

Badri Prasad and ors. Vs. the State

Badri Prasad and ors. Vs. the State

SooperKanoon Citation : sooperkanoon.com/468520

Court : Allahabad

Decided On : Jan-04-1954

Reported in : AIR1954All591

Judge : Kidwai, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 107, 117 and 561A

Appeal No. : Criminal Misc. No. 335 of 1953

Appellant : Badri Prasad and ors.

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : R.K. Rai, Adv.

Judgement :

ORDER

Kidwai, J.

1. This is an application under Section 561A, Criminal P. C. for expunging certain remarks contained in the judgment of the City Magistrate of Lucknow. A proceeding was going on against the applicants under Sections 107/117, Criminal P. C. On 15th May 1953 the learned City Magistrate passed the following order :

'As per S. O.'s report and the A. P. P. endorsement thereon of 15-5-1953 suggesting that there is no apprehension of breach of the peace now, the case is filed and the notices withdrawn with a warning to the accused that they shall not give any chance to the police to report danger to breach of the peace at any time in future. Should such an occasion, however, arise the S. O. shall take immediate N. A. Copy to S. O'.

2. It appears from a perusal of this order that an apprehension at one time existed of a breach of the peace and proceedings were, therefore, started under Sections 107/117. These proceedings continued for some time and written statements were filed on behalf of the accused persons. Thereafter a report was made by the police that there was no longer any apprehension of a breach of the peace. The learned City Magistrate then passed the order in question.

3. It appears from a perusal of the order that without going into the matter at all the learned Magistrate was inclined to the view that at one time there had in fact been an occasion for a proper report under Sections 107 and 117, Criminal P. C. He had no justification whatsoever for arriving at any such conclusion without allowing an opportunity to the applicants to show that at no time was there any apprehension of a breach of the peace from them. When he was finally withdrawing the notice, he had no business to issue any warning. He had no reason to anticipate that the accused would give legitimate occasion for a report against them.

4. It is always up to the police to make any report that it likes and it is for the Magistrate to judge the validity of any such report and not merely to place the accused persons at the mercy of the police surely as is done by the last sentence of this order since the police is directed to take immediate action should an occasion arise when the police may have any complaint. The police have large powers under the law. They can always take action that the law justifies but there is no justification for the Magistrate, who is not a police officer and who should be as interested in safeguarding the interest of innocent persons accused of the crime as he should be in the prevention of the crime, to go out of his way to issue such warnings.

Such a course of action is wholly unjustified under the law and can be nothing but an abuse of the process of the Court. I accordingly direct that the later portion of the order shall be deemed to be non-existent though I cannot order the removal of the words complained of from the order itself which is a part of the record of the Court.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com