

D.M. Bhandari and ors. Vs. State

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Court : Orissa

Decided On : Sep-23-1994

Reported in : 1995CriLJ3201; 1994(II)OLR545

Judge : A. Pasayat, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 106 and 107

Appeal No. : Criminal Misc. Case No. 167 of 1994

Appellant : D.M. Bhandari and ors.

Respondent : State

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : G. Rath, ;B.R. Sarangi, ;K.K. Jena and ;P. Acharya

Judgement :

A. Pasayat, J.

1. In this application under Sec. 482 of the Code of Criminal Procedure, 1973 (in short, the 'Code') petitioners call in question legality of order dated 18-1-1991 passed by the Executive Magistrate. Jharsuguda in C. M. C. No. 11 of 1994, requiring them to show cause as to why each one of them shall not be directed to execute bond of Rs. 5000/- with one surety for keeping peace in the locality for a

period of one year. The order was passed in purported exercise of power Under Section 107 of the Code. According to petitioners, the order is outcome of non-application of mind and has been erroneously passed. Learned counsel for State on the other hand, supported the order stating that the application is premature as it was open to petitioners to file show cause reply and indicate their state instead of rushing to this Court.

2. Before dealing with various contentions of parties it is necessary to take a bird's eye view of the facts situation as described by petitioners. An industrial dispute was raised for equal pay for equal work by the employees of contractors of Orient Paper Mill. Management resisted it. A meeting was held in the office of the District Magistrate and Collector, Jharsuguda wherein parties accepted suggestion of the Assistant Labour Commissioner, and normalcy was restored on 5-1-1994. Petitioners are functionaries of the Mill. On 12-1-1994 the vehicle which was carrying the Assistant Personnel Manager (petitioner No. 2) to the Mill was obstructed by workers of the contractor and they gave out threats to assault and hurled abuses. As a result petitioner No. 1 had to return back. Superintendent of Police, Sub-Collector and S. D. P. O. were informed over telephone about the situation. At about 2 p. m. on 12-1-1994 the Assistant Personnel Manager and Officer on Special Duty called on the Superintendent of Police, Sub-Collector and the S. D. P. O and apprised them of the situation and sought for police protection. The situation was aggravated by some acts of violence by the workers, and took a violent turn on 13-1-1994. On that day about 300 to 400 workers gathered near the gate and chased all the vehicles bringing officials to the mills. Two sections of armed forces were deployed at the gate and police advised that the Assistant Personnel Manager (petitioner No. 2) should not come to the mills, till they give clearance. However, on clearance being given, he came to the mills at 11 a. m. Prior to that, at 9 a. m. some office bearers of Workers' Union approached petitioner No. 1 to give assurance for engagement for all contract labourers. However, before any decision was taken by petitioner No. 1, some of the contract labourers instigated some regular workmen to stop entire feeding operation and there was an illegal and wild-cat strike. This position has also been apprised to the Superintendent of Police, and Sub-Collector over telephone. Since situation became tense and strike had been resorted to Management declared lock-out in

terms of Section 24 of the Industrial Disputes Act, 1947 (in short, the ID Act') at about 8 a. m. It only allowed such workers who were engaged in essential services inside the mills. At about 8-30 a. m. Sub-Collector, S. D. P. O. and Superintendent of Police sent for petitioners to the, Police Station, where necessity for declaring lock-out was explained. The venue of discussion was shifted to the Inspection Bungalow at Brjarainagar where in presence of the Revenue Divisional Commissioner, D. I. G. of Police, Superintendent of Police, Sub-Collector, S. D. P. O., representatives of union and workmen were requested to call off the strike, and restore normalcy. After discussion, minutes of discussion was drawn up and copy of the same is annexed as Annexure-1 to the application under consideration. The dispute was resolved on the basis of discussions held on 14-1-1994 in presence of District Magistrate and Collector, Superintendent of Police, Sub-Collector and S. D. P. O. and Executive Magistrate at Brajarajnagar. In the light of discussions, workers called off the strike and Management lifted lock-out on 14-1-1994. A tripartite written agreement was reached between the parties for restoring normalcy, Honouring the agreement workmen called off the strike, and Management withdrew order of lock-out. The learned Executive Magistrate who issued notice was also present when the discussion took place. Thereafter, on 15-1-1994 the Assistant Labour Commissioner, Sarnbalpur directed the petitioners and representatives of Union to furnish information as indicated in its letter annexed as Annexure-2 to this petition and subsequently, on 19-1 1994 the Assistant Labour Commissioner allowed seven days' time to furnish information regarding engagement of contract labourers and produce records. Strangely the Executive Magistrate passed the impugned order on 18-1 1994, though he was fully conversant with the fact that normalcy had been restored. Learned counsel for State could not place any material to rebut correctness of statements made in the application about facts situation However, his plea was that the Executive Magistrate was apprehensive of breach of peace, and in order to avoid it, prohibitive action has been initiated. In any event, the points raised before this Court could have been pressed into service in a show cause reply before the Executive Magistrate.

3. When a person is required to show cause, he should normally furnish his reply, so that the Magistrate issuing notice can consider desirability of continuing

proceeding further. There is a marked distinction between issuing process to the delinquents asking them to execute interim bond during pendency of the proceeding Under Section 107 and a notice requiring them to show cause why they would not be asked to execute interim bond. In the latter case no right of the party is decided. The delinquent can indicate reasons in his reply as to why the proceeding should be dropped, Before initiating action Under Section 107 the concerned Magistrate should be satisfied that such action is necessary to be taken to prevent persons from committing breach of peace and should record reasons for his satisfaction. Proceedings can be taken under this section against a person if he is likely (a) to commit a breach of the peace or disturb the public tranquillity ; or(b) to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. If the breach of the peace has already occurred, then the offending person should be tried and dealt with in accordance with law. A Magistrate has power to drop proceedings initiated under this section at any stage, even after a formal order Under Section 111 has been drawn up and before an inquiry Under Section 116, if there be fresh materials, as soon as he is satisfied that there is no danger of a breach of peace. Although there is no provision in Sections 107, 111 and 110 specifically empowering a Magistrate to drop proceedings once started, such power can be legitimately inferred. Continuance of the proceedings after Magistrate is satisfied that there is no danger of breach of peace would not be in the interest of justice. Provisions of Sections 106 and 107 are in aid of orderly society and seek to nip in the bud conduct subversive of peace and public tranquillity,

4. Section 107 is aimed at persons who cause a reasonable apprehension of conduct likely to lead to a breach of peace or disturbance of public tranquillity. Both Sections 106 and 107 are counterparts of the same policy ; the first applies when by reason of the conviction of the person his past conduct leads to an apprehension for the future, and the second applies when the Magistrate on information is of opinion that unless prevented from so acting, a person is likely to act to the detriment of public peace and tranquillity. Pending completion of enquiry Under Section 107, a person proceeded against may be required to execute an interim bond Under Section 116(3) in case of emergency. The section is preventive and not punitive. Provisions of Chapter VIM of the Code deal with

security for keeping the peace and for good behaviour. The gist. of. the Chapter is prevention of crimes and disturbances of public tranquillity and breaches of peace. There is no need to prove overt acts although ii overt acts have taken place they will have to be considered. The action being preventive is not based on overt act, but on the potential danger to be averred. The provisions are essentially conceived in the interest of public order. in the sense defined by the apex Court in (Madhu Limaye v. Sub-Divisional Magistrate, Monghyr and Anr. AIR 1971 SC 2486).

5. It is interesting to note that crucial words used in Section 107 are 'is likely' and not 'were likely'. The crucial test is whether the person 'is likely' to commit a breach of peace in near future. Wide powers have been conferred on the Executive Magistrate by the section and as it concerns liberty of the subject who has not been found guilty of an offence, it is essential that the power should be exercised strictly in accordance with law. Information as to past acts is not sufficient. Something more is necessary i. e. contemplation of an act involving a breach of peace in near future. Past acts may however in certain cases provide a basis for a conclusion regarding probable breach of peace in future. What is required is that information must relate to facts which show that a breach of peace is imminent. Unless a breach of peace is imminent, it cannot be presumed from the fact that the person has done a wrongful act in the past, and therefore he is likely to do the same again. There must be something more than a bare possibility; there must be a reasonable likelihood of breach of peace.

6. A proceeding Under Section 107 must be disposed of at the earliest possible. As indicated (supra), the proceeding affects liberty of the subject who has not been found guilty and therefore it is of paramount importance that the proceeding should not be Kept pending indefinitely. The purpose of the proceeding would not be served if it is kept pending unnecessarily.

7. Further proceedings in the case had been stayed by order dated 27-1-1934. Additionally, facts situation described by petitioners has not bean disputed. Testing it on the touchstone of legal principles highlighted above, further continuance of the proceedings is unnecessary.

Criminal Misc. Case is disposed of accordingly.

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