

**Jamil-ul-rehman Vs. State**

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**Court :** Delhi

**Decided On :** Feb-05-1973

**Reported in :** 1973RLR179

**Judge :** P.S. Safeer, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 107

**Appeal No. :** Criminal Revision Appeal No. 431 of 1972

**Appellant :** Jamil-ul-rehman

**Respondent :** State

**Advocate for Pet/Ap. :** K.N. Chitkara and; H.R. Bhardwaj, Advs

**Judgement :**

**P.S. Safeer, J.**

(1) This petition has come up on in consequence of a report submitted by Additional Sessions Judge, Delhi in exercise of his jurisdiction provided by section 438 the Criminal Procedure Code, hereinafter called the 'Code'. His order has been read out to me. I have seen the original record. I find a report was submitted to the Sub-Divisional Magistrate, Kotwali, Delhi under the date 13th June, 1972. The first order on the record bears the date 18th August, 1972 and is in the following terms :-

'I have gone through the calendra u/s 107/ 105 Criminal Procedure Code . received from PS. Lahori Gate and I am satisfied that there are sufficient grounds to proceed against the respondents named in the calendra u/s 107/150 Criminal Procedure Code . Issue summons Along with notices u/s 112 Cr. P.C. to the respondents requiring them to show cause as to why they should not be bound down in the sum of Rs. 3,000.00 Along with one surety in (be like amount each to keep peace for a period of one year. To come up on 28-8-1972'.

Areference to the record shows that inspire of the order passed on the 18th of August, 1972 in respect of police report bearing the date 13th June, 1972 no notices were issued till the 8th of September, 1972. On that date notices were issued to Aziz-ul-Rehman, Jamil-ul-Rehman and Akhlau-ul-Rehman. After being served with the notices the petitioners filed the petition under sections 436/438 of the Code impugning the same. Sections 107(1) and 112 of the Code may be noticed together :- [After reproducing these, Judgment proceeds :

(2) Section 107(1) of the Code does not warrant a colourable use of the statute. No Magistrate would be justified in assuming jurisdiction by merely stating that there are sufficient grounds for intiating the proceedings. He has of necessity to record an order containing the grounds which may be the basis of his opinion. Only a speaking order containing the grounds will be open to judicial scrutiny. Without recording the grounds which may be determinable as sufficient grounds for initiating the proceeding the Magistrate would not be disclosing jurisdiction in himself to proceed under Sections 107/112 of the Code.

(3) Section 112 in one part requiries that the Magistrate shall make an order in writing, setting forth the substance of the information received by him. It is on the statement of the substance of such information received by him that the Magistrate is empowered to call upon any person to show-cause why he should not be required to execute a bond in a particular amount for a particular term with a particular number of sureties of a particular class and character.

(4) In this case I find a complete disregard was shown to the provisions of sections 107/ 112 of the Code. Accepting the petition, the proceedings taken by the trial court are hereby set aside.

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