

State Vs. Tilakdhari and ors.

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Court : Allahabad

Decided On : Dec-01-1960

Reported in : 1962CriLJ386

Judge : M.C. Desai, J.

Appellant : State

Respondent : Tilakdhari and ors.

Judgement :

ORDER

M.C. Desai, J.

1. The opposite parties are residents of village Choriamb, police station Kotwali Dehat and still live there. The station officer of Police Station Pandari submitted information to the Sub-Divisional Magistrate Sadar, Mirzapur to the effect that the opposite parties were habitual thieves and burglars and requested him to bind them down under Section 110 Cri.P.C. The Sub-Divisional Magistrate has as such territorial jurisdiction over police circle Pandari but not over police circle Kotwali Dehat and the station officer submitted the information to him alleging that the opposite parties have shifted themselves to village Atraura of Police Station Pandari. The Sub-Divisional Magistrate on the basis of the information on 19.3.1959 passed an order contemplated by Section 112 Cir.P.C. calling upon the opposite parties to show cause why they should not be bound down under Section

110 on account of being habitual thieves, house breakers etc. The opposite parties congested the notice and pleaded inter alia that they are residents of village Cheruiram, and not of village Atraura and that the Sub-Divisional Magistrate had no jurisdiction to issue the order against them. The Sub-Divisional Magistrate found as a matter of fact that they are residents of village Cheruiram and not village Atraura and cancelled the order. The State went up in revision against his order to the District Magistrate, who has referred the case to the Court with the recommendation that the order of the Sub-Divisional Magistrate be set aside.

2. I find from the record that the District Magistrate before making the reference called for a report from the Sub-Divisional Magistrate on the revision application submitted to him; this action taken by him is not warranted by any provision of the Cri.P.C. It was for him to dispose of the revision application after deciding whether the order of the Sub-Divisional Magistrate was legal or proper or not he should not have sent for a report from the Sub-Divisional Magistrate at all. If he decided to make a reference to this Court, he was only required to send a copy of his order to the Sub-Divisional Magistrate for any explanation that he wanted to offer. Before deciding to make a reference he had no jurisdiction to call for a report from the Sub-Divisional Magistrate on the merits of it.

3. Section 110 Cri.P.C lays down that if a Sub-Divisional Magistrate, receives information that any person within the local limits of his jurisdiction is by habit a robber, house-breaker etc. he may require him to show cause why he should not be bound down. Section 112 lays down that when a Sub-Divisional Magistrate acting under Section 110 deems it necessary to require any person to show cause he shall make in order in writing setting forth the substance of the information etc. This provision makes it clear that an order under Section 112 can be passed by a Sub-Divisional Magistrate, if he has territorial jurisdiction over the place where the person is residing. An order made under Section 112 by a Sub-Divisional Magistrate not having such territorial jurisdiction is without jurisdiction and, therefore, invalid. Section 530(d) lays down that if a Magistrate not being empowered by law to demand security for good behaviour demands it his proceedings shall be void.

In the present case no security for good behaviour has yet been demanded from the opposite parties and, therefore, the question whether such an order passed by a Magistrate, not having territorial jurisdiction is void or not does not arise. If an order under Section 112 is made by a Magistrate having territorial jurisdiction and the case is subsequently transferred to another Magistrate not having territorial jurisdiction, the proceedings held by the latter would be void, notwithstanding that the order of transfer is valid under Section 192(1). But the question here is of the effect of the want of territorial jurisdiction in the Sub-Divisional Magistrate passing an order under Section 112. Such an order is invalid according to the very terms of Sections 110 and 112 and can always be cancelled by the Sub-Divisional Magistrate when the invalidity is brought to his notice. The words not being empowered by law in this behalf include incapacity arising out of want of territorial jurisdiction. When a Magistrate without having territorial jurisdiction demands security for good behaviour from a person the proceedings held by him are void. It means, that the order passed by him under Section 112 also is void. If he cannot pass a final order under, Section 118 demanding security for good behaviour, he cannot pass an order under Section 112 also. The Sub-Divisional Magistrate was, therefore, right to his view that if he had no territorial jurisdiction over the opposite parties, the order passed by him under Section 112 was invalid and that he had jurisdiction to cancel it.

The District Magistrate in his referring order states that the duty of the Sub-Divisional Magistrate on finding that he had no territorial jurisdiction was to act under Section 347 and transfer the enquiry against the opposite parties to another Magistrate having territorial jurisdiction. The section certainly applies in a case under Section 110 Cr.P.C. also but it applies when the initiation of the case was legal or valid. There is a distinction between initiation of an enquiry into, or trial for, an offence and initiation of a case under Section 110. Cognizance of an offence can under Section 190 Cr.P.C. be taken by a Magistrate regardless of the question of territorial jurisdiction; but a notice under Section 112, which is the first step to be taken by a Magistrate on receipt of information, can be issued only by a Magistrate having territorial jurisdiction. It is on account of this difference that while an enquiry into, or a trial for, an offence may be transferred by a Magistrate not having territorial jurisdiction to another Magistrate having such jurisdiction under

Section 347, a case under Section HO started by a Magistrate not having territorial jurisdiction cannot be transferred by him to another Magistrate having such territorial jurisdiction, the reason being that all his proceedings ab initio are void, and remain void even after the transfer, A void proceeding cannot be transferred and, therefore, all that the Sub-Divisional Magistrate could do on finding that he had no territorial jurisdiction was in cancel the order made under Section 112. Any transfer by him of the case to another Magistrate having territorial jurisdiction would not cure the defect in the order made under Section 112.

4. Though the order passed by the Sub-Divisional Magistrate was correct according to his finding that he had no territorial jurisdiction, the finding itself was erroneous. The Sub-Divisional Magistrate is also a 1st class Magistrate and every 1st class Magistrate in the State has been specially empowered to demand security for good behaviour under Section 110 Cri.P.C Every 1st class Magistrate in a district has territorial jurisdiction Over the entire district. The position therefore, is that the Sub-Divisional Magistrate has territorial jurisdiction as 1st class Magistrate over the entire district and as Sub-Divisional Magistrate over only his sub-division. While he could not exercise his powers as a Sub-Divisional Magistrate outside his sub-division, he would exercise his 1st class powers in any part of the district. He was, therefore, fully competent to demand security from the opposite parties under Section 110 and he erred in 'cancelling his order made under Section 112, Cri.P.C.

5. I accept the reference, set aside the Order passed by the Sub-Divisional Magistrate on 24.6.1959 and remand the case to him for making an enquiry under Section 117, Cri.P.C. against the opposite parties.