

Panna Lal Vs. State

Panna Lal Vs. State

SooperKanoon Citation : sooperkanoon.com/683290

Court : Delhi

Decided On : Sep-29-1978

Reported in : 15(1979)DLT248

Judge : R.N. Aggarwal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 110

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 401 of 1978

Appellant : Panna Lal

Respondent : State

Advocate for Pet/Ap. : S.K. Agarwal, Adv

Judgement :

R.N. Aggrarwal, J.

(1) On 24th May, 1978 Sub-Inspector Shyam Lal made a report to the Sub-Divisional Magistrate, Kotwali, Delhi that he was on patrol duty at Nicolson Road and he saw Panna Lal @ Panna running away on seeing the police party, that he chased Panna Lal and succeeded in apprehending him. it was further reported that a dagger was seized from the hand of Panna Lal and a separate case under the Arms Act has been registered against him. It was further alleged in the report that Panna Lal has been challenged in a number of robbery, stabbing and hurt

cases and he is a man of desperate character and his being at large without security is hazardous to the community.

(2) On a perusal of the report submitted by the police the sub-Divisional Magistrate satisfied that there are sufficient grounds to proceed against Panna Lal and, accordingly, issued a notice to Panna Lal to show cause as to why he be not bound down under section 110 to maintain peace for a period of one year. The Sub-Divisional Magistrate further passed an order under sub-section (3) of Section 116 requiring Panna Lal to execute a bond in the sum of Rs.4000.00 with two sureties in the like amount undertaking to maintain peace and be of good behavior until the conclusion of the inquiry.

(3) Panna Lal furnished the requisite bonds on 8th June 1978. The inquiry in the above case is still pending.

(4) On 11th July, 1978 the police made another report to the Sub-Divisional Magistrate that on 11th July, 1978 the accused was found at Kucha Motarkhan near Akhada and he on seeing the police party tried to slip away and that Panna Lal was chased and apprehended and that on search of his person one kirpan was recovered. It was further alleged that a day earlier the mother of Panna Lal had lodged a report that Panna Lal was giving threats to her and he has also kept a knife with him.

(5) Shri V.B. Gupta, Metropolitan Magistrate, on a perusal of the Kalendra felt satisfied that there are sufficient grounds to proceed against Panna Lal and accordingly gave a notice to Panna Lal under Section 111 of the Code of Criminal Procedure requiring him to show cause as to why he be not bound down in the sum of Rs. 2000.00 with one surety in the like amount undertaking to keep good behavior for a period of one year. The Magistrate further passed an order under Section 88 read with section 273 Explanationn requiring the respondent (Panna Lal) to furnish a personal bond in the sum of Rs. 2000.00 with one surety in the like amount undertaking to appear in the court on every date of hearing and on his failure to furnish the required bond be be detained in judicial custody until he executes the required bond. It appears that Panna Lal did not furnish the requisites bond and he is at present in Jail.

(6) An objection was taken by Panna Lal before the learned Magistrate that he cannot be proceeded within two separate cases under section 110 of the Code of Criminal Procedure at the same time and, therefore) the proceedings taken on the later complaint should be quashed. On 11th August 1978, the Magistrate rejected the above contention of the respondent. Against that order the respondent (Panna Lal) has filed this petition through jail.

(7) Sections 106 to 124 find place in Chapter VIII and they pertain to security for keeping the peace and for good behavior. Sections 106 to 110 contemplate different classes of cases. Section 111 provides that in case a Magistrate acting under sections 107, 108, 109 and 110 deems it necessary to require any person to show cause under such section he shall make an order, in writing, setting forth the substance of 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 provides that if the person in respect of whom an order is made under Section 111 is present in court, it shall be read over to him and the substance thereof explained to him. Section 113 provides that if the person against whom an order is made under section 111 is not present, then Magistrate shall issue summons requiring him to appear and if such person is in custody a warrant directing the officer in whose custody he is to produce him before the court. The next important section with which we are concerned is section 116(1) provides that where an order under section 111 has been read or explained under section 112 or under section 113 to the person concerned 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 be necessary. Sub-Section (3) of Section 116 provides that if after the commencement and before the completion of the inquiry under Sub-Section (1) the Magistrate 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, he 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 behavior until the conclusion of the inquiry, and may detain him in custody until such bond is executed. The rest of the provisions are not relevant for the

decision of this case.

(8) The object of section 110 is preventive and not punitive and action under it is not intended as a punishment for past offences. It is aimed at protecting society from dangerous characters against the preparation of crimes by placing them under security. When the order dated 12th July, 1978 was made by the Magistrate, proceedings under section 110(g) were already pending against the petitioner. The petitioner had furnished a personal bond with two sureties undertaking to keep good behavior until the conclusion of the inquiry. Assuming for the sake of argument that the allegations made by the police in the report dated 11th July, 1978 are correct, the Magistrate could have forfeited the earlier bond and proceeded against the petitioner and the sureties. I am of the view that the two proceedings under the same clauses of section 110 cannot proceed against a person at the same time.

(9) I find another infirmity in the order of the Magistrate dated 12th July, 1978. The Magistrate passed an order under section 88 read with section 273 Explanation requiring the petitioner to furnish personal bond in the sum of Rs. 2000.00 with one surety in the like amount undertaking to appear in the court on every date of the hearing and if he did not furnish the bond he was to be detained in judicial custody until the required bond is executed by him. Section 88 is not applicable for the simple reason that the petitioner was not a free person when he was produced before the Magistrate on 12th July, 1978. He was produced in custody. The Supreme Court in *Madhu Limaya and another v. Ved Murti and others* A.I.R. 1971 SC 2481 held as under :

'WHERE the person is already under arrest and in custody, his appearance is dependent not on his own volition but on the volition of the person who has his custody. Section 91 is, therefore, inappropriate in such a case.'

(10) The order is also bad for reason that it was made after the order, under section 111 was drawn up. See : *Madhu Limaye v. Sub-Divisional Magistrate, Monghyr*, : 1971 CriLJ1720 .

(11) For the reasons stated I would allow the petition and quash the orders dated 12th July, 1978 and 11th August, 1978. The effect of the order would be that the petitioner has to be released forthwith. The petitioner be informed of the judgment in jail. A copy of the order be also sent to the court concerned immediately.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com