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Mohan Vs. State

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Court : Delhi

Decided On : Dec-08-1974

Reported in : ILR1975Delhi817

Judge : M.R.A. Ansari, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 107 and 112

Appeal No. : Criminal Revision Appeal No. 169 of 1974

Appellant : Mohan

Respondent : State

Advocate for Pet/Ap. : S.C. Bhuttan and; P.P. Malhotra, Advs

Judgement :

M.R.A. Ansari, J.

(1) The S.H.O., Haus Qazi, Delhi sent a report dated 12-3-1974 to the Sub Divisional Magistrate, Kamla Market to the effect that on 11-3-1974 , about 1.00 P.M. the petitioner and some other persons were found standing in batches of two near Farash Khana in which locality a communal riot had occurred some days previously and that they were blaming the members of the opposite community for pausing the riot and were also threatening to use force A against them and to indulge in further rioting. It was also stated in the report that they did not disperse

even when asked to do so by the police and that, thereforee, in order to avoid an imminent breach of the peace they were arrested by the police and were being produced before the le,arned Magistrate. It was also stated in the report that proceedings may be instituted against them under section 107 Cr.P.C.

(2) On receipt of this report, the learned Magistrate passed orders under section 112 Criminal Procedure Code . read with section 107 Criminal Procedure Code . requiring the petitioner to show cause why he should not be ordered to execute bonds in the sum of Rs. 10,000.00 with two sureties in the like amount for keeping the peace for a period of one year. The order was read over to the petitioner and he denied the allegations made against him in the said order. The learned Magistrate then proceeded to record the statement of witnesses and on the basis of such evidence, he passed an order on the same date, i.e., on 12-3-1974, under section 117(3) Criminal Procedure Code . directing the petitioner to execute an interim bond in the amount of Rs. 10,000.00 with two sureties for keeping the peace during the pendency of the proceedings under section 107 Criminal Procedure Code .

(3) The petitioner filed a revision petition in the Court of Session challenging the validity of the orders passed by the learned Magistrate under section 112 as well as under section 117(3) Criminal Procedure Code . The order under section 112 Criminal Procedure Code . was challenged on the ground that the substance of the information on the basis of which the proceedings under section 107 had been started against him was not stated in the order. The order under section 117(3) was challenged on the ground that section 117(3) did not apply to cases under section 107 Cr.P.C. The learned Additional Sessions Judge, who heard his revision petition, did not accept the contention of the petitioner so far as the order under section 117(3) Criminal Procedure Code . was concerned and held that it was properly passed. But he accepted the contention of the petitioner in respect of the order under section 112 Criminal Procedure Code . and held that this order did not contain the substance of the information on the basis of which proceedings under section 107 had been instituted. He has, thereforee, made a. reference to this Court with a recommendation that the order under section 112 Criminal Procedure Code . be quashed and that the learned Magistrate be directed to pass

a valid order and issue proper notice under section 112 Criminal Procedure Code . containing necessary particulars regarding the substance of the information.

(4) I shall first consider whether the order passed under section 112 Cr.P.C. is a proper order. If this order suffers from any illegality which vitiates the order and if this order has to be quashed, then automatically the order under section 117(3) Criminal Procedure Code . also has to be quashed. It is only if the order under section 112 Criminal Procedure Code . is held to be a proper order, then the further question would arise regarding the validity of the order under section 117(3) Criminal Procedure Code .

(5) Section 117(1) under which the proceedings had been instituted against the petitioner reads as under :-

'S.107(1)- Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occassion a breach of the peace, or disturb the public tranquility, the Magistrate if in his opinion there is sufficient ground for proceeding may. in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix'

(6) The first step to be taken by the Magistrate in proceedings under section 107 Criminal Procedure Code . is to require the person proceeded against to show cause why he should not be ordered to execute a bond. This has to be done 'in manner hereinfter provided'. Section 112 Criminal Procedure Code . provides the manner in which the person proceeded against has to be required to show cause and section 112 reads as under :- 'When a Magistrate acting under section 107, section 308, section 109 or section 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 inforce, and the number, character and class of sureties (if any) required.'

(7) After the order under section 112 is passed by the Court, then section 113 Criminal Procedure Code . states that 'if the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.' Under section 114 'If such person is not present in Court. The Magistrate shall 'issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is, to bring him before the Court.' The proviso to section 114 is not relevant. Then section 115 provides that 'Every summons or warrant issued under section 114 shall be apcompanied by a copy of the order made under section 112, and such copy shall be delivered by the ofFicer serving or executing such summons or warrant to the person, served with, or arrested under, the same.

(8) Shortly stated, thereforee, when the Court forms an opinion on the basis of the information received by him that there are sufficient grounds for proceeding under section 107 Criminal Procedure Code . he has to pass an order under section 112 Criminal Procedure Code .. read out and explain the said order to the person against whom it is passed if he is present in Court and if he is not present, to issue a summons or warrant accompanied by acopy of the order under section 112 Criminal Procedure Code . The provisions referred to above do not contemplate the passing of an order under section 112 and then issuing a notice to the persons against whom the order is passed.

(9) In the present case, I find that the learned Magistrate has not passed any separate order under section 112 Criminal Procedure Code . But he has merely issued a notice to the petitioner purporting to be under section 112 read with section 107 Criminal Procedure Code . But this, in my view, is a mere irregularity and the notice issued by the learned Magistrate is really in the nature of an order passed under section 112 Criminal Procedure Code . As the petitioner was present in Court having been produced by the police, there was no necessity for the learned Magistrate to issue a notice to him. It was sufficient for him to have read out and explained to the petitioner the order he had passed against them under section 112 Cr.P.C. The notice in this case contains an endorsement signed by the learned Magistrate to the effect that the notice had been read over and explained to the petitioner and that he had denied the allegations made against

him. To this extent, there has been sufficient compliance with the requirements of sections 112 and 113 Criminal Procedure Code .

(10) The more important question for consideration is whether the order under section 112 Criminal Procedure Code . contains the substance of the information received by the Magistrate. What amounts to the substance of the information has been the subject of judicial pronouncements of various courts. But it would be sufficient to refer to the decision of the Supreme Court on this point in Madhu Limaye v. S.P.M., Monghyr : 1971 CriLJ1720 In para 37 of the reported judgment the Supreme Court has explained the meaning of these words in the following terms :-

'THE procedure begins with section 112. It requires that the Magistrate acting under section 107 shall make anorder in writing, setting forth the substance of the information received, the amount of the bond, the term for which it is to be in force and the number, character and class of sureties (if any) required. Since the person to be proceeded against has to show cause, it is but natural that he must know the grounds for apprehending a breach of the peace or disturbance of the public tranquillity at his hands. Although the section speaks of the 'substance of the information' it docs not mean the order should 'not be full. It may not repeat the information bodily but it must give proper notice of what has moved the Magistrate to take the action. This order is the foundation of the jurisdiction and the word 'substance' means the essence of the most important parts of the information.'

(11) Whether an order under section 112 Criminal Procedure Code . has given the substance of the information is a question which has to be decided on the nature of the information received by the Magistrate and the recitals in the said order. In the present case, the information which was submitted by the police to the Magistrate was to the following effect:-

'ON 11-3-1974 at about I noon the police were patrolling the locality called Rodgram where communal riots had taken place recently. The petitioner and the other persons were standing in the street in batches of two and were accusing each other as being responsible for the rioting and they were also spreading rumours and talking in a manner which was likely to incite the people. They were

asked by the police to refrain from doing so and to disperse, but they persisted in using exciting language. As the police apprehended that this might lead to a breach of the peace, the petitioner and the other persons were arrested and were being produced before the Magistrate for action being taken against them under section 107 Criminal Procedure Code .'

The order passed under section 112 Criminal Procedure Code . against the petitioner and the other persons was in the following terms :-

'WHEREAS information has been laid before me by the S.H.O. Kamla Market/Hauz Qazi that you (name of the person is stated) S/o Shri (Name of his father stated) resident of (his address is stated) on 1 1-3-1974 at about 12.30 p.m. at Rodgram threatened to use force and to spread communal riots again and are likely to commit a breach of peace or disturb the public tranquillity or do any wrongful act that may probably occasion a breach of peace, or disturb the public tranquillity within the local limits of my jurisdiction. And whereas I am satisfied that there are sufficient ground for taking proceedings against you u/s 107 Criminal Procedure Code . Now, thereforee, I, P. N. Gupta, S.D.M. (Kamla Market) do hereby serve you with this notice under sections 107/112 Cr.P.C. requiring you to show cause why you should not be ordered to execute a personal bond in the sum of Rs. 10.000.00 with two sureties in the like amount for keeping pe.a,ce for a period of one year.'

(13) It would thus be seen that the date and time of the incident as well as the overt acts alleged to have been committed by the petitioner and the others have been stated in this order. In view of the nature of the information that was laid before the learned Magistrate, I feel what was stated in the order under section 112 Criminal Procedure Code . represents the substance of the information, as those portions of the information which were omitted in this order were only details which are not required to be stated in an order under section 112 Criminal Procedure Code .

(14) The learned Additional Sessions Judge has referred to my order in Cr. Rev. No. 325/72 dated October 23, 1972 (Anisul Rehman v. State) Tn that case, the order under section 112 Criminal Procedure Code . merely stated that the

petitioners threatened to use force against Azizul Rehman and did not state when and under what circumstances they were threatening to use force against Azizul Rehman. The information laid before the Magistrate was to the effect that the petitioners and one Azizul Rehman were quarrelling with one another with regard to the possession of a room in house No. 5314 which was in their joint occupation and that although there was no imminent apprehension of the breach of the peace, it could be occasioned at any time and that, thereforee, proceedings under section 107 Criminal Procedure Code . be instituted against the petitioners. It was in view of the nature of this information and the nature of the recitals in the order under section 112 Criminal Procedure Code . that it was held in that case that the order did not mention the substance of the information. The order in the present case does not suffer from the infirmity from which the order in that case had suffered.

(15) The Additional Sessions Judge has also referred to the judgment in Cr.Rev. No. 432/72 decided on 17-1-1973 (Dhani Ram v. State) delivered by P. S. Safeer, J.I have perused that judgment and I do not find anything in it to support the view taken by the learned Additional Sessions Judge. The point that arose for consideration in that case was whether section 96 Criminal Procedure Code . applied to proceedings under section 107 Criminal Procedure Code . and whether a person who was proceeded .against under section 107 Criminal Procedure Code . may be released on bail and it was held that 'releasing a person being proceeded against under section 107 of the Code is to frustrate the very purpose of the proceedings unless his good behavior is ensured by taking a bond in that behalf.' The question whether an order passed in that case under section 112 Criminal Procedure Code . contained the substance of the information or not did not arise for consideration.

(16) I, thereforee, do not find any illegality in the order under section 112 Criminal Procedure Code . in the present case which would warrant the quashing of the order.

(17) As regards the order passed under section 117(3) Criminal Procedure Code ., the learned Additional Sessions Judge himself has given a finding that that order does not suffer from any illegality. The learned counsel for the petitioner, however,

contents that the order was passed simultaneously with the order under section 112 Criminal Procedure Code . and not after the inquiry had commenced. In support of this contention, he has referred to the decision of the Supreme Court in Madhu Limclye's case which has already been referred to. In that case, after passing the order under section 112 the Court merely adjourned the proceedings from time to time and without making any inquiry, passed an order under section 117(3) Cr.P.C. requiring the person proceeded against in that case to execute an interim, bond under section 117(3) and on his failure to do so, committed him to prison. It was held that some inquiry has to be made before the bond could be ordered. In the present case the learned Magistrate after passing the order under section 112 Criminal Procedure Code ., proceeded to examine one witness and it was only after examining that witness that he passed an order under section 117(3) Criminal Procedure Code . In other words, the learned Magistrate had made some inquiry before passing the order under section 117(3) Criminal Procedure Code . This order, in my view does not suffer from any illegality.

(18) It was Finally contended by the learned counsel for the petitioner that the information which was laid by the police before the learned Magistrate did not justify the institution of proceedings against the petitioner under section 107 Criminal Procedure Code . and in support of this contention, lie has referred to the decision of a le,arned single Judge of the Mysore High Court in H. D. Dodde Gowda v. The State of Mysore, 1966 I.L.R. 699 It was held in that case that where the police report and the sworn statement of the Police Inspector did not contain definite allegations, there was no justification for passing an order unde.r section 107 Criminal Procedure Code . I understand the rule laid down by the learned Judge in that case as being based upon the particular facts of that ca,sc, because it is now well settled that it is not within the jurisdiction of the revisional Court to go into the question whether the information laid before the Magistrate was sufficient for the institution of proceedings under section 107 Criminal Procedure Code . Reference in this connection may bfc made to a decision of the Supreme Court in R. H. Bhutafu v. Miss Mani J. Desai and othern AIR 1965 Sc 1444. That was a case under section 145 Criminal Procedure Code . under which the Magistrate has to be satisfied from a police report or other information that a dispute likely to cause a breach of the peace existed before he instituted proceedings under

section 145 Criminal Procedure Code . It was held by the Supreme Court as follows:-

'THE satisfaction under sub-s.(1) of S. 145 is of the Magistrate. The question whether on the materials before him, he should initiate proceedings or not is thereforee, in his discretion which, no doubt has to be exercised in accordance with the well recognised rules of law in that behalf. No hard and fast rule can, thereforee, be laid down as to the sufficiency of material for his satisfaction. The language of the sub-section is clear and unambiguous that lie can arrive at his satisfaction both from the police report or 'from other information' which must include an application by the party dispossessed. The High Court in the exercise of its revisional jurisdiction, would not go into the question of sufficiency of material which has satisfied the Magistrate.'

(19) The language used in section 107 Criminal Procedure Code . is similar to the language used in section 145(1) Criminal Procedure Code . As a matter of fact, the satisfaction of the Magistrate regarding the existence of a dispute likely to cause breach of the peace is not required under section 107 Criminal Procedure Code . because under this section, it is sufficient if the Magistrate forms an opinion that there are sufficient grounds for proceeding under section 107 Criminal Procedure Code . Apart from the legal position, there can be no doubt that in the present case the information laid before the Magistrate by the police was sufficient for taking proceedings under section 107 Cr.P.C. against the petitioner and the other persons.

(20) I, thereforee, see no valid reason to quash the order passed by the learned Magistrate under sections 112 and 117(3) Criminal Procedure Code . The reference is not accepted.

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