

Bhola Kunwar and ors. Vs. the State

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Court : Allahabad

Decided On : Apr-18-1957

Reported in : AIR1957All831; 1957CriLJ1386

Judge : Chowdhry, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 107 and 107(2); Code of Criminal Procedure (CrPC) (Amendment) Act, 1955 - Sections 116

Appeal No. : Criminal Revn. No. 1460 of 1956

Appellant : Bhola Kunwar and ors.

Respondent : The State

Advocate for Def. : M.M. Chaturvedi, Adv.

Advocate for Pet/Ap. : C.B. Misra, Adv.

Disposition : Application dismissed

Judgement :

ORDER

Chowdhry, J.

1. This is an application in revision by Bhola Kunwar and twenty-one others against an interlocutory order passed by the Sub-Divisional Magistrate of Salem

pur at Deoria in proceedings under Section 107, Or. P. C.

2. It appears 'that in the course of the proceedings an application was filed on behalf of the present applicants before the Sub-Divisional Magistrate that the proceedings be dropped inasmuch as the Magistrate had no jurisdiction to make the enquiry. That application was rejected by the Magistrate, and the applicants' revision to the Sessions Judge was also rejected. The applicants have, therefore, come up in revision to this Court.

3. The argument of the learned counsel for the applicant was this, Under Sub-section (2) of Section 107 of the Criminal Procedure Code, as it stood before the amendment by the Act Criminal Procedure Amendment) Act 26 of 1955, proceedings under the section could not be taken by a Magistrate other than the District Magistrate unless both the persons informed against and the place where the breach of the peace or disturbance was apprehend-ed were within the local limits of the Magistrate's jurisdiction. Here admittedly the applicants were residents of a place in the district of Saran in Bi-har. It was submitted therefore that only one, but not both, of the aforesaid conditions were satisfied in the present case. Under the amended Section 107 (2), proceedings may be taken before any Magistrate otherwise empowered when either, but not necessarily both trip aforesaid conditions of person or Place is satisfied.

4. Now, the aforesaid Amendment Act contains a saving section, viz. Section 116. Under that section, except for certain amended provisions mentioned in Clauses (a) to (d), which were expressly excepted from being applicable to pending cases, it was provided that all the provisions of the amending Act and the amendments made thereby shall apply to all proceedings instituted after the commencement of the Act and also to all proceed-ings pending in any criminal Court on the date of such commencement. Proceedings under Section 107 not being one of the proceedings excepted within the purview of Clauses (a) to (d) of Section 116, the amended provisions of the Code were manifestly applicable to the present proceedings which were pending on the date, 1-1-1956, on which the Amendment Act came into force.

That being so, prima facie the Sub-Divisional Magistrate concerned, had the requisite jurisdiction within the purview of Sub-section (2) of Section 107 as amended by the aforesaid Amendment Act, The learned counsel for the applicant urged, however, that the proceedings referred to under Section 116 of the Amendment Act were valid proceedings, and that it could not validate proceedings which were in-valid _ab initio. He submitted, therefore, th (sic) provisions, of the amended Sub-section (2) of Section 107 (sic) not applicable to the present proceedings (sic) were proceedings invalid under the unamended Sub-section (2). It does not seem to be necessary to ex-7' press any opinion on this point since there ap- pears to be another ground on which this revision should fail--a ground unaffected by the argument of the learned counsel just noticed and left undecided.

5. What Sub-section (2) of Section 107 prohibits is the taking of proceedings and not their continuance. That being so even if the Magistrate who continued the proceedings did not have the requisite jurisdiction in accordance with the provisions of Sub-section (2) of Section 107. that would be immaterial if proceedings taken initially were taken by a competent Court. For instance, proceedings may validly be initiated before the District Magistrate and the District Magistrate may subsequently transfer those proceedings to another Magistrate under Section 192 of the Code, provided, of course, that the Magistrate to whom the proceedings are transferred y is a Sub-Divisional Magistrate or a Magistrate of the first class, as provided .by Sub-section (l) of Section 107. A reference to the application leading to the present revision made by the Present applicants be- f fore the Sub-Divisional Magistrate of Salempur shows that admittedly cognizance of these proceeding had initially been taken by the District Magistrate.

That being so, proceedings were 'taken' before a competent Magistrate within the purview of Sub-section (2) of Section 107, since a District Magistrate could take cognizance of proceedings even under the old Sub-section (2) although both of the aforesaid conditions were not satisfied. In this view of the matter the contention of the applicants that the j Sub-Divisional Maagistrate Salempur had no jurisdiction to go on with the proceedings has no force.

6. The application in revision is accordingly rejected. The order regarding stay of proceedings is hereby vacated and it is directed that the record of the case be sent back forthwith so that the proceedings be continued without any further delay.

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