

Het Ram Vs. State

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SooperKanoon Citation : sooperkanoon.com/470369

Court : Allahabad

Decided On : Mar-31-1976

Reported in : 1977CriLJ117

Judge : H.N. Seth and; G.D. Srivastava

Appellant : Het Ram

Respondent : State

Judgement :

G.D. Srivastava, J.

1. By his order dated 8-8-1975 Hon. H.N. Seth, J. has referred the following question to a Division Bench:

Whether the proceedings under Section 107(1) of the Code of Criminal Procedure get vitiated merely because while issuing process under Section 107(1) the Magistrate acts upon the statement of a party and its witness, purporting to have been recorded under Section 202, Cr.P.C.

The facts leading to this reference may be briefly stated thus : One Karan Singh moved an application under Section 107/ 117 of the Code of Criminal Procedure against Het Ram and others in which he alleged that the opposite parties had formed a group against him and had threatened him with violence and therefore

there was likelihood of a breach of the peace. The Magistrate called for a report from the police and the report submitted by the police was that there was no such apprehension. Thereupon Karan Singh came forward with the allegation that the report of the police was incorrect, and he offered to produce evidence in support of his allegations. The Magistrate, therefore, proceeded to record the statement of Karan Singh applicant and one of his witnesses, namely, Jagannath, purporting to do so under the provisions of Section 202 of the Code of Criminal Procedure. After recording this evidence, the Magistrate drew up a formal order requiring the opposite parties to show cause as to why they should not be ordered to execute a bond in the sum of Rs. 1,000 each with one surety. One of the opposite parties, namely, Het Ram did not appear but sent an application with a medical certificate for exemption. The Magistrate rejected this application and directed that a warrant of arrest be issued against him. A revision was filed against this order and also against the order summoning the opposite parties. The learned Additional District Magistrate (Judicial), Mathura relying on a ruling reported as *Kesri v. Angna* 1966 All WR (HC) 774 held that the procedure adopted by the Magistrate was illegal and unwarranted by law. The Additional District Magistrate (Judicial) therefore, came to the conclusion that the order summoning the opposite parties under Section 107, Cr.P.C. after recording the evidence under Section 202 of the Code of Criminal Procedure was illegal. He has referred the matter to this Court with a recommendation that the orders of the Magistrate dated 15-9-72 and 25-11-72 be set aside. This reference came up for hearing before Hon. H.N. Seth, J., who has referred the aforesaid question, which has now come up before us for opinion.

2. The relevant portion of Section 107 of the old Criminal Procedure Code may be reproduced as follows:

Whenever a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity, the Magistrate if in his opinion there is sufficient ground for proceeding may, in the manner hereinafter provided....

A perusal of this provision of law will make it clear that a certain class of Magistrate, has been given a power to draw proceedings under Section 107, Cr.P.C. against a person who is likely to commit a breach of the peace on getting information. The Code of Criminal Procedure or Section 107, Cr.P.C. does not anywhere lay down from what source or in what manner this information should reach the Magistrate. In the case referred to above, the matter came up before this Court in similar circumstances and the opinion expressed in that case was that Section 202 had no application to such a case. It was observed that it was open to the Magistrate to hold that the report submitted by the police was not correct and that from the allegations made by the opposite party he was satisfied that it was a fit case in which action should be taken under Section 107, Cr.P.C. The learned Judge observed that the Magistrate did not choose to proceed in accordance with the provisions of Sub-section (1) of Section 107, but instead, he resorted to a procedure which was wholly unwarranted by law. On the basis of this reasoning the learned Judge came to the conclusion that the order of the Magistrate summoning the opposite parties under Sub-section (1) of Section 107 was illegal. It will be noticed that in this reported case also, it has been remarked that it was open to the Magistrate to act on the allegations made by the opposite party. It is true that Section 202 does not apply to a proceeding under Section 107, Cr.P.C. but the question is whether the statement recorded by the Magistrate, while purporting to act under Section 202, Cr.P.C. can be considered by the Magistrate as an information for the purposes of Section 107, Cr.P.C. In our opinion there being nothing in Section 107, Cr.P.C. or in the Code of Criminal Procedure to indicate that this information should come from a particular source or in any prescribed manner, there is nothing to prevent the Magistrate from considering such a statement in order to satisfy himself whether action under Section 107, Cr.P.C. is justified or not. If it was open to the Magistrate to act on the allegations of a person, there seems to be no reason why the Magistrate should be precluded from acting on the sworn statement of such a person if it is reduced into writing, The procedure adopted by the Magistrate when he purports to act under Section 202, Cr.P. C may not be warranted by law; but such a statement thereby does not become incapable of being taken into consideration as an information contemplated by Section 107, Cr.P.C. In our opinion whatever be the source of

information or whatever be its nature, it is for the Magistrate to form his opinion as to whether action under Section 107, Cr.P.C. is justified or not in other words, we think that the Magistrate is well within his rights to consider the information, whatever be its source, and he can proceed under Section 107, Cr.P.C. provided of course he is satisfied that such action is necessary. If the Magistrate commits some error in the procedure which has been provided in Section 107, Cr, P.C. itself, an order summoning the opposite parties may not be sustainable, but we do not think that such an order can be set aside merely because the Magistrate has considered an information which had come to him in a manner which was not in accordance with the procedure prescribed by the Code. The information thus received does not cease to be an information for the purposes of Section 107, Cr.P.C.

3. Our answer to the question will, therefore, be that the procedure under Section 107, Cr.P.C. does not get vitiated merely because while issuing process the Magistrate has acted upon the statement of the party or his witnesses while purporting to have done so under Section 202, Cr.P.C.

4. Let the papers of this case be laid before the single Judge with our opinion on the question referred to us.