

Yunus Vs. State

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Court : Allahabad

Decided On : Nov-21-1967

Reported in : 1969CriLJ73

Judge : Rajeshwari Prasad, J.

Appellant : Yunus

Respondent : State

Judgement :

Rajeshwari Prasad, J.

1. This petition in revision has been filed by one Shri Yunus son of Mohammad Sahmad.

2. It appears that there were cross cases under Sections 107/117 Criminal P.C. One party was headed by Yunus and the other by Najeebullah. The proceedings which was stated against Najeebullah were against Najeebullah and 18 other persons while the proceeding which was started against Yunus was against Yunus and five other persons. During the course of those proceedings on the 29th March 1968, an application was moved on behalf of Najeebullah to add 16 persons more in the party of Yunus and to proceed against those additional persona also under Sections 107/117, Criminal P.C. A report in respect of the persons sought to be added was submitted by the Sub-Inspector indicating that there was no

apprehension of breach of peace from the persons sought to be imploded. It was brought to the notice of the Court on behalf of Najeebullah that the police was acting with partiality in favour of Yunus and that a report be obtained from the Circle Officer.

The Circle Officer reported that there was apprehension of breach of peace and that it was proper to proceed against those persons also, who were sought to be joined in the proceedings. The Circle Officer directed the Station Officer to make report against those persons also as a result of which the Station Officer made a report on the basis of the directions of the Circle Officer. On 16th August, 1967, learned Magistrate made an order purporting to be under Section 112, Criminal P.C. and directing notice to issue against those persons also. It is that order of the learned Magistrate, which is questioned by means of the revision petition under consideration.

3. Against the order of the learned Magistrate, a petition in revision was filed before the District Magistrate Varanasi. That application in revision was, however, dismissed by the Additional District Magistrate (Judicial) Varanasi.

4. In support of this revision petition, two contentions have been made by Mr. A.D. Giri, learned Counsel for the revisionists. In the first place, it has been urged that the learned Magistrate has not made any such order as is required by Section 112, Criminal P.C. and the order that he had made does not comply with the requirements of that section. The second contention that has been made by the learned Counsel for the revisionists is that there was no material or data before the learned Magistrate on the basis of which he could arrive at the satisfaction or could entertain the opinion that there was sufficient reason to proceed against others also as desired by Najeebullah.

5. In support of the second contention mentioned above it has been urged that there was nothing in the report of the Circle Officer, which could go to show that there was any cause of apprehension of breach of peace from the aforesaid persons sought to be joined in the proceedings. A copy of that report has been tiled as Annexure 'B' to the affidavit, which has been filed in this case on behalf of Yunus. The Circle Officer said in his report that he himself visited village Benipur

on 15th June, 1967 and made enquiry. As a result of enquiry, he found that there was tension amongst the parties and there was apprehension of breach of peace. He further said that, therefore, the number of persons proceeded against in the party of Yunus which was only five was not sufficient. He further remarked that these persons in spite of what the Circle Inspector told him were not prepared to remove their palisades which according to Circle Officer was the bone of contention between the parties. He recommended that notices under Sections 107/117 Criminal P.C. be also issued against those persons whose names were mentioned at the bottom of the report. Thereafter, the Sub-Inspector submitted a report on the basis of the report of the Circle Officer. The learned Magistrate then proceeded to make a short order on 11th August, 1967 which is quoted below:

The S.O. reported that there was no apprehension of the breach of peace from these 16 persons. Later on the C.O. was asked to enquire and report the position as there was an allegation against the S.O. for collusion. The C.O. has directed the S.O. on 16.6.1967 that there was apprehension of breach of peace from those 16 persons and reports should be made against them also. The S.O. thereupon made a report on 15.7.1967 for proceedings under Section 107 against these persons also. Let, therefore, notices be issued against them under Section 107/ 112, Criminal P.C.

Thereafter, formal notices were drawn up on 16th August, 1967. It proceeded to say that he was satisfied from the report of the Station Officer Mirzamuradpur dated 15th July, 1967 that there were apprehensions to the person and property of Najeebullah and others from the side of 17 persons mentioned in that notice. It further proceeded to direct those persons to show cause on 25th August, 1967 why security bond in the sum of Rs. 1,000/- along with two sureties in the like amount for keeping peace for the period of one year should not be taken from them.

6. Against the order of the learned Magistrate dated 11th August, 1967, quoted above, a petition in revision was filed by Sri Yunus in the Court of the District Magistrate which I have already mentioned was dismissed by the Additional District Magistrate (Judicial) Varanasi. The learned Additional District Magistrate

(Judicial) observed that it was entirely a question of subjective satisfaction of the learned Magistrate and that the learned Magistrate had passed his order on the report of the Sub Inspector which itself was based on the enquiry of the Circle Inspector. He further observed that the report of the Circle Inspector was quite clear on the point that there had been apprehension of breach of peace from 16 persons in question. According to the learned Additional District Magistrate, the learned Magistrate was fully authorized under the law to rely on the police report and that he did not commit any illegality in passing the order which was sought to be revised. There was no impropriety in that order either. On such observations, the petition in revision was dismissed by the learned Additional District Magistrate.

The report of the Circle Inspector, the substance of which has already been reproduced by me undoubtedly failed to specify any overt act on the part of sixteen persons in question. It is rather vague. The opinion of the Circle Officer that the number of persons in the party of Yunus proceeded against being five was rather small, is wholly irrelevant. The learned Counsel for the opposite party has, however, drawn my attention to the application and the affidavit filed on behalf of Najeebullah before the learned Magistrate in which it was averred that there was apprehension of breach of peace from the side of 16 persons in question also. When the learned Magistrate formed the opinion, that there was sufficient ground for proceeding against the 16 persons in question also, had, therefore, two data before him. The first was the report of the Sub-Inspector on the basis of the enquiry made by the Circle Officer and the second was the affidavit referred to above. I agree with the view taken by the learned Additional District Magistrate (Judicial) that it was entirely for the learned Magistrate, seized of the matter, to form his independent opinion whether there was sufficient ground for proceeding under Section 107, Criminal P.C. against the 16 persons in question or not. It is not a case in which there was absolutely no data before the learned Magistrate over which he could apply his mind with a view to take the decision whether it was appropriate to proceed under Section 107, Criminal P.C. or not.

In a case where there was some data for coming to such an opinion this Court ordinarily would be reluctant to inquire in its revisional jurisdiction whether the opinion arrived at by the Magistrate was correct or not. It is perhaps not

appropriate that this Court should substitute its own opinion on the basis of available data in that nature. I am, therefore, unable to accept the contention of the learned Counsel for the revisionists that no dates existed before the learned Magistrate on the basis of which opinion could be formed. It has been held by this Court in the case of *Laxmi Narain v. Emperor* : AIR1932 All670 , that the function of the Magistrate up to the Stage of forming opinion under Section 107, Criminal P.C. is not only judicial but administrative also and ordinarily there would be no interference with the same by this Court. The functions of the learned Magistrate after taking that decision certainly becomes judicial function and he has to implement his decision or opinion by complying with the provisions of the Code of Criminal Procedure. The observation made in this case is as follows:

The above section being enacted simply with a view to prevent commission of offences and being a part of the administrative machinery for maintaining law and order, the legislature did not think it fit to circumscribe the administrative powers of the Magistrates under those sections by making it obligatory on them to follow the procedure that by law they are bound to follow while dealing with complaints. A reference to Section 117 of the Code makes it clear that it is only after an order has been made under Section 112 that the Magistrate is to 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.

7. The other contention of the learned Counsel relating to the question of validity of the order said to have been made under Section 112 of the Code of Criminal Procedure and the notice issued to the opposite party appears to have force. Section 112, Criminal P.C. enjoins that when a Magistrate acting under Section 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. In the instant case, the notice issued by the learned Magistrate mentioned that the learned Magistrate was satisfied from the report of the Sub-Inspector that there was apprehension to the person and property of Najeebullah and others from the persons to whom notices were issued

and that they should show cause why order to file bonds for Rs. 1,000/- along with two sureties in the like amount to keep peace for the period of one year be not made against them. What has been said in the notice cannot be said to be satisfactory expression of the substance of the information that was received by the learned Magistrate.

I have pointed out above that, so far as the report of the Sub-Inspector was concerned, it was entirely based on the enquiry of the Circle Officer. The Circle Officer in his report did not indicate anything against the sixteen presses in question, If the learned Magistrate came to form the opinion that it was a fit case in which he should proceed under Section 107, Criminal P.C. on the basis of the facts alleged in the affidavit, to which I have already referred, it was his duty to make reference to that affidavit in the Order which he made under Section 112, Criminal P.C. and in the notice that was issued to the opposite parties in pursuance thereof. No mention of the facts alleged in the aforesaid affidavit has been made in the order or the notice. It is, therefore, clear that the order passed by the learned Magistrate and the notice issued to the 16 persons in question failed to comply with the requirements of Section 112, Criminal P.C.

8. It has, however, been urged that if there were any defect in the order or the notice in question that could very well have been pointed out to the Magistrate himself and the matter should not have been brought, at this stage, to this Court, in revision. This Court, however, did interfere in revision in such a case at such a stage in the case of *Nadar v. State* 1964 ALJ 1103, it was held that the provisions of Section 112, Cri.P.C. are mandatory and non-compliance with the same was material defect in the proceedings.

9. Although, I propose to set aside the order of the learned Magistrate made in exercise of jurisdiction under Section 112, Criminal P.C. as well as notice issued on the basis of that order, I make it clear that this order is not intended to interfere in any way with the opinion of the learned Magistrate formed under Section 107, Criminal P.C. or his decision to proceed against the 16 persons in question under the security provisions of the Code.

10. The revision petition is partly allowed and the order of the learned Magistrate purporting to be under Section 112, Criminal P.C. and the notice issued to the sixteen persons in question, under Section 107/112, Criminal P.C. are set aside. The decision of the learned Magistrate to proceed against the aforesaid sixteen persons under Section 107, Criminal P.C. however, will remain intact. The case is sent back to the learned Magistrate to make a regular order as required by Section 112, Criminal P.C. and to issue notices to persons concerned by complying with the provisions of law.

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