

**Abdul Naim Vs. State of Orissa**

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**Court :** Orissa

**Decided On :** Jul-05-1999

**Reported in :** 88(1999)CLT452; 1999(II)OLR123

**Judge :** P.K. Misra, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 106 to 115

**Appeal No. :** Criminal Miscellaneous Case No. 3951 of 1998

**Appellant :** Abdul Naim

**Respondent :** State of Orissa

**Advocate for Def. :** Addl. Standing Counsel

**Advocate for Pet/Ap. :** J. Pal, C. Mohanty and R.K. Pradhan

**Judgement :**

**P.K. Misra, J.**

1. This is an application Under Section 482, Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C') to release the delinquent who is being proceeded against in a proceeding Under Section 110, Cr.P.C, now pending in the Court of the Executive Magistrate, Cuttack, in Criminal Misc. Case No. 709/98.

2. In the present order I shall only deal with the action of the police and the Magistrate in arresting the petitioner and keeping him under detention until such petitioner was released on bail under orders of this Court.

3. It appears that the proceeding Under Section 110, Cr.P.C. was initiated on the basis of Non-F.I.R. No. 76/98 submitted by the Officer-in-Charge of Cantonment Police Station. It appears that the petitioner was arrested by the I.I.C., Cantonment P.S. and produced along with the Non-FIR No. 76/98 on 17.8.1998 before the Executive Magistrate, Cuttack, who passed the following order :

'17.8.1998. Delinquent Sk. Janu alias Abdul Nairn, S/o. Abdul Alim of Pension Lane, P.S.Cantonment, Dist- Cuttack produced from police custody being arrested by I.I.C., Cantonment P.S. Non- F.I.R. No. 76/98 Under Section 110, Cr.P.C. He complains no ill-treatment by the Police. The substance of the P.R. are read over and explained to the delinquent and he is called upon to show cause why he should not execute a bond of Rs. 15,000/- with two local satisfactory sureties for the like amount to be of good behaviour for a period of six months. But the allegation is derived. Delinquent neither prays to release him good behaviour no interim bond. Hence he is remanded to jail custody till 1.9.1998.

Later - Advocate J. Pal and others appear for the delinquent. Put up on date fixed.'

4. The question arises whether the police had the power to arrest the petitioner while initiating the proceeding Under Section 110, Cr.P.C. and further as to whether the Executive Magistrate had the power to detain the petitioner in jail custody. For the aforesaid purpose, it is necessary to notice the relevant provisions of the Cr.P.C.

5. Chapter VIII of the Code of Criminal Procedure contains several provisions relating to security for keeping the peace and for good behaviour. Section 106 relates to security for keeping the peace on conviction. Section 107 relates to security for keeping the peace in other cases, namely, where the Magistrate receives information that any person is likely to commit breach of the peace, or disturb the public tranquillity, or do any wrongful act which may occasion a breach of the peace and disturb the public tranquillity. Section 108 relates to security for

good behaviour from persons disseminating seditious matters and section 109 relates to security for good behaviour from suspected persons. Admittedly, Sections 106 to 109 are not applicable. As a matter of fact, the police and the Magistrate have purported to proceed Under Section 110. As per the provision of Section 110, Cr.P.C, if the Executive Magistrate receives information that there is a person within his jurisdiction who comes within the purview of the various clauses, namely Clauses (a) to (g) indicated in Section 110, 'the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.' In other words, before taking any action Under Section 110, the Magistrate is required to issue notice to the delinquent to show cause. Section 111 which is applicable to provisions Under Sections 107, 108, 109 and 110, Cr.P.C. lays down that the Magistrate acting under any of the above sections, shall make an order in writing setting-forth 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 and class of sureties, if any, required. Section 112 lays down the procedure in respect of the person present in Court and Section 113 provides that summons or warrant may be issued to the person not present in Court. If a person is not present in Court, the Magistrate is to issue summons requiring him to appear and if such person is already in custody, the Magistrate is required to issue a production warrant directing the officer to bring the delinquent to the Court. The proviso to Section 113 indicates that whenever the Magistrate has reason to fear the commission of a breach of the peace and it appears to the Magistrate that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue warrant for arrest of the delinquent.

6. In the present case, admittedly no such warrant had been issued by the Magistrate and the police had on its own arrested the petitioner and produced the petitioner along with the report on the basis of which the proceeding was initiated. While issuing summons or warrant Under Section 113, the order made Under Section 111 has to be sent. Section 115 contemplates that the Magistrate has the power to dispense with the personal attendance of a person called upon to show cause. Section 115 contemplates an enquiry as to the truth of the information and

Sub-section (3) of Section 116 contemplates that after commencement and before the completion of the enquiry under Sub-section (1), the Magistrate may for reasons to be recorded in writing, direct for execution of a bond which is otherwise commonly termed as 'interim bond'.

7. In the above back-ground of the provisions, it is apparent that the action of the police in arresting the petitioner was wholly unjustified and without jurisdiction. Similarly, the action of the Magistrate in calling upon the petitioner to execute a bond even though the enquiry had not commenced and keeping the petitioner in custody for non-execution of the bond was also equally without jurisdiction. The learned counsel appearing for the State has not been able to justify the arrest of the petitioner and the subsequent action of the Magistrate. It is apparent that the Magistrate has proceeded to take stringent action against the petitioner even without bothering to examine the limits of his jurisdiction under Chapter-VIII. For the aforesaid reasons, the direction of the Magistrate remanding the petitioner to jail custody is found to be illegal and without jurisdiction. However, since in the meantime, the petitioner has been asked to show cause, it is directed that the proceeding, if not already completed, should be completed within a reasonable period. Since the arrest of the petitioner was without jurisdiction, the bail furnished by the petitioner stands discharged. It is, however, made clear that if the proceeding is still continuing, the petitioner should attend the same on each date unless otherwise directed by the Magistrate.

8. Subject to the aforesaid observations and directions, the Criminal Misc. Case is disposed of.