

Dhani Ram Vs. State

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Court : Delhi

Decided On : Jan-17-1973

Reported in : 9(1973)DLT255; 1973RLR141

Judge : Pritam Singh Safeer, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 107(1)

Appeal No. : Criminal Revision Appeal No. 432 of 1972

Appellant : Dhani Ram

Respondent : State

Advocate for Pet/Ap. : P.N. Dixit, Adv

Judgement :

P.S. Safeer, J.

(1) Although no one has appeared on behalf of the petitioner yet I am to deal with the report submitted by Shri S. C. Chaturvedi, Addl. Sessions Judge, Delhi under section 488 of the Criminal Procedure Code, hereafter called 'the Code'

(2) The report recommends that the order dated the 11th September, 1972 passed by Shri C. D. Sharma, Sub Divisional Magistrate, Delhi under section 107 read with section 112 of the Code be set aside to the extent to which it contains the

direction that the petitioner Dhani Ram may furnish bail bond for his continuous appearance in Court on the dates on which the proceedings may be taken up.

(3) According to the allegations against Dhani Ram, be Along with one Paras Ram was engaged in selling cinema tickets at black-market rates when Fateh Singh, complainant contacted them. Dhani Ram and his companion were alleged to have offered to sell a ticket of the value of Rs. 1,65 to Fateh Singh for Rs. 4.00. Fateh Singh is alleged to have offered Rs. 2.00. An altercation is then alleged to have arisen and the prosecution case was that Sub Inspector Niranjana Malik reaching the spot apprehended Dhani Ram. Thereafter a report was sent by the S.H.O.Kashmiri Gate and on perusing the same on the 11th September, 1972 acting under sections 107/112 of the Code, the Sub Divisional Magistrate passed the following order :-

'CALANDRApresented today. Respondent present in custody. I have seen the police report and heard the respondent (s) at length. I am satisfied that there are sufficient grounds for proceeding against the respondent. Notice under section 107/112 Cr. P. C. accordingly been given to the respondent to show cause why he should not be order to execute a personal bond in the sum of Rs. 3000.00 along with one surety/two sureties in the like amount for keeping peace/good behavior for a period of one year. The respondent desire to contest the notice. He is further ordered to execute a personal bond in the sum of Rs. 3000.00 with one surety in the like amount for appearance in the court. Summons with notice be issued to the other respondents. To come up on 19th September. 1972 for P. Ws.. sd/- (C. D Sharma) Sub Divisional Magistrate, Kotwali, Delhi.'

(4) A petition was moved under section 435/438 of the Code impugning the ultimate part of the order, reproduced above, whereby Dhani Ram had been ordered to execute a personal bail bond in the sum of Rs. 3000.00 with one surety in the like amount for appearance in Court.

(5) Section 107(1) of the Code, is :-

'SECTION 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 tranquillity, 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. In order to assume the jurisdiction to act in the manner provided by the provisions that follow section 107(1) of the Code, the Magistrate is to state in his order the grounds sufficient for his forming the opinion that any person was likely to commit a breach of the peace or was likely to disturb the public tranquillity or that any such person was likely to do any wrongful act which may occasion breach of the peace or which may disturb public tranquillity. If the order passed under section 107 of the Code does not specify the grounds leading to the formation of the opinion by the Magistrate then the order will not only suffer from arbitrariness and from being a mere colourable use of the statute but will also be such which the superior Court will not be able to scrutinize for judging its validity.

(6) Whenever an order is to be passed under section 107(1) of the Code, it must record those grounds which may be sufficient in the opinion of the Magistrate for proceeding in terms of the authority provided by the provision

(7) Section 112 of the Code, is :-

'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.'

The after quoted provision again requires that no order shall be recorded in writing, setting forth the substance of the information received and then notifying the concerned person, the amount for which he is required to execute the bond and the term for which the bond is to be in force and the order is also to specify the number, character and class of sureties.

(8) When a person is not present in Court and appears in consequence of the orders passed under sections 107/112 of the Code and the summons issued under section 114 then in terms of the requirements of section 117 the order passed under section 112 having been read out and explained to him, the Magistrate is to proceed to inquire into the truth of the information on the basis whereof action may have been taken. Pending the completion of the enquiry, the Magistrate, if he considers that immediate measures are necessary for the prevention of breach of the peace or the prevention of the apprehended disturbance of public tranquillity, he can for reasons to be recorded aird that the concerned person may execute a bond with or without sureties for keeping the peace or for maintaining good behavior, until the conclusion of the enquiry and the Magistrate has the authority to direct the detention of the person in custody until such bond is executed or until the enquiry is concluded. There is no sanction in section 117 of the Cods to direct that a person proceeded against in terms of the orders made under sections 107/112 of the Code may bedirected to execute a personal bond with or without sureties for his appearance in Court on dates of adjourned hearings. The impugned order was outside the contemplation of the Code.

(9) The counsel for the State has taken a fair stand and has not opposed the recommendation.

(10) Accepting the recommendation, the order dated the 11th September, 1972 made by the Sub-Divisional Magistrate, Kotwali, Delhi to the extent to which it directs that bail bond for appearance in Court be furnished is hereby set aside. The petition is disposed of.