

Pritapal Singh Vs. State

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Court : Delhi

Decided On : Apr-24-1973

Reported in : 9(1973)DLT374

Judge : Pritam Singh Safeer, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 107

Appeal No. : Criminal Revision Appeal No. 47 of 1973

Appellant : Pritapal Singh

Respondent : State

Advocate for Pet/Ap. : Mchan Singh and; R.N. Dixit, Advs

Judgement :

P.S. Safeer, J.

(1) This petition has come up before me, in consequence of an order, passed by MK. Chawla, Addl. Sessions Judge, Delhi on the 9th of February, 197.). in exercise of the jurisdiction, given by section 438 of the Criminal Procedure Code, here- alter called 'Ibe Code'-

(2) A petition had been filed before the

'I have gone through the police report and found that the parson (s) named in the kalandra attempted to indulge in unlawful acts. I am satisfied that the circumstances of the case as mentioned in the kalandra warran s action u/s. 107 Cr P. C Issue notice under section 112 Cr. Pc read with u/s 114 Criminal Procedure Code to the respondent(s) named in the kalandra. To come up again on 28th December, 1972.'

A close scrutiny of the order reveals a very sad state of affairs. The Subdivisional Magistrate, Patel Nagar, never in fact, passed any order. He was using a cyclosiyled form in which orders had been already framed. The cyclostyled form had been devised for being used by 'Navin Chawla' Sub-divisional Magistrate, Civil Lines, Delhi. The words 'Navin Chawla' are cut out by ink other than the ink by which the order was initialled by the Sub Divisional Magistrate, Patel Nagar, Delhi. The words, 'Civil Lines' appearing within the bricket, were similarly cut out by similar ink and the words 'P. Nagar' appear above those words Then the name of Pritpal Singh etc. is written in green ink.

(3) I hereby, exercising the power given by Article 227 of the Constitution of India, call upon the Magistrate to render a written Explanationn as to why be did not apply his mind at all and did not pass a proper order by considering to circumstances disclosed by the police report. None of those circumstances could have been mentioned in a cyclostyled order.

(4) A composite order can be passed under sections 107/112 of the Code. The order, however, has to find its source within sections 107/ 112 of the Code and the Court has to comply with sections 112, 113, 114 and 115 thereof. The said provisions may be noticed :- '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 tranquillity or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tran. quallity, 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. S.

112. When a Magistrate acting under section 107, section 108, 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 in force, and the number, character and class of sureties (if any) required. S.

113. If the person in respect of whom such order is made is present in Court, it will be read over to him or, if he so desires, the substance thereof shall be explained to him. S.

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: Provided 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. S.

115. Every summons or warrant issued under section 114 shall be accompanied 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.'

(5) Section 107 of the Code gives exceptional jurisdiction. The liberty of the subject guaranteed by Articles 19(1)(d) and 21 of the Constitution of India can be immediately curtailed. Under the proviso contained in section 114 of the Code in given circumstances, the Magistrate may order the immediate arrest of the person concerned. In such a situation no person exercising judicial authority should show disregard to these exceptional provisions. If the person in respect of whom order is made under section 112 of the Code is present in Court then the same containing

the substance of the information received is to be read over to him and if the person present so requires the substance is to be explained to him. In case such person is not present then the Magistrate is to issue a summons requiring him to appear or when he is in custody, a warrant is to be issued directing the officer holding him in custody to produce him.

(6) It is made clear by section 115 of the Code every summons or warrant issued under section 114 thereof shall be accompanied by a copy of the order made under section 112 of the Code. The requirement is purposeful. The person, who is to receive summons or the warrant has to know the substance of the information on which action has been taken against him. Unless he is made aware of the same, he will not be in a position to explain the circumstances and submit that the proceedings against him should be terminated. In this case the order purporting to have been passed under sections 107/112 of the Code was illegal. No summons could have been issued on the basis of that order. The proceedings, against the petitioner, are hereby quashed.

(7) The petition is disposed of.