

Gopi and ors. Vs. State

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Court : Allahabad

Decided On : Mar-13-1974

Reported in : 1974CriLJ1410

Judge : H.N. Kapoor, J.

Appellant : Gopi and ors.

Respondent : State

Judgement :

ORDER

H.N. Kapoor, J.

1. This reference has been made by the A. D. M. (J) Bulandshahr dated 16.5.1972 with the recommsndation that the order of the Magistrate dated 31.12.1971 issuing bailable warrants against the applicants be set aside.

2. The facts giving rise to this reference are as follows. Proceedings under Sections 107/ 117, Criminal P. C., were started against the revisionists as there was apprehension of the breach of peace from their side. An order under Section 112 Criminal P. C, had been passed and the notice under Section 107, Cri. initial P. C., had been issued and duly served requiring the applicants to execute bonds for Rs. 1, 000 with two reliable sureties each in the like amount to keep peace for a period of one year. Summons were then issued. The revisionists then filed a

revision against the order issuing notice. That revision was reject-ed by the First Civil and Sessions Judge, Bulandshahr by his order dated the 27th of November, 1971. Proceedings were then continued in the Court of the Magistrate. A date was fixed for appearance of the revisionists. They did not put in appearance on that date. The case was again adjourned as the presiding officer was on leave. Another date was fixed The revisionists were absent even on that date. that is 31.12.1971. On that date the impugned order was passed by the learned Magistrate which is as follows 'The O. Ps are absent despite due information, On the case being. called out the parties (O. Ps) did not turn up. Let the O. Ps, be served withailable warrants of arrest....

3. It is signi ficant to note that notice was issued to the revisionists of this reference butthey have not put in appearance in Court even to day. The learned A. D.M. (J) has referred to two decisions of this Court and has made this reference as according to him reasons were not recorded by the learned Magistrate under Section 114, Or. P.C. showing that there was reason to fear the commission of breach of the peace and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of the revisionists The two authorities referred to are Brij Raj Rai v. State 1971 All Cri R 355 and Kamlakar Singh v. State 1970 All Ori R 490 I have Been both these authorities. In both these oases non-bailable warrants of arrest bad been issued. In the case of Kamlakar Singh it was observed that there was nothing to show that the order was passed under Section 90, Or. P.C. The order was taken to be one having been passed under Section 114. Cr.P.C. Under Section 114, Cr.P.C., warrant of arrest can be issued in two contingencies only, viz. (i) where an order under Section 112, Cr.P.C., has been recorded against a person and such a person is in custody a warrant may be issued directing the officer in whose custody he is, to bring him before the court and (ii) whereupon an information plased before the Magistrate he has reason to fear the commission of a breach of the peace and is of the opinion that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may issue a warrant for his arrest. The learned Judge held that compliance was not made with the provisions of Section 114, Cr.P.C., and from the order of the Magistrate it did not appear that the arrest was ordered under either of these two contingencies.

4. In the other case warrant of arrest was treated to be clearly under Section 90, Cr.P.C. It was held that in such a case no order need be passed as contemplated under Section 114, Cr.P.C., to the effect that there was reason to fear the commission of breach of the peace and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such persons. The learned Judge, however, took the view that in that case reasons were not recorded for issuing warrant for arrest even as contemplated under Section 90, Or. P.C.

5. In the present case only bailable warrant had been issued and reasons had been clearly recorded that the opposite parties were absent despite due information. The circumstances are also such that they clearly show that the revisionists were avoiding to attend the court even after they failed to get the relief in the revision from the court of the First Civil and Sessions Judge. In my opinion, the Magistrate has committed no illegality which can vitiate the trial.

6. The learned Deputy Govt. Advocate in all fairness drew my attention to the case of *Madhu Limaya v. Ved Murti* AIR 1971 S C 2481 (2486) : 1971 Cri L J 1715 at p. 1719. In that case the Supreme Court has no doubt, laid down that Section 91, Cr.P.C., was not Applicable to the case of the person who had appeared in court in response to the notice under Section 107, Cr.P.C., After the order under Section 112, Cr.P.C., had been passed. In the present case the revisionists had not put in appearance in spite of the service of notice, The provisions of Section 90, Cr.P.C., were, therefore, attracted.

7. In the result the reference is rejected. The record of the case shall be sent to the lower court immediately. The learned Magistrate is directed to proceed with the case expeditiously according to law.