

Mr. Naresh Kumar Jain and anr. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Jan-18-1993

Reported in : 1993CriLJ1352

Judge : Virendra Saran, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 107, 111 and 116

Appeal No. : Criminal Misc. Writ Petn. No. 2787 of 1993

Appellant : Mr. Naresh Kumar Jain and anr.

Respondent : State of U.P. and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Tej Pal, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Virendra Saran, J.

1. I have heard Sri Tej Pal, learned counsel for the petitioners and learned Standing Counsel who both agree that the writ petition may be finally disposed of.

2. An order purporting to be under Section 111 Code of Criminal Procedure was made by the learned Additional City Magistrate 1st. Agra on 26-11-1992 asking the petitioners to show cause why they may not be required to furnish a personal bond of Rs. 2,000/- and two sureties, each in the like amount for keeping peace for a period of one year. A photo copy of the order has been annexed as Annexure-4 to the writ petition. On the basis of this order proceedings under Section 107/116 of the Code were initiated against the petitioners who challenged the order of the learned Magistrate by filing Criminal Revision No. 595 of 1992 in the court of Session but their revision was also dismissed by the learned VIII Additional District & Sessions Judge, Agra on 11-1-1993. The petitioners have now approached this Court praying that the order passed by the learned Magistrate as well as the entire proceedings of the case be quashed.

3. Learned counsel for the petitioners has invited my attention to the order made by the Teamed Magistrate under Section 111, Cr. P.C. It has been submitted by the learned counsel that the above order is bad in law and as such the learned Magistrate could not assume jurisdiction to proceed under Section 107, Cr. P.C. The learned counsel has invited my attention to one of my earlier decisions given in Criminal Misc. Application No. 13541 of 1992 Siya Nand Tyagi v. The State of U.P., decided on 20-10-92. Learned counsel for the petitioners has invited the attention of the court to the order under Section 111 of the Code passed in the present case. The order is on a cyclostyled pro forma with certain blanks which have been filled in with pen and ink by someone and simply initialled by the Additional City Magistrate 1st, Agra. In the case of Siya Nand Tyagi v. the State of U.P. (supra) it was observed:--

It is unfortunate that the requirement of Section 107 of the Code that the Executive Magistrate receiving information should be of the opinion that there are sufficient grounds for proceedings under the said Section have become a dead letter and are always followed in its breach. It should be borne in mind that the proceedings Under Section 107/116 of the Code some time cause irreparable loss and unnecessary harassment to the public who run to the court at the cost of their own vocations of life. Unless it is absolutely necessary proceedings Under Section 107/116, Cr. P.C. should not be resorted to. Experience tells that proceedings like

the one Under Section 107/116 of the Code are conducted in a most lethargic and lackadaisical manner by the learned Executive Magistrates causing harassment to public beyond measure.

4. The order made under Section 111 in the present case does not at all disclose the substance of information received by the Magistrate. The order has been passed in a most mechanical manner. In the case of *Madhu Limayev. S.D.M. Mongyr*, 1971 Cri LJ 1720 : (AIR 1971 SC 2486) the Supreme Court laid down that it is not open to the Magistrate to substantially depart from the mandatory provisions of Section 111. The Supreme Court observed (para 36):

We have seen the provisions of Section 107. That Section says that action is to be taken in the manner here-in-after provided and this clearly indicates that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is very salutary because the liberty of the person is involved and the law is rightly solicitous that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned. It behoves us, therefore, to emphasise the safeguards built into the procedure because from there will arise the consideration of the reasonableness of the restrictions in the interest of public order or in the interest of the general public.

5. In this very case the Supreme Court emphasised that a person who is proceeded against must know the grounds of apprehending or a breach of peace or disturbance of public tranquillity at his hands. The Supreme Court observed (para 37, at p. 2499 of Cri LJ) :—

Although the Section speaks of the 'substance of the information, it does not mean the order should not be full. It may not repeat the information bodily but it must give proper notice of what has moved the Magistrate to take the action. This order is the foundation of the jurisdiction and the word 'substance' means the essence of the most important parts of the information.

6. In the case of *Mohan Lal v. State of U.P.*, 1977 All Cr. C. 333 this Court observed that there are a series of decisions in which the same principles have

been repeated again and again. It is distressing to note that the repeated pronouncements of this Court as also the pronouncements made by the Supreme Court have fallen on the deaf ears of our Executive Magistrates who still treat the making of order Under Section 111 an idle formality. Unfortunately due to lack of clear perception of law the learned VIII Additional Sessions Judge, Agra has also put his seal of approval on the invalid order Under Section 111. In modern time the judiciary, like any other State Organ, is under scrutiny of the public and rightly so because in a democracy the people are the ultimate masters of the country and all State organs are meant to serve the people. The lack of vigil on the part of the lower revisional court is regrettable.

7. The writ petition is hereby allowed. The order Under Section 111 Code of Criminal Procedure dated 26-11-1992 passed in Case No. 355 of 1992, State v. Naresh Chand Jain and another, passed Under Section 107/116, Cr. P.C. as confirmed by the order dated 11-1-1993 passed by Sri Udai Chandra, VIII Additional District & Sessions Judge, Agra in Criminal Revision No. 595 of 1992 is quashed and the proceedings of the case are also quashed.

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