

Tejsingh Man Singh Vs. State

Tejsingh Man Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/499447

Court : Madhya Pradesh

Decided On : Sep-08-1952

Reported in : 1954CriLJ543

Judge : Nevaskar, J.

Appellant : Tejsingh Man Singh

Respondent : State

Judgement :

ORDER

Nevaskar, J.

1. On 20-9-1951 Station Officer Badnawar submitted an information to the Sub-Divisional Magistrate, Second Class, Badnawar that accused Tejsingh is desperate and dangerous and is in the habit of beating others on flimsy pretexts and the people of the village are under a great terror on account of him. He therefore should be bound down for keeping good behaviour under Section 110, Criminal P. C,

2. Immediately on receipt of this information, the learned Magistrate passed an order under Section 117 (3), Criminal P. C. for an interim security to be furnished by Tejsingh for Rs. 5000/-. It was further ordered that on his failure to do so he may be kept in jail. The accused thereupon preferred a revision application before

the Sessions Judge Dhar who dismissed the same. Accused Tejsingh has therefore come up in revision to this Court.

3. Mr. Sanghi who appears for Tejsingh contends that the order of the Magistrate under Section 117 (3), Criminal P. C. in the absence of an order under Section 112 is illegal and unsustainable. He therefore submits that the same should be set aside.

4. On the other hand the learned Government Advocate contends that though it may be conceded that there is certain amount of irregularity in the order passed by the Magistrate in not observing the provisions of Section 112, Criminal P. C. that is an irregularity curable under Section 537, Criminal P. C. and in view of the decision of their Lordships of the Privy Council in - Pulukuri Kottaya v. Emperor AIR 1947 PC 67 (A) and - Abdul Rahman v. Emperor AIR 1927 PC 44 (B). He therefore contends that the order, for that reason alone, cannot be set aside if it cannot be shown that it has caused any prejudice or has resulted in injustice. He further contended that it was open for the Magistrate even to pass an order requiring the arrest of the accused and the fact that he instead of passing that order showed a certain amount of leniency in first calling upon him to furnish security should not entitle the accused to make a grievance on the score of prejudice or injustice.

5. In order to appreciate these reasonings it is necessary to refer to the provisions of Criminal P. C. from Sections 110 to 117.

6. Section 110 provides in effect that

When a Magistrate receives information that any person within the local limits of his jurisdiction is of a character mentioned in that Section the Magistrate may require such person in the manner provided in subsequent sections to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for a certain period.

7. Section 112 provides:

When a Magistrate acting under Section 107, Section 108, Section 109 or Section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed the term for which it is to be in force, and the number, character & class of sureties (if any) required.

8. Section 113 then provides:

If the person in respect of whom such order is made is present in Court, it shall be read over to him or, if he so desires, the substance thereof, shall be explained to him.

9. Section 114 then provides:

If such a person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the Officer in whose custody he is, to bring him before the Court.

10. In cases of imminent danger of breach of peace which cannot otherwise be prevented the Section empowers him to order immediate arrest of such person.

11. Section 115 then provides:

Every summons or warrant issued under Section 114 shall be accompanied by a copy of the order made under Section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with or arrested under, the same.

12. Section 117 then provides:

(1) When an order under Section 112 has been read or explained under Section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under Section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

13. Sub-clause (3) of the aforesaid Section provides:

Pending the completion of the inquiry under Sub-clause (1) the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person 'in respect of whom the order under Section 112 has been made' to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the Inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded.

14. From these provisions it is clear that an order under Section 117 (3), Criminal P. C. is only contemplated when first an order under Section 112 is passed. The intimation of that order is given to the person proceeded against and notice is given to him to show cause as to why the order proposed be not passed against him and the Magistrate then proceeds to enquire into the truth of the information upon which action was taken. In Sub-section (3) of 8. 117, Criminal P. C. the words direct the person in respect of whom an order under Section 112 has been made' make it absolutely clear that before any order under Sub-section (3) can be passed an order under Section 112 is indispensable. When under the provisions of the Code a certain fact is a condition precedent to the passing of a certain order then unless that condition precedent is satisfied the impropriety of the subsequent order is plain.

My attention has been drawn in this connection to several authorities. The cases reported in - Emperor v. Sidik GuJam AIR 1943 Sind 163 (C); and - Jatol v. Emperor AIR 1926 Sind 288 (D) are the authorities which take the view somewhat similar to one taken by me. On the other hand - Ram Murti v. Emperor AIR 1946 Oudh 230 (E) apparently suggests that non-compliance with the provisions of Section 113 in respect of an order under Section 112 in the manner provided by the Code is not such an irregularity as would vitiate the whole proceeding resulting in an order requiring the person proceeded against to furnish security for his good behaviour.

Relying upon the decision of the Privy Council the learned Judge in this Oudh case says as follows:

A breach of an imperative statutory rule of procedure is not necessarily enough to vitiate the whole proceedings. The whole criterion given by Section 537, Criminal P. C. is whether the accused person has been prejudiced or not. The object of the procedure is to enable the Court to do justice but if in spite of even a total disregard of the rules of procedure, justice has been done, there would exist no necessity for setting aside the final order which is just and correct simply because the procedure adopted was wrong.

15. The same view has been taken by their Lordships of the Privy Council in - 'AIR 1947 PC 67 (A)'. In both cases the question was as to whether the trial concluded in disregard of certain provisions of the Code resulting in an irregularity in the course of the trial, the mode of trial being proper, was valid order or not. These cases referred to above cannot be brought in aid in order to justify an order which under the provisions of the Code could not be made except on compliance with a certain condition precedent. I therefore hold that the order passed by the Sub-Divisional Magistrate under Section 117 (3), Criminal P. C. immediately on receipt of the information and without passing an order under Section 112, Criminal P. C. is illegal and deserves to be set aside,

16. The application is allowed, The order is hereby set aside. The magistrate will conform to the provisions as detailed above.

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