

Mohanlal and ors. Vs. Kashi Ram

Mohanlal and ors. Vs. Kashi Ram

SooperKanoon Citation : sooperkanoon.com/473366

Court : Allahabad

Decided On : May-23-1956

Reported in : 1957CriLJ273

Judge : Roy, J.

Appellant : Mohanlal and ors.

Respondent : Kashi Ram

Judgement :

ORDER

Roy, J.

1. This is a reference by the learned Sessions Judge of Barabanki arising out of proceedings under Section 107 of the Code of Criminal Procedure. The learned Sessions Judge has recommended that the order dated the 25th August, 1955, passed by the Magistrate directing that Mohan Lal, Sahjoo, Ram Bharosey, Ram Samp and Buddhi be summoned for 7-9-1955, be set aside.

2. The facts giving rise to this matter are these. Kashi Ram moved an application against Mohan Lal and 15 others for action under Section 107, Cr. P.C. read with Section 117 of the Code, The learned Magistrate sent the application to S. O. Kothi for a report. The Station Officer of P. S. Kothi made a report on the 14th August, 1955, which was to the effect that it was Kashi Ram who was acting in a

high-handed manner and that there was no apprehension of a breach of the peace on the part of Mohan Lal and 15 others against whom the application had been made by Kashi Ram.

The learned Magistrate without taking any further evidence and without even examining Kashi Ram passed an order on the 25th August, 1955, which was to the following effect : - 'Summon Mohan Lal, Sahjoo, Ram Bharosey, Ram Sarup and Buddhi for 7-9-1955.'

3. It is manifest that the procedure adopted by the Magistrate was wholly unwarranted and was not dictated by the clear provisions of Section 107 of the Code of Criminal Procedure. That section provides that whenever a Magistrate 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 provided by the Code require such person to show cause why he should not be ordered to execute a bond, with or without sureties for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix. The power of a Magistrate to call for report from police or a subordinate Magistrate came up for consideration in a number of judicial decisions.

The procedure provided for in Sections 202 and 203 does not in terms apply to a petition asking for an order for security being passed against a person because such a petition is not a 'complaint' within the meaning of those sections but a Magistrate to whom such a petition is addressed is not bound to initiate proceedings in every case. With a view to satisfy himself as to the necessity of issuing process under Section 107 he has the right to test the accuracy of the information received by him before issuing notice to the person informed against. For this purpose the Magistrate has inherent power to refer the matter to the police or to a subordinate Magistrate for investigation or inquiry and report before he makes up his mind as to whether notice must issue or not. The Magistrate, has however, to form his own opinion.

4. In the present case the record does not disclose that apart from the report that was made by the Station Officer of P. C. Kothi which was to the effect that there : existed no circumstance to apprehend a breach of the peace on the part of Mohan Lal and 15 others against whom the application of Kashi Ram was directed there was anything which justified the Magistrate to form an opinion to the contrary. In fact in his order dated the 25th August, 1955, the Magistrate does not say that he had some, other source of information from which he could come to the conclusion that the police report was wrong and that there existed circumstances which were indicative, of an apprehension of a breach of the peace.

The Magistrate cannot act arbitrarily in the matter. He must have some definite information on which ho can act. The explanation which has been submitted by the Magistrate in the present case is that after the police report he got information 'through a reliable source' that there is an apprehension of a breach of the peace from the side of Mohan Lal, Sahjoo, Ham Bharosey, Ram Sarup and Buddhi and acting upon that information he considered it necessary that notice should be issued to these five persons. What that "reliable source" was has not even been expressed by the Magistrate in his explanation which he has submitted to this Court. Information of the kind mentioned, in Section 107, Cr. P. C. must be clear and definite directly affecting the person against whom process is issued and should disclose tangible facts and details so that it may afford notice to such person of what he is to come prepared to meet.

The Magistrate should understand that the provisions of Part IV, Chapter VIII of the Code of Criminal Procedure are not to be arbitrarily used to prevent persons from legally exercising their rights of property, nor are persons in the position of opposite parties to be subjected to the indignity of being called upon to find sureties for keeping peace. Moreover, in the case before us the Magistrate has failed to state that in his opinion a breach of the peace was likely to take place. This he was bound to do before issuing process. The order dated the 25th August, 1955, cannot be supported.

5. The reference is accepted, the order dated the 25th August, 1955, is set aside and it is directed that the original record be sent back to the Magistrate for

proceeding in the manner provided' by law.

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