

Sona Khan and ors. Vs. State

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Court : Orissa

Decided On : Jul-23-1980

Reported in : 50(1980)CLT245; 1981CriLJ39; AIR 1981 NOC 30

Judge : R.N. Misra, ;K.B. Panda and ;P.K. Mohanti, JJ.

Appellant : Sona Khan and ors.

Respondent : State

Judgement :

R.N. Misra, J.

1. Members of the second party in a proceeding tinder Section 107 of the Code of Criminal Procedure have moved this Court under Section 401 of the Code for setting aside the direction of the Executive Magistrate calling upon them to furnish interim bonds.

2. When this revision application was placed before the learned Chief Justice, he passed the following order:

Let this case be heard by a Full Bench for examining the correctness of the decision reported in 44 Cut LT 381 : 1978 Cri LJ 124 (Uchhaba Jena v. Kunjabehari Routray).

When the hearing began, before us Mr. Dhal for the petitioners and Mr. R.C. Patnaik appearing for some of the members of the first party indicated that neither of them wanted the correctness of the Bench decision to be considered by a Full Bench. Mr. Dhal further pointed out that the question that arises for consideration in the revision application has no relationship with anything decided by this Court in the Division Bench decision and as such for the disposal of the present revision application examination of the correctness of the Bench decision is not relevant.

3. In the reported decision referred to above, two questions have been examined. In the absence of formulation of any specific point by the learned Chief Justice, counsel could not pinpoint their arguments to any particular aspect but since reference has been made under Rule 12 of Chapter III of the Court's Rules, we propose to examine the correctness of the entire decision. In that case one proceeding under Section 107 of the Code had been dropped on the ground that more than six months had elapsed since its commencement. On the self-same day, an application was made to the learned Magistrate for initiating a fresh proceeding and on that basis a fresh proceeding under Section 107 was registered. Therein, furnishing of interim bond was directed. One of the grounds advanced for vacating the order for interim bond was that by the date of the order, more than six months had elapsed from the date of commencement of inquiry and, therefore, the proceeding should not have been continued and an order for furnishing of interim bond was not called for. As the Sessions Judge when moved declined to interfere and at the unsuccessful petitioner's instance a second revision did not He in view of the bar in the Code, the extraordinary jurisdiction of the Court was invoked. A separate application for quashing of the order for furnishing of interim bonds in exercise of inherent power was also filed.

The Division Bench first took into consideration whether inherent power under Section 482 of the Code could be invoked for quashing the direction when the Sessions Judge had declined to interfere and a second revision was barred. It chose to follow the ratio of the decision of this Court in the case of *Deena Nath Acharya v. Daitari Charan Patra* (1975) 41 Cut LT 856 : 1975 Cri LJ 1931. The second question for consideration was whether an interim bond could be directed to be furnished before the inquiry had commenced. The court following the ratio of

the Supreme Court decision in *Madhu Limaye v. Ved Murti* AIR 1971 SC 2481 : 1971 Cri LJ 1715 held that the direction for furnishing of interim bond could be made only after the commencement and before completion of the inquiry. It next examined the question as to from what date the period of six months stipulated in Sub-section (6) of Section 116 of the Code has to be calculated and observed:. In view of the authorities referred to above, we are inclined to agree that the inquiry referred to in Sub-section (6) is with reference to the stage when the Magistrate, after both parties appear before him, proceeds to inquire with reference to the evidence as to whether the delinquencies alleged are established....

It also took the view that the inquiry contemplated in Sub-sections (3) and (6) must refer to the same process.

4. We shall first refer to the provisions of Section 116 of the Code-

116. Inquiry as to truth of information. (1) When an order under Section 111 has been read or explained under Section 112 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 113, 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.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons cases.

(3) After the commencement and before the completion of the inquiry under Sub-section (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 tranquility 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 111 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: Provided that....

(4) & (5) ...

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs-

Provided....

(7)...

Sub-sections (1) and (2) of Section 116 of the Code of 1973 are in identical language as in Section 117, Sub-sections (1) and (2) of the Code of 1898 except reference to the sections only. There are three cases of the Supreme Court which have interpreted the provisions of Section 117 of the old Code. We think it appropriate to refer to these decisions first. These are the cases of *Madhu Limaye v. Ved Murti* AIR 1971 SC 2481 : 1971 Cri LJ 1715; *Madhu Limaye v. Sub-Divisional Magistrate, Monghyr* : 1971 CriLJ1720 and *Govinder Singh Verma v. Mrs. Bachubhai T. Pestonji* : 1972 CriLJ316 .

In paragraph 4 of the judgment of the learned Chief Justice in *Madhu Limaye's* case AIR 1971 SC 2481 : 1971 Cri LJ 1715, the facts of the case have been indicated thus:..The two petitioners named here and one *Narendra Shastri* were arrested by the Police at a level crossing when they were proceeding by car to the city. According to the petitioners they were not told the grounds of their arrest but were taken to Varanasi Police Station and afterwards to the City Magistrate's Court. On the way the Police Officers showed them the report made by the Police to the Magistrate for taking action under Sections 107/117 and 151 of the Criminal Procedure Code. When they appeared before the Magistrate he read out a notice under Section 112 of the Code calling upon them to furnish security in the sum of Rupees 5,000 with two sureties in the like amount for keeping the peace. *Narendra Shastri* was however discharged as it was not proved that he was the right person. The petitioners refused to accept the notice and the Magistrate thereupon adjourned the case to the following day and remanded them to jail

when the petitioners declined to offer bail.

It further appears that on 9-8-1971, the City Magistrate called for interim bonds. No inquiry until then had been made as to the truth of the allegations. From paragraph 13 of the judgment it appears: 'It will be noticed that before the Magistrate took action to call for an interim bond, he did not make any efforts to enquire into the truth of the information as is required by Section 117(3) of the Code. He only saw the Police report and was satisfied from it, without even questioning the Sub-Inspector. He did question him with regard to Narender Shastri who is described in the Order as O.P. No. 3 but not others. It is also to be noticed that the case was fixed on the following day for statements of Madhu Limaye and Ram Adhar Giri and there is no mention that any witnesses were to be present. In fact even on the next day the Magistrate was not going to try the case but only take statements from the petitioners....

The learned Chief Justice observed in paragraph 16:

It appears to us that the powers of the Magistrate to ask for an interim bond were not properly exercised in this case and consequently the order to the petitioners to furnish interim bond could not be made. That stage had not been reached under the scheme of the Code of Criminal Procedure. The Magistrate could only ask for an interim bond if he could not complete the enquiry and during the completion of the enquiry postulates a commencement of the enquiry, which means commencing of a trial according to the summons procedure. It was not given to the Magistrate to postpone the case and hear nobody and yet ask the petitioners to furnish a bond for good conduct. The Magistrate should have made at least some effort to get a statement from Brij Mohan or Ved Murti Bhatt or any of the witnesses named in the challan. Nothing of this kind was done. Therefore the proceedings for asking for an interim bond were completely illegal.

5. In the next case of Madhu Limaye : 1971 CriLJ1720 , the majority through the learned Chief Justice spoke thus:

A question was raised before us whether the Magistrate can defer the inquiry and yet ask for an interim bond. There is a difference of opinion in the High Courts.

Some learned Judges are of opinion that this action can be taken as soon as the person appears because then the Magistrate may be said to have entered upon the inquiry. Other learned Judges are of the opinion that Sub-sections (1) and (2) envisage that the Magistrate must proceed to inquire into the truth of the information and only after *prima facie* satisfying himself about the truth and after recording his reasons in writing can the interim bond be asked for. Some of the cases on the previous view are- *Emperor v. Nabibux* AIR 1942 Sind 86 : 43 Cri LJ 788, *Dulal Chandra Mondal v. State* : AIR1953 Cal238 , *Gani Ganai v. State* AIR 1959 J & K 125 : 1959 Cri LJ 1320 and *Laxmilal v. Bherulal* . Those representing the other view are- *In re, Muttuswami* ILR (1940) Mad 335 : AIR 1940 Mad 23 : 41 Cri LJ 238 (FB); *In re, Venkatasubba Reddy* : AIR 1955 AP96 , *Jagdish Prasad v. State* : AIR1957 Pat106 , *Jalalludin Kunju v. State* AIR 1952 Trav-Co 262 : 1952 Cri LJ 1111, *Shravan Kumar Gupta v. Superintendent, District Jail, Mathura* : AIR1957 All189 , *Jangir Singh v. The State* , *Rama Gowda v. State of Mysore* AIR 1960 Mys 259 : 1960 Cri LJ 1348 and *Ratilal Jasraj v. State* : AIR1956 Bom385 .

In our opinion the words of the section are quite clear. As said by Straight. J. in *Empress v. Babua* (1883) ILR 6 All 132, the order under Section 112 is on hearsay but the inquiry under Section 117 is to ascertain the truth of the necessary information. Sub-section (1) contemplates an immediate inquiry into the truth of the information. It is pending the completion of the inquiry that an interim bond can be asked for if immediate measures are necessary, and in default it is necessary to put the person in custody. Therefore, as the liberty of a person is involved and that person is being proceeded against on information and suspicion, it is necessary to put a strict construction upon the powers of Magistrate. The facts must be of definite character....

The Magistrate adjourned the case from day to day and yet asked for an interim bond. This makes the proceedings entirely one sided. It cannot be described as an inquiry within an inquiry as has been said in some cases. Some inquiry has to be made before the bond can be ordered. We, therefore, approve of those cases in which it has been laid down that some inquiry should be made before action is taken to ask for an interim bond or placing the person in custody in default. In an old case reported in *A. D. Dunne v. Hem Chunder* (1869) 12 Suth WR (Cri) 60 a

Full Bench of the Calcutta High Court went into the matter. The case arose before the present Code of Criminal Procedure and, therefore, there was no provision for an interim bond. But what Sir Barnes Peacock C.J. said applies to the changed law also not only with regard to the ultimate order but also to the interim order for a bond. The section even as it is drafted today, is hedged in with proper safeguard and it would be moving too far away from the guarantee of freedom, if the view were allowed to prevail that without any inquiry into the truth of the information sufficient to make out a prima facie case a person is to be put in jeopardy of detention. A definite finding is required that immediate steps are necessary. The order must be one which can be made into a final order unless something to the contrary is established. Therefore it is not open to a Magistrate to adjourn the case and in the interval to send a person to jail if he fails to furnish a bond. If this were the law a bond could always be insisted upon before even the inquiry began and that is neither the sense of the law nor the wording or arrangement of the sections already noticed.

(underlining is ours)

In the case reported in : 1972 CriLJ316 , the Court was dealing with the propriety of an order under Section 117(3) of the Code and observed:

Section 117(3) of the Code of Criminal Procedure confers power on the Magistrate to direct the person in respect of whom the order under Section 112 6f the Code of Criminal Procedure has been made to execute a bond for keeping the peace. The respondent lodged a complaint under Section 107 of the Code of Criminal Procedure. The Magistrate examined the appellants and the Sub-Inspector....

In that view of the matter, the direction for execution of bond was not interfered with. From the three decisions of the Supreme Court referred to above, it is clear that an order under Sub-section (3) for furnishing of bond can be made only after the commencement of the enquiry and before its completion provided the allegations forming the basis of the parent proceeding or the allegations leading to the necessity for furnishing of interim bonds are tested by inquiry and judicial mind is applied for ascertaining whether there is prima facie justifiable basis for such a direction. Sub-section (2) of Section 116 provides that the inquiry is to be as nearly

as practicable in the manner prescribed for conducting trial and recording of evidence in summons cases. Chapter XX of the Code makes provision for trial of summons cases.

6. A Division Bench of this Court in the case of Mandalapu Sundar Narayan v. V.V. Chenulu (1970) 36 Cut LT 954 : 1970 Cri LJ 1378, reviewed several authorities of this Court as also of different High Courts on the very question which we are now examining. One of the cases specifically referred to is the decision in the case of Satyanarayan Gantayet v. State (1967) 33 Cut LT 386 : 1967 Cri LJ 1166, wherein Ahmad, C.J. observed:

The first question is based on the assumption that an order under Section 117(3), Criminal Procedure Code may be passed only when an enquiry under Section 112, Criminal Procedure Code has already been taken up for consideration and that unless the proceeding under Section 112, Criminal Procedure Code has come to that stage, the Magistrate has no jurisdiction to take action under Section 117(3). In my opinion, there is no substance in this contention. Sub-section (3) of Section 117, Criminal Procedure Code provides that pending completion of enquiry the Magistrate may direct the person in respect of whom the order under Section 111 has been made, to execute a bond for keeping the peace or maintaining good behaviour until the conclusion of the enquiry. The exercise of this power is subject to two conditions only- (i) that the Magistrate considers that immediate measures are necessary for the prevention of a breach of the peace, and (ii) that the reasons in support of that consideration are recorded in writing. In my opinion, if these two conditions are complied with, an order under Section 117(3) may be passed at any time during the period commencing from the date when an order under Section 112, Criminal Procedure Code has been passed till the disposal of the enquiry....

Referring to this decision, Misra, C.J., at page 965 of the Reporter observed:..In Satyanarayan Gantayet v. State 33 Cut LT 386 : 1967 Cri LJ 1166. the learned Chief Justice did not closely examine the meaning of the expression 'pending completion of the inquiry under Sub-section (1)'. According to the majority view, there must be commencement of an enquiry under Section 117(1), and Section

117(3) can be resorted to only thereafter. This analysis puts a narrow construction on the expression. The expression merely fixes the completion of the enquiry as the terminus, after which the power under Section 117(3) cannot be exercised, and gives a mandate for exercise of the power before the enquiry is completed. As was rightly observed in the Gujarat case 4 Guj LR 490 : 1963 (1) Cri LJ 663, an enquiry which has not been started is also an enquiry which is not completed. The expression also takes within its sweep an enquiry which is not yet commenced but which has been ordered under Section 112. Thus the expression would mean either pending the completion of the enquiry started in pursuance of Section 112 or ordered to be held but not yet started. As it involves a case of emergency, there is no justification for giving a restricted construction to the aforesaid expression. On a plain reading and logical analysis, we are inclined to accept the Gujarat view as laying down the correct law.

A little later at page 966 of the Reporter, the learned Chief Justice indicated:

We are therefore clearly of opinion that if the other conditions precedent are fulfilled, namely that there is an emergency and that the Magistrate, on application of his judicial mind for reasons to be recorded in writing comes to the conclusion that an interim bond should be furnished, there is no reason why Section 117(3) would not be made applicable prior to the commencement of the enquiry under Section 117(1).

Though the learned Chief Justice in *Satyanarayan Gantayet v. State* 33 Cut LT 386 : 1967 Cri LJ 1166 did not elaborate this aspect of the matter, we agree with his ultimate conclusion on the first point and hold that it lays down the law correctly.

To sum up we hold that both the points that arose for consideration in *Satyanarayan Gantayet v. State* (1967) 33 Cut LT 386 : 1967 Cri LJ 1166 were correctly decided.

The ratio indicated by Misra, C.J. runs counter to the principle laid down in *Madhu Limaye's case* (supra) which we have extracted in extenso. The single Judge decision of Chief Justice Ahmad and the Bench decision of Chief Justice Misra

and Ray, J. (as he then was) must be taken to have been overruled by the Supreme Court. Chief Justice Misra in later decisions of this Court took note of Madhu Limaye's case. In the case of Gouranga Rout v. T. Jaganath Podhan (1972) 38 Cut LT 836, Misra, C.J. himself observed:

Mr. Mohapatra places emphasis on the expression 'pending the completion of the inquiry' as meaning that an order to furnish interim bond can only be passed after commencement and before completion of the enquiry. The Division Bench decision of this Court in Mandalapu Sundar Narayan v. V.V. Chenulu 36 Cut LT 954 : 1970 Cri LJ 1378 directly militates against this view. In that case the narrow view adopted by the majority of High Courts was not approved, and it was held that the expression brings within its sweep an inquiry which has not yet commenced, but which has been ordered under Section 112, Criminal Procedure Code.

Reference was then made to Madhu Limaye's case 1971 Cri LJ 1715 (SC) and the learned Chief Justice stated:

The aforesaid Supreme Court decision fully supports Mr. Mohapatra's contention, and on this point the view expressed by this Court in the aforesaid decision of the Division Bench must be taken as not laying down good law and is to be overruled.

To the same effect is the view of the learned Chief Justice in the case of Chakradhar Rout v. The State (1973) 2 Cut WR 1826 and in the case of Udayanath Pradhan v. State (1974) 40 Cut LT 148.

7. In the case of Bhagabat Biswal v. State (1972) 38 Cut LT 1133, a learned single Judge of this Court after referring to Madhu Limaye's case AIR 1971 SC 2481 : 1971 Cri LJ 1715 observed:..Their Lordships have stated all this in the context of the facts and circumstances of that particular case, where there was absolutely nothing, excepting the preliminary police report, before the Magistrate at the time when he passed the order under Section 117(3), Criminal Procedure Code as stated above. The above observations of their Lordships are of salutary nature. Doubtless, some enquiry should be made by the Magistrate before he exercises his power under Section 117(3) and the facts requiring the Magistrate to act in this

direction should be of a definite character. In the present case, before the passing of the impugned order the order under Section 112 had already been served on the petitioners, and both the parties had already appeared before the Magistrate and had filed their written statements before him, and accordingly the enquiry under Section 117 had started by the time the impugned order was passed. The witnesses had been summoned, but for reasons stated above they could not be examined by that date. Before the passing of the order on 27-4-1971 the Magistrate had before him several police reports and copies of the F.I.Rs. lodged by the parties against each other in the different police stations on different dates. The Court on a consideration of the various materials before it has catalogued the different facts and circumstances which impelled him to pass the aforesaid order under Section 117(3). The impugned order also shows that before the passing of the same, counsel appearing for both the parties were given a hearing. On a perusal of the impugned order I am satisfied that the Court had enough of materials before it and it passed the impugned order on bestowing proper thought and consideration to these materials on record. Accordingly it cannot be said that there was no enquiry in this case. There is nothing in the abovementioned contention of Mr. Tri-pathy, and if Mr. Tripathy's contention is accepted it will in most cases render the provisions of Section 117(3) nugatory and will nullify the very purpose for which the said provision is made.

In the facts of the case, the decision seems to be correct but to the extent it seeks to lay down a broad proposition that the enquiry contemplated in the section starts the moment the delinquents appear and the notice under Section 122 of the Code is read to them, would run counter to the Supreme Court decision. In Madhu Limaye's case that stage had passed, yet the Supreme Court said that enquiry had not started. We may indicate here at the cost of repetition that the learned Judges of the Supreme Court have indicated with emphasis that until the allegations are supported by materials so as to satisfy the judicial mind that a direction for bond is called for, no order for furnishing of bond can be given. The enquiry their Lordships have in view is thus one which would enable the Magistrate to do so.

A later decision of the same learned single Judge in the case of Hadu Palei v. Chandramani Mantri (1978) 45 Cut LT 548 : 1978 Cri LJ 1307, has also been laid

before us, where it has been observed:

On citing the above decisions which all support the contention of Mr. Sahu, he submits that for the purpose of taking action under Section 116(3) it will not be correct to say that the Magistrate can do so only after the enquiry in the proceeding commences by the examination of witnesses in that proceeding. He submits that if the Magistrate has to wait till that stage, then in many urgent cases of impending danger to peace and tranquility in the society, he, who has the responsibility of preventing the same, cannot take any effective step or action in that direction, and will thus be rendered powerless and ineffective in matters within his sole responsibility and jurisdiction.

There is enough weight and substance in the above contention and submission of Mr. Sahu. His contention gets ample support from the above and many other decisions in the field. In view of the Division Bench decision in Uchhaba Jena's case (1977) 44 Cut LT 381 : 1978 Cri LJ 124, Mr. Sahu suggested that this case should be referred to a Full Bench for the interpretation of the clause 'commencement of the inquiry' in its application to sub-s. (3) of Section 116 of the Code, keeping in view the emergent situations in which immediate measures are required to be taken under this Sub-section. Mr. Sahu's above suggestion is also reasonable. But in view of the facts that the apprehension of breach of the peace and disturbance of public tranquility took place in this case as far back as August, 1976 and overt acts were committed in July, 1977, and the operation of the impugned order has been stayed since August, 1977 and nothing is known about the now existing situation in the locality, I do not deem it proper to refer this case to a bigger Bench at this stage.

The learned single Judge referred to a series of authorities prior to Madhu Limaye's case of different High Courts and two or three subsequent decisions and followed his own decision in Bhagabat Biswal's case (1972) 38 Cut LT 1133.

Section 116 of the Code of 1973 corresponds to Section 117 of the Code of 1898. Sub-sections (6) and (7) of the 1973 Code are new provisions. Old Sub-section (3) commenced with 'pending the completion of the enquiry.' The new Sub-section (3), however, starts with 'after the commencement and before the completion of the

enquiry.' This change has been made so as to put the matter beyond doubt that an interim bond can be called for only after commencement of the enquiry and before its completion. The amendment gives effect to the Supreme Court decision in Madhu Limaye's case in AIR 1971 SC 2481 : 1971 Cri LJ 1715. Our attention has been invited to a single Judge decision of the Calcutta High Court in the case of Prafulla Kumar Dutt v. Ajit Kumar Dutta 1978 Cri LJ 316, where it was said that the enquiry starts when the delinquent appears. This decision has been overruled by the same High Court in the case of Paresh v. Ahitosh 1978 Cri LJ 1171. The Division Bench held that the enquiry would commence as soon as the delinquent challenges the allegations made against him or refuses to admit the same or submits a show cause petition against the allegations or the Magistrate otherwise has reason to proceed or proceeds or decides to ascertain the truth of the allegations by taking evidence or otherwise. This in our opinion is near about the correct position.

In view of the ratio in Madhu Limaye's case and the language of the new Code, there is no scope for the proposition that without commencement of inquiry, an order for interim bond can be made. Inquiry does not commence as soon as the delinquent appears and the notice under Section 112 of the Code of Criminal Procedure is read out to him. The Supreme Court has emphasised on the position that bare allegations cannot form the foundation of the order for a bond and failing furnishing of it detention of the delinquent. The allegations have got to be tested. It may be that in a particular case, oral evidence may not be necessary to test the truth or otherwise of the allegations. Affidavits may be enough. There may be documentary evidence which might substitute oral evidence which necessitates examination of witnesses. Parties may agree that the allegations are true and, therefore, there may not be any necessity of looking for evidence. Situations arising in daily life cannot be catalogued and discretion must be left to the Magistrate to deal with particular situations as may arise before him in different cases, but the mandate of the law is that the inquiry must commence and the Magistrate must proceed to ascertain the truth of the allegations by application of his judicial mind and look for materials which would substitute allegations into facts. The inquiry contemplated is an acceptable legal process by which allegations can be converted into facts. What that process would be should be left

to the discretion of the Magistrate with reference to facts of each case, but he must adopt an acceptable judicial method for testing the allegations and recording findings of fact with reference to the acceptability or otherwise of such allegations.

8. The next question for consideration is as to when inquiry commences for the purpose of computing the period stipulated under Sub-section (6) of Section 116 of the Code. 'Commencement of inquiry' is a concept common to Sub-sections (3) and (6). The mandate in Sub-section (!) is that after appearance of the delinquent, the order has to be read out and inquiry has to follow. The provision itself is preventive and is intended to meet emergent situations. The purpose is to maintain public peace and tranquility. Parliament has held out a mandate that the inquiry must be expeditious. As pointed out in Madhu Limaye's case it is not open to the Magistrate to defer the inquiry and call for an interim bond. As we have already indicated, commencement of inquiry starts when the Magistrate attempts in a legal way to put the allegations to test for finding out whether they are the facts. Both Sub-sections (3) and (6) of Section 116 refer to this stage as the commencement of inquiry. The Supreme Court rightly pointed out in Madhu Limaye's case that it is not an inquiry within an inquiry. Ordinarily, the interim bond is asked for on the allegations forming the foundation for the basic proceeding. There may be instances where fresh allegations also come up and become material for an interim bond. Yet, 'commencement of inquiry' in Sub-sections (3) and (6), in our opinion, refers to the same stage. It is one of the well accepted rules of interpretation that when the same phrase occurs in the same section at different places and there is no indication of legislative intent that a different meaning is intended thereby, both the phrases have to be given the same meaning. We agree with the Division Bench decision in Uchhaba Jena's case (1977) 44 Cut LT 381 : 1978 Cri LJ 124 that its view that 'commencement of inquiry in Sub-sections (3) and (6) refers to the same stage' is correct.

9. We may point out that though we are inclined to agree with the decision of the Division Bench correctness of which we are called upon to review, situations may arise where oral evidence may not be necessary. For instance, one of us had occasion in the case of Patric Francis v. Jethu Kishan, 1974 Cut LR 341,' to examine a case where the order read thus:

I have carefully gone through the relevant station diary entry of 1-7-73 and the enquiry report made by the S. I. and the impugned leaflet circulated and the report of the Officer-in-Charge, Tangar-pali P.S. I am satisfied that there is grave and imminent breach of the peace and may result in clash and plotting (rioting?) among the parties by such overt acts and circulation of the said leaflet unless the second party members are ordered to execute the interim bond. As such I order the second party members to execute the interim bond of Rs. 1,000 each with one surety for the like amount each to keep peace till the finalisation of the enquiry.

It was held:

Before passing of the above order, the order under Section 112, Cr. P.C. had already been served on the petitioners and both the parties had already appeared before the Magistrate. The Magistrate had before him several police reports and copies of the station diary entries on different dates. Having gone through the records and having heard the learned Counsel on either side, I am satisfied that the learned Magistrate had sufficient materials before him and he passed the impugned order on a consideration of those materials. It is not shown that the Magistrate has committed any error of law. There was apprehension of breach of the peace and it could not be prevented except by calling upon the petitioners to execute interim bonds under Section 117(3) Cr. P.C. The learned Magistrate was, therefore, perfectly justified in passing the aforesaid order.

As it appears, the Magistrate heard also both sides with reference to the allegations. There was no indication that parties wanted the correctness of the allegations to be tested in a manner different from oral submissions. There may be cases, where without oral testimony, the allegations can be tested. Where the Magistrate has abundant material otherwise to satisfy his judicial mind about the correctness of the allegations, for the purposes of satisfying the inquiry contemplated in the section, he may not look for oral testimony of witnesses. We reiterate that raw allegations by themselves cannot constitute the foundation for an order under Section 117(3) of the Code. The Magistrate has to make a genuine attempt to test the correctness of the allegations and judicial mind has to be applied and procedure known to law has to be followed for testing the correctness

of the allegations and finding out how much thereof is factual. The factual basis must be the foundation for the judicial satisfaction that an order for a bond under Sub-section (3) is necessary. In this view of the matter, we must point out that the Division Bench decision in Uchhab Jena's case (1977) 44 Cut LT 381 : 1978 Cri LJ 124 where it was stated that enquiry does not commence until oral evidence is led, is not correct.

10. Now that we have indicated the law, the revision application may be placed before a learned single Judge for disposal on merit.

K.B. Panda, J.

11. I agree.

P.K. Mohanti, J.

12. I agree

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