

Nikka Ram Vs. State

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Court : Punjab and Haryana

Decided On : Jul-13-1953

Reported in : AIR1954P& H6

Judge : Soni, J.

Acts : Code of Criminal Procedure (CrPC) , Sections - 110, 112 and 114

Appeal No. : Criminal Revision No. 107 of 1953

Appellant : Nikka Ram

Respondent : State

Advocate for Def. : Har Parshad, Asst. Advocate-General

Advocate for Pet/Ap. : A.R. Kapur and; V.K. Ranade, Advs.

Judgement :

ORDER

Soni, J.

1. On 14-10-1952, the Station House Officer of Kotwali Amritsar put in an application before the Prosecuting Sub-Inspector which was in the following terms:

'State versus Nikka Ram alias Nikka under Section 110(F), Cr. P. C. Police Station 'E' Division Amritsar.

Sir,

Nikka Ram alias Nikka son of Naudha Ram, Girth, resident of Gali Rorianwali, Bazar Harcharan Dass, Amritsar, a B. C. on No. 10 of P. S. 'E' Division, is so desperate and dangerous as to render his being at large without security hazardous to the community and the public at large. The local police has got evidence enough to run the B. C. under Section 110 (F), Cr. P. C. It is hereby request (sic) that warrants of arrest under Section 110(F), Cr. P. C. may very kindly be issued against this Nikka Ram alias Nikka B. C. and oblige.'

2. On this the Prosecuting Sub-Inspector wrote on the same day 'Forwarded', and it came up before the present Magistrate on which he recorded an order--

'As requested by the police let a warrant for the arrest of Nikka Ram alias Nikka bailable in the sum of Rs. 5,000/-, returnable on 24-10-1952, be issued.'

This order is dated the same day, 14-10-1952. There is an order of the 24th of October which does not state whether the accused was or was not present but states that the challan has not been received and that it should be called for by 27-10-1952. On the 27th of October his proceedings are recorded as follows :

'Nikka Ram accused is present on bail. Counsel has objected that he has not been able to look into the file as the challan was not presented in time. Let the witnesses for the prosecution be called for 7-11-1952. Let the respondent be given a notice for that date.'

On the same day a revision application was drafted which was presented to the Sessions Judge on the 29th of October, in which amongst other things it was objected that the Magistrate had not complied with the provisions of Section 112, Cr. P. C. and had issued a warrant against the petitioner illegally. The Sessions Judge accepted the objection and has recommended that the proceedings against the petitioner be quashed. On the receipt of the recommendation of the Sessions Judge which is dated 31-1-1953, a rule was issued by this Court on 26-2-1953. This has come up for hearing to-day.

3. Both learned counsel for the petitioner have argued that in this case there has been a complete failure on the part of the Magistrate to comply with the provisions of Section 112, Cr. P. C. They object that there was no information before the Magistrate, that it was the Magistrate's duty to get information against the accused, that it was further his duty after having got that information that he should have made an order in writing in which he should have set forth the substance of the information which he had received and that the Magistrate should have also told the accused the amount of the bond which he had to execute and the term for which it was to be in force and the number, character and class of sureties, if any, required. Learned counsel says the Magistrate did not apply his mind at all to the facts of this case and he merely automatically passed an order which was practically to the effect that the order be as prayed. The objection is that in the application which the Station House Officer made he has given no information to the Magistrate as to what the accused is supposed to have done and has merely reproduced the words of a clause in Section 110, Cr. P. C.

Mere giving a bad name to a person and reproducing of a clause of a section of a statute against him is giving no information to the Magistrate. It is no doubt the duty of the Magistrate, they say, to protect the interests of the community but it is also his duty to see that nobody is unnecessarily harassed unless there is some information against him, and that the Magistrate did not take the trouble of getting the information which the law makes it incumbent on him to get before he starts the process of law against a citizen. Magistrates are expected to take intelligent interest in the matters before them and not to become handmaidens of the police. In this particular case the Station House Officer did not tell the Magistrate what exactly the accused had done and the Magistrate also took no trouble of getting the information from the Police Officer. He made no order that the accused should appear before him and answer the charge. The charge would have been the information which the Magistrate had received against the accused. The accused has a right to know what the Magistrate is going to try, why he is being summoned before him and what he had done to the prejudice of the interests of the community, so that he may be able to answer the accusations against him. It is urged that if the Magistrate had got information from the Police Officer it may be possible in an individual case for the Magistrate to find the information to be vague

or to be baseless and the Magistrate may have dismissed the application without calling upon the accused. It is the Magistrate's function to scrutinize the information which is given to him and if the Magistrate does not take the trouble of getting the information from the police how can he scrutinize the information, & how can he find that the information given to him is frivolous or not, or credible or false. In my opinion therefore the preliminary steps which the Magistrate should have taken have not been taken in this case. I am not saying that there is no substance in what the police have against the accused, but all the material must be put before a Magistrate, in order that the Magistrate may apply his mind to it and having applied his mind may then proceed according to law and then give an opportunity to the accused to meet the charge against him. The object of the law of procedure is that there should be a charge which may be met and it is the business of the police to supply the information, the duty of the Magistrate to receive it and pass it on to the accused person in order that he may be able to meet it. As this has not been done in this case the proceedings before the Magistrate upto now i.e. the proceedings of summoning the accused were improper. Not only the Magistrate did not issue summons which ordinarily he must do unless the case is covered by the proviso to Section 114, but it does not appear from the record before me that the Magistrate had any papers of the case before him or ever thought that the proviso was applicable. If the proviso was not applicable it was improper on his part to have issued a warrant.

4. In my opinion therefore the Magistrate has not complied with any one of the provisions of Section 112, Cr. P. C. His proceedings therefore culminating in the issue of a warrant against the accused were wholly unjustified and these proceedings must be quashed.

5. I do not desire to fetter the police or the Magistrates, but a Magistrate may, if he proceeds in the proper manner get the information and finding it good and credible, proceed again under Section 112, Cr. P. C. Order accordingly.