

Musharraaf Ahmed Vs. State

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Court : Delhi

Decided On : May-24-1968

Reported in : AIR1969Delhi12; 1969CriLJ43

Judge : I.D. Dua, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 107, 108, 109, 110, 112, 117(1) and 117(3)

Appeal No. : Criminal Revn. No. 197 of 1968

Appellant : Musharraaf Ahmed

Respondent : State

Advocate for Def. : V.D. Misra and ; Dinesh Chand Mathur for S.K. Malik, Advs.

Advocate for Pet/Ap. : A.C. Gambhir and; A.D. Mehndroo, Advs

Judgement :

1. Shri B. L. Nagpal, Additional Sessions Judge, Delhi, has forwarded this cast with a recommendation that the order of Shri N. C. Jain, Sub Divisional Magistrate, Delhi, dated 5-12-1967 be modified to the extent that the part of the order relating to action under Section 117(3) Cr. P. C. against Maulvi Musharraaf Ahmed petitioner be set aside.

2. It appears that the station House Officer, Police Station Lahori Gate, Delhi, made a report for action under Section 107, Cr. P. C., against the petitioner and on that report, on 5-12-1967, the learned Sub-Divisional Magistrate passed an order as contemplated by Section 112, Cr. P. C. directing the petitioner to show cause why he should not be asked to furnish a bond in the sum of Rs. 5,000, with one surety in the like amount to keep the peace for a period of one year. In the same report, the police had also asked for action against the petitioner under Section 117(3) Cr. P. C., and on that report, the learned Magistrate making the enquiry, also directed the petitioner to furnish a bond under Section 117(3) for Rs. 5,000 with one surety in the like amount. As the recommendation of the learned Additional Sessions Judge shows, the recitals in the police report disclosed the existence of a dispute between the petitioner and one Moha. Ahmed relating to the office of religious head in the Masjid Fetehpuri, Delhi, The matter in dispute is suggested to be pending adjudication in a Civil Court. On the complaint of Mohd. Ahmed, the Station House Officer, Police Station, Lahori Gate, visited the Masjid Fatehpuri, Delhi and finding an apprehension of breach of peace, made the report mentioned above. The challenge to action under Section 107, Cr. P. C., was considered by the learned Additional Sessions Judge to be without substance, but in regard to the order under Section 117(3) Cr. P. C., the impugned order was held to be unsupportable. According to the recommendation, the learned Magistrate made the order under Section 117(3) Cr. P. C., only because a request to that effect had been made by the police without himself properly considering the question of existence of emergency justifying immediate drastic action under Section 117 Cr. P. C.

3. I have myself gone through the whole record and I am constrained to observe that the matter has been dealt with by the learned Magistrate in a most unsatisfactory manner and it certainly does not reflect the requisite judicial approach on his part; nor does it show that he has devoted to the case the anxious thought it demanded. Section 117(3) Cr. P. C. provides as follows:

'Pending 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 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 behavior 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-

(a) no person against whom proceedings are not being taken under Section 108, Section 109, or Section 110, shall be directed to execute a bond for maintaining good behavior, and

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under Section 112'.

It is obvious that to justify an order under this Sub-section, the learned Magistrate must first himself consider that immediate measures are necessary for the prevention of a breach of the peace or the disturbance of the public tranquillity or the commission of any offence or for the public safety and then after recording his reasons in writing, direct the person concerned to execute a bond for keeping the peace etc., until the conclusion of the enquiry. The Legislature has quite clearly disclosed its anxiety not to leave the citizens in this respect at the mercy of the executive authorities who may arbitrarily and in a light-hearted manner direct execution of bonds. The law-giver has entrusted the power of making orders under this, Sub-section to a Magistrate and has also enjoined on him to record his reasons in writing before directing the person concerned to execute the bond there under. This postulates application of his judicial mind by the Magistrate, whose order is subject to judicial scrutiny by superior Courts of revision and superintendence. He cannot completely mortgage his decision, or abdicate his power or surrender his own responsibility in favor of the police, though it would be well within his competence, in a given case, to take into account the police report for what it is worth in forming his own conclusion on the material legally available to him. He would indeed be failing in his solemn duty if he were to mechanically

adopt the police report without evaluating for himself its worth and usefulness and without forming his own independent judgment on the material before him. In such cases also, justice must not only be done but it must indisputably be seen to be done and the order of the Magistrate must clearly reflect the application of the Magistrate's own judicial mind to the facts and circumstances properly before him.

4. From the record of the case, I find that on 4-12-1967, an order was recorded in Urdu (presumably by the Reader) which in clear terms suggests that a settlement was stated by Shri Mohammad Mian son of Maulvi Musharraf Ahmeed to have been arrived at between the parties and the proceedings were adjourned to 5-12-1967, on which date the impugned order was made in Hindi. On 4-12-1967, it is worth noting Maulvi Musharraf Ahmed was not present, but instead his son Shri Mohammed Mian appeared. But curiously enough, I find on the record a cyclostyled notice under Sections 107 and 112, Cr. P. C. dated 4-12-1967 in English signed by Shri D. V. Kapoor, Sub-Divisional Magistrate, requiring Maulvi Musharraf Ahmed to show cause why he should not be ordered to execute a bond in the sum of Rs. 5,000 for keeping the peace for one year. At the bottom of this notice, I find the following footnote :--

'Notice read over and fully explained to the accused'.

This is also signed by Shri D. V. Kapoor. The learned Magistrate did not even care to read the Urdu proceedings in which it was unequivocally suggested by Shri Mohammad Mian and by other respectable people, who had also appeared that the controversy had been mutually settled and there was no reasonable apprehension of any breach of peace. Mohammad Mian of course undertook on behalf of his father that he would appear in Court on the following day. The order in Hindi under Section 117 dated 5-12-1967 was passed exclusively on the report of the Deputy Superintendent of Police and the learned Magistrate does not seem even to have cared to consider the previous day's proceedings in which Mohammad Mian and other respectable persons appearing had assured that the matter had been mutually settled. What has really come to me as a surprise is the fact that in the order dated 5-12-1967, the period for which the bond for keeping the peace was directed to be taken, was fixed as one year, which it is not denied

by the State counsel, is contrary to the terms of Section 117(3). The cyclostyled order in English dated 5-12-1907, however, does mention that the bond in the sum of Rs. 5,000 was to be executed for keeping the peace until the conclusion of the proceedings under Section 107, Cr. P. C. This state of the record leads me to the irresistible conclusion that whosoever had recorded the order in Hindi was not aware of the terms of Section 117, Cr. P. C. and the learned Magistrate, whose signatures in English this order bears, had not at all taken care to apply his own mind to the proceedings before him. He seems to have signed this order mechanically as if it was a routine order. The conflict between the order in Hindi and the cyclostyled order in English also furnishes a sad commentary on the working of the Court below and this Court cannot too strongly disapprove of the manner in which proceedings in this case have been conducted. However summary the proceedings under Chapter VIII, Cr. P. C. may be considered, they are judicial proceedings and have to be conducted in accordance with the Code and the Magistrates holding these proceedings must see that the fundamental elements of the judicial process find expression in the machinery for administering justice. Cases like the present only tend to breed and promote distrust of our criminal judicial process, which must, in the final result, adversely affect the law and order position in Delhi and the sooner the quality and standard of our criminal administration of justice is improved, the better. The capital of our Republic is expected to provide ideal administration of justice. This Court has repeatedly drawn the attention of the authorities concerned to the highly unsatisfactory state of criminal administration of justice in the capital, but unfortunately its urgency and importance does not seem to have been fully realised so far, with the result that cases keep coming to the notice of this Court disclosing a progressive deterioration in this branch of our judicial process. This Court would be failing in its duty if it did not point out that laxity and indifference on the part of the Presiding Officers of the Courts in criminal matters may also tend to encourage and foster corruption on the part of their ministerial staff which is likely to shake the people's confidence in the impartial dignity, effectiveness and majesty of the administration of criminal justice resulting in adverse impact on the law and order situation and on our democratic way of life.

5. In so far as this case is concerned, I am constrained to accept the recommendation of the learned Additional Sessions Judge and set aside and quash the impugned order as recommended.

RSK/D.V.C.

6. Order accordingly.

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