram Prasad joined his brother, Suraj Prasad. Thereupon the Magistrate drew up a 'rubkar' initiating proceedings under Section 107 of the Code of Criminal Procedure against Suraj Prasad, Ram Prasad and Mukta Prasad. This 'rubkar' is dated 29-9-1950. On the same date the Magistrate drew up a notice under Sections 112/107 of the Code calling upon

Suraj Prasad, Ram Prasad and Mukta Prasad to show cause why they may not be ordered to execute a personal bond for Rs. 1,000/- and to furnish two sureties in the like amount for keeping the peace for a period of six months. Having initiated the proceedings under Section 107 of the Code in the manner stated above, the learned Magistrate made an order under Section 117(3) of the Code directing Suraj Prasad, Ram Prasad and Mukta Prasad to execute a personal bond for Rs. 1,000/- and to furnish two reliable and substantial sureties each in the like amount for keeping the peace until the conclusion of the enquiry under Section 107 of the Code pending against them.

2. Against the above order passed by the Magistrate Suraj Prasad and Ram Prasad filed a revision in the court of the Sessions Judge of Sitapur. It was urged before the learned Sessions Judge that there were no materials before the Magistrate to satisfy him that the parties were likely to commit breach of peace or disturb the public tranquillity or do any wrongful act that might occasion breach of the peace and as such the proceedings under Section 107 of the Code were illegal and unnecessary. On this point the learned Sessions Judge expressed the view that there was no sense in resorting to proceedings under Section 107 of the Code. Another point raised before the learned Sessions Judge was that the Magistrate was incompetent to take any action under Section 107 of the Code in connection with what had taken place in his presence in court, inasmuch as he could act under Section 107 of the Code on information received from others and not on what he had himself seen. In disposing of this : contention, the learned Sessions Judge observed that the action taken by the Magistrate was wholly unwarranted and not supported by the pro-visions of Section 107 of the Code. The third point raised before the learned Sessions Judge was that the act complained of having taken place at Sitapur, it was not within the jurisdiction of the Magistrate and no proceedings could have been taken by him under Section 107 for want of jurisdiction. This contention was upheld by the learned Sessions Judge, Lastly, it was contended before him that the Magistrate did not issue an order under Section 112 of the Code and so he was incompetent to take any action under Section 117(3) of the Code. The learned Sessions Judge has pointed out that the procedure laid down in Section 112 of the Code was not followed by the Magistrate. He further observed that the procedure laid down in the first part of

Sub-section (1) of Section 117 of the Code was also not complied with and that the order of the Magistrate was illegal on account of the non-observance of the procedure laid down in Sections 112 and 117 Sub-section (1) of the Code.

3. Accordingly, the learned Sessions Judge has made this reference and recommended that the order of the Magistrate be quashed and the proceedings under Section 107 of the Code be dropped.

4. The learned Government Advocate has opposed this reference and taken exception to the views expressed by the learned Sessions Judge.

5. The first question that arises for consideration in this case is whether the Magistrate, who is the Sub-divisional Magistrate of Misrikh, had jurisdiction to initiate the proceedings under Section 107, Criminal P. C. Section 107 empowers a Presidency Magistrate, District Magistrate, or Magistrate of the first class on being 'informed' that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion breach of the peace, or disturb the public tranquillity to require such person in the manner provided in the Code to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix. Sub-section (2) of Section 107 of the Code lays down that proceedings shall not be taken under the section unless either the person informed against or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate other than a Chief Presidency or District Magistrate, unless both the person informed against and the place where the breach of the peace or disturbance is apprehended, are within the local limits of the Magistrate's jurisdiction.

6. In this case, the place where the breach of the peace or disturbance was apprehended was the court room of the Sub-Divisional Magistrate of Misrikh at Sitapur, which was undoubtedly beyond the local limits of the jurisdiction of the Magistrate. Now, let us see if the persons concerned were within the local limits of the Magistrate's jurisdiction. It is not disputed that the persons concerned reside within the local limits of the Magistrate's jurisdiction but according to my

interpretation of Section 107, Criminal P. C., at the time when the breach of the peace or disturbance was apprehended they should have been present within the local limits of the Magistrate's jurisdiction. If the place or the persons concerned are not within the local limits of the Magistrate's jurisdiction, the mere residence within those limits would not confer jurisdiction on the Magistrate to initiate proceedings in respect of what had happened or was likely to happen outside his jurisdiction. It follows, therefore, that the proceedings, under Section 107 of the Code, in respect of what had happened at Sitapur in the court room of the Sub-Divisional Magistrate of Misrikh could not be initiated by the Magistrate.

7. There is a special provision in Sub-section (3) of Section 107 for such cases. It is provided therein that when any Magistrate not empowered to proceed under Sub-section (1) has reason to believe that any person 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 and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such persons in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons. It would thus appear that the Magistrate was not absolutely helpless if he apprehended that the parties before him would come to blows or commit some other offence. He could proceed under Sub-section (3) of Section 107 and detain the persons concerned in custody and proceed in the manner laid down therein and commit them for trial to a competent court. That course was, however, not adopted by the Magistrate.

8. The learned Government Advocate has pointed out that the order of the Magistrate having been made under Sub-section (3) of Section 117, Criminal P. C., was perfectly valid and is not vitiated on any ground. The order of the Magistrate purports, no doubt, to have been made under Sub-section (3) of Section 117 and it has to remain force pending the completion of the inquiry under Sub-section (1) of the said section; but it been made in a proceeding under Section 107 of Code, which was initiated without any jurisdiction. An order under Sub-section (3) of Section 117 has to be made when inquiry is being made into the

truth of information upon which the proceedings under Section 107 of the Code have been initiated and the inquiry contemplated by Sub-section (1) of Section 117 is an inquiry validly Initiated when an order under Section 112 has been read or explained under Section 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 under Section 114. If there is no validly initiated proceedings there can be no inquiry contemplated by Sub-section (1) or an order pending such inquiry under Sub-section (3) of Section 117 of the Code. Consequently, the fact that the order purports to have been made under Sub-section (3) of Section 117 does not save an order made in a proceeding initiated without jurisdiction.

9. Learned Government Advocate has also urged that the learned Sessions Judge has made a reference upon the basis of wrong facts, inasmuch as in this case an order under Section 112 had been made, while the learned Judge has observed that there was no such order. It, no doubt, appears that an order under Section 112 of the Code of Criminal Procedure had been made; but the fact remains that it was made in a proceeding which had been initiated without jurisdiction and as such that fact is of no consequence.

10. In my opinion, therefore, the proceedings initiated by the Sub-divisional Magistrate of Misrikh were without jurisdiction and as such the order made by the Magistrate under Section 117 (3) of the Code cannot be sustained. I, therefore, accept this reference and quash the proceedings under Section 107, Criminal P. C., and set aside the order made by the Magistrate calling upon Suraj Prasad, Ram Prasad and Mukta Prasad to furnish security for keeping the peace under Section 117(3) of the Code of Criminal Procedure.

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