

Ram Kishan Das Vs. State

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Court : Delhi

Decided On : May-28-1976

Reported in : 1976RLR562

Judge : V.D. Misra, J.

Acts : Code of Criminal Procedure (CrPC) , 1975 - Sections 116

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 211 of 1976

Appellant : Ram Kishan Das

Respondent : State

Judgement :

V.D. Misra, J.

(1) By this jail petition Ram Kishan Dass, who is under detention because of his failure to furnish the bond for a sum of Rs. 5,000.00 with two sureties of the same amount under section 116(3) of the Code of Criminal Procedure, challenges his detention and the proceedings initiated against him.

(2) I am deciding the petition on a question of law and would refer only to those facts which are necessary to decide the question.

(3) The record shows that by an order of November 6 1975 Mr. R.S. Sethi, Sub Divisional Magistrate (Shahdra) ordered the arrest of the petitioner under section 111 of the code and his production before him. The relevant part of the order reads : 'Where information has been laid before me that there is reason to that Shri Ram Kishan Dass son of Kedar Nath R/o 314, Shakula Gali, Shahdara, (?) to commit a breach of the peace and that such breach of the peace cannot be prevented than by immediate arrest of Shri Ram Kishan Dass.' A copy of the order passed by the Magistrate under section 111 of the Code was directed to be served on the petitioner. The petitioner was arrested on November 19, 1975, and was produced before the Magistrate on November 20, 1975. The Magistrate passed the following order : 'Resp. produced before me today. Case to come up on 5-12-75.' Order of 5-12-1975 reads : Respondent is present in custody. Case to come up on 19-12-1975.' There are two orders dated December 19. 1975 at two different places on the record. One order reads thus : 'Respondent is not produced from Central Jail. Issue robkar for app. for 2-1-76.' However, the order of the same day on another paper reads : 'Respondent is present in custody. Case to come up on 2-1-76' Thereafter 11 dates of hearing were fixed till May 15, 1976 and on every hearing the case was adjourned for calling for the prosecution evidence. The last order adjourned the case to May 22, 1976 for the same purpose.

(4) A perusal of the record of learned Sub- Divisional Magistrate discloses a shocking state of affair. The order required to be served on the petitioner at the time of his arrest is in a cyclostyled form. The relevant portion reads thus :

'I, therefore, order that Notice U/S 111 Cr. P.C. be given to the respondent to show cause why he should not be ordered to be bound down in the sum of Rs. 5,000.00 with (.....)two sureties in the like amount for (.....) good behavior for a period of one year. In default of submitting the required bailbond and sureties. will remain in judicial custody. Notice has been read over and explained to the respondent who denied the allegations mentioned in the kalendra.'

(5) Admittedly the petitioner was not before the Magistrate and the question of notice having been read over and explained to him and his denying the allegations, did not arise, Moreover, I find that the Magistrate did not pass the

requisite order under section 111, Criminal Procedure Code, on November 6, 1975. The notice on record is dated November 20, 1975. It is in a cyclostyled form. The relevant portion reads thus :

'I, Sub Divisional Magistrate, Shahdara, Delhi, do hereby require you to show cause why you should not be ordered to execute a bail bond in the sum of Rs. 5,000.00 with one surety/two sureties each in the like amount for keeping good behavior for a period of one year.'

(6) Section 111 of the Code enjoins upon the Magistrate acting under sections 107, 108, 109 or 110 of the Code, 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.' Before I proceed further I must refer back to the notice under section 111, Criminal Procedure Code, dated November 20, 1975 relevant portion of which has been reproduced above. It will be noticed that the learned Magistrate has not even cared to specify the amount. This situation has arisen because the form of notice is cyclostyled. It has some blanks which have been evidently filled in by a person other than the Magistrate. The person filling in the blanks wrote '1000' in the blank space provided after the words 'Rs'. and the learned Magistrate, who was acting as a mere rubber stamp, had no occasion to apply his mind and specify the amount. He had also no occasion to decide whether one surety or two sureties were required from the petitioner. Moreover, the substance of the information has not been given in the notice which merely reproduces the provisions of law. As far back as 1971 the Supreme Court in *Madhu Limay v. S.D.M. Monghyr*, : 1971 CriLJ1720 , had ruled that the mechanical reproductions of the provisions of law do not amount to setting forth the substance of the information received and the petitioner is entitled to know the material portions of the information. It was also held that only a valid notice under section 111 lays the foundation of jurisdiction of the Magistrate to proceed in the matter. The notice evidently is not worth the paper on which it is written.

(7) The scheme of the Code is that it is only when a proper notice under section 111 has been given that the Magistrate gets the jurisdiction to proceed. If the

person in respect of whom an order under section 111 is made is present in Court the order is required to be read over to him or, if he so desires, the substance of the order explained to him under section 112. Section 113 of the Code provides for a case where such person is not present in court. In that event the Magistrate is required to issue a summons requiring presence of that person. The proviso to this section lays down 'that whenever it appears to such Magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and 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 a warrant for his arrest.' There is nothing on record to show that the Magistrate had recorded the substance of the information received by him. Section 114 requires that every summons or warrant issued by a Magistrate under section 113 shall be accompanied by a copy of the order made under section 111, and it shall be delivered by the officer serving or executing such summons or warrants to the person served with or arrested under the same. As already pointed out, the Magistrate failed to pass an order on November 6, 1975 setting forth the substance of the information received as is required by that section.

(8) SUB-SECTION (1) of section 116 enjoins upon the Magistrate what that a person 'is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 113, the Magistrate shall proceed to enquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.' In other words, the first thing the Magistrate was required to do when the petitioner was produced before him on November 20, 1975, was to enquire into the truth of the information upon which he had taken action. Unless this enquiry is started, sub-section (3) of section 116 does not come into play. This sub section reads thus :

'(3)After the commencement, and before 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 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 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 ; (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 111.'

(8) Obviously no person can be kept under detention unless an enquiry has been initiated and an order passed in terms of sub-section (3) and the person proceeded against fails to execute the bond in terms of that order.

(9) In the instant case no enquiry under section 116(1) was started at any stage but the learned Magistrate, for reasons best known to him, kept the petitioner in detention and on December 5, 1975 passed an order, which is a cyclostyled one, under section 116(3) of the Code. This order speaks of the evidence adduced before the Magistrate in the following words :

'...NOTICE U/S 111 Cr. P.C. has already been given to you and from the evidence adduced so far I am satisfied that immediate measures are necessary for the preventing of the commission of offence at your hands even during the pendency of those proceedings.'

(10) It is shocking indeed how the learned Magistrate, who has been empowered to preside over the liberty of the citizen, without least regard to the law and without applying his mind and caring to read what he was signing, went on blindly putting his signatures on every cyclostyled form which was placed before him after having been filled in by somebody.

(11) But the facts do not end here. The unfortunate petitioner did execute the bond and produce two sureties on February 24, 1976. The Magistrate decided to accept one surety but rejected the other on March 26, 1976 after directing the police to

report whether the surety has control over the petitioner. He rejected this surety with the remarks. 'Police report received. The surety has no control. As such rejected.' It will be seen that it took more than one month before the police decided to submit the report and the Magistrate decided to reject the surety.

(12) If the learned Magistrate was really anxious to verify the truth of information received and hold an enquiry, he had only to record the statements of two persons who are named as witnesses in the police report. These are a Sub Inspector and a Constable of Farash Bazar Police Station, Shahdara. The Court of Sub Divisional Magistrate is hardly a mile away from this police-station and there was no reason for him to delay securing attendance of these witnesses and completing the enquiry, if he was so minded. But that was not to be

(13) Now, sub-section (6) of section 116 of the Code provides that the enquiry under Section 116 'shall stand terminated on the expiry of a period of six months of such detention' of the person proceeded against. Thus the enquiry under section 116 (which, as stated earlier, was in fact never started), came to end automatically under the law by May 20, 1976. Evidently the Magistrate was quite innocent of the law and on May 15, 1976 he fixed the case for evidence on May 27, 1976. In other words, the Magistrate did not realise that even if he was validly keeping the petitioner under detention, the detention beyond May 20, 1976 will amount to a wrongful confinement.

(14) The fact discussed above show that the learned Magistrate was throughout acting mechanically as a rubber stamp without applying his mind to the facts of the case and in complete violation of the express law from the date he passed the first order. For him the liberty of a citizen had no value and the rule of law had no meaning. To call him a 'Magistrate' is indeed an outrage upon justice.

(15) All the proceedings are quashed as being illegal and without jurisdiction, and the petitioner is directed to be released forthwith unless he is being detained under any other law.