

Subas Rai Vs. State

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Court : Allahabad

Decided On : Oct-30-1978

Reported in : 1979CriLJ225

Judge : P.N. Bakshi, J.

Appellant : Subas Rai

Respondent : State

Judgement :

ORDER

P.N. Bakshi, J.

1. The police submitted a report on 3rd March, 1978 for taking action under Section 107/117 Cr.P.C. The Magistrate took cognizance on 14th March 1978 and directed notice to issue to the opposite parties for appearance on 28th March, 1978. When the opposite parties put their appearance on the said date, title order under Section 111 Cr.P.C. was read out to them. Thereafter the case was fixed on several 'dates, but it was adjourned for some reason or the other. On 19th September, 1978 an application was filed by the Public Prosecutor for extension of time. No orders were passed on this application. After the expiry of six months, it appears that the opposite parties applied to the Magistrate concerned pleading that in view of the provisions of Section 116(6) Cr.P.C. the inquiry had not been completed within six months and as such the proceedings should be dropped.

Thereafter on 29th September, 1978 the Magistrate passed the impugned order condoning the delay and directing continuance of the proceedings under Section 107/117 Cr.P.C. Aggrieved thereby a revision was filed before the Sessions Judge, Jaunpur, which had been dismissed on 18th October, 1978 on the ground that the impugned order is an interlocutory order. Hence this application under Section 482 Cr.P.C.

2. I have heard learned Counsel for the parties and have also perused the impugned order. Under Section 107 Cr.P.C. when any Magistrate on receiving information 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, is of the opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit. Under Section 111 Cr.P.C. he passes an order in writing to that effect setting forth the substance of the information received by him and also the details with regard to the bonds which are required to be executed by the person concerned. Under Section 112 Cr.P.C. when the opposite party appears before the court the order under Section 111 Cr.P.C. is read out to him. The Magistrate then proceeds to inquire into the truth of the information upon which action is sought to be taken. The subsequent Section viz. 116 Cr.P.C. lays down the procedure for holding such inquiry. Under Section 116(6) Cr, P. C. it is mandatory for the Magistrate to complete the inquiry within a period of six months from the date of its commencement. If the inquiry is not so completed then the period can be extended by the Magistrate for special reasons to be recorded in writing. It is significant to note that under Sub-section (6) of Section 118 Cr.P.C. on the non-completion of the inquiry the proceedings stand terminated unless otherwise extended. That is to say, if no final orders are passed up to six months of the commencement of the inquiry or the extended period, then the proceedings under Section 107/117 Cr.P.C. will automatically come to an end.

3. On a perusal of the order of the Magistrate, I find that he has given a number of reasons for extending the time of inquiry. But I do not find any good ground

mentioned therein to indicate as to why it was not possible to complete the inquiry within the stipulated period of six months, envisaged under Section 116(6) Cr.P.C. The order under Section 111 Cr, P. C. was no doubt read out to the accused on 28th March, 1978. From a perusal of Section 116 Cr.P.C. there can be no doubt that it is only after the accused had been brought to the court and the order under Section 111 Cr.P.C. is read out to him that the inquiry commences. The relevant date, therefore, for the purpose of the present application would be 28th March, 1978, when the order under Section 111 Cr.P.C. was actually read out to the accused present in court u/s. 112 Cr.P.C. It is true that an application for extension of time was filed on 19th September 1978 by the Public Prosecutor on behalf of the State, but in fact, no orders appear to have been passed by the Magistrate concerned on this application. It was on 29th September 1978 that the Magistrate passed the impugned order extending the time. Clearly enough on that date, six months period had already expired. Law contemplates that if a statutory period of limitation is prescribed for the completion of a proceeding and a power is also given to the court concerned to extend that period, then that power can only be exercised in accordance with law within that statutory period. After that period expires the court does not have any power to extend the limitation for the continuance of the inquiry. In my opinion, therefore, the order passed by the Magistrate is wholly without jurisdiction. The Sessions Judge found himself unable to interfere with the impugned order because he treated it as an interlocutory order. Here again the Sessions Judge appears to have committed an error. This order is not an interlocutory order in the sense in which the interlocutory order has been interpreted by the Supreme Court. In the instant case the proceedings had terminated under the statute due to the expiry of the period of limitation. Thus an order passed thereafter would in effect result in setting aside of a final order concluding the proceedings. In that view of the matter the Sessions Judge had jurisdiction to interfere with such an order. The question of limitation goes to the root of the case. They are questions of jurisdiction and they cannot be treated at par with a mere illegality.

4. I am supported in my view by a decision of the learned Single Judge of this Court reported in 1077 All Cri C 297 *Ummaid All v. State* in which a similar view has been taken with regard to the scope of the inquiry under Section 107/117

Cr.P.C.

5. This application under Section 482 Cr.P.C. is accordingly allowed, as mentioned above.

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