

**Chatha Ittaman Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/717010](http://sooperkanoon.com/717010)

**Court :** Kerala

**Decided On :** Jul-22-1952

**Reported in :** 1953CriLJ244

**Judge :** Koshi, C.J.

**Appellant :** Chatha Ittaman

**Respondent :** State

**Judgement :**

ORDER

Koshi, C.J.

1. This revision petition is directed against an order of the Division First Class Magistrate, Alwayas, by which the learned Magistrate discharged counter-petitioners 3 to 6 in M.C. 3 of 1951 on the file of his court. In that case, six persons were being proceeded against under Section 107 Criminal P.C. (Travancore Section 103) to show cause why they should not be bound over to keep the peace. When counter-petitioners 3 to 6 appeared in court pursuant to the notice issued to them, they filed an application requesting the court to drop the proceedings as against them at the same time undertaking that they will not commit any breach of the peace. The prosecution represented by the prosecuting Inspector of Police supported the motion made by the said counter-petitioners and filed a report to the effect that there was no likelihood then of any breach of peace being caused by

them. The present petitioner who moved, the police to take action under Section 107 against the counter-petitioners, sought to intervene at that stage to oppose the motion. The court held that he had no locus standi to intervene and passed orders under Section 119, Criminal P.C. (Travancore Section 115) discharging counter-petitioners 3 to 6 on the ground that the court was satisfied that there was no necessity to continue the proceedings as against them. The revision petition is against that order.

2. Two points arise for decision here. One is whether the petitioner is competent to file this revision. The other is whether the Magistrate's order is bad in law.

3. The petitioner has no locus standi to maintain this revision petition. He was not a party to the proceedings before the lower court. That proceeding was between the State on the one hand, and the counter-petitioners thereto on the other. The Magistrate's order refusing to listen to the objection was therefore right and the petitioner cannot have in this Court any higher right than what he had before the primary court.

4. This does not, however, mean that the court should reject the revision on that ground. Section 439, Criminal P.C. which deals with the powers of this Court in revision is couched in very wide terms. It states that in the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a court of appeal by Sections 423, 426, 427 and 428 or on a court by Section 338 and may enhance the sentence.. The circumstances under which the Magistrate happened to discharge counter-petitioners 3 to 6 have now come to the knowledge of this Court, and it is up to this Court to examine the legality of that order. This would appear to me to be the proper approach to the preliminary objection raised by the counter-petitioners.

5. As for the merits of the order, it cannot be forgotten that proceedings under Section 107, Criminal P.C. are only intended for the security of the public peace and the person most responsible for maintaining peace in a particular locality is the Magistrate of the District. When on cogent grounds he is satisfied that there is

no likelihood of a breach of peace arising on account of all or any of the persons against whom a preliminary order under Section 107 is drawn up there is nothing in the code which prevents him from dropping that enquiry in whole or in part. Section 117(2) enacts that in a proceeding under Section 107, the enquiry shall be made, as nearly as may be practicable in the manner prescribed for conducting trials and recording evidence in summons cases. Chapter XX, Criminal P. C, deals with the trial of summons cases by Magistrates and the scheme or the intendment of the Chapter does not forbid a premature termination of a case. The decision in King v. Ba Khim AIR 1940 Rang. 189 brought to my notice during the course of the argument contains the following observations relevant to the point:..the jurisdiction of the magistrate under this Section (107) is a discretionary jurisdiction, and under Section 119, if it has not been proved that it is necessary for keeping the peace that the person in respect of whom the enquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect and shall discharge the respondent. Consequently if, after having made his preliminary order under Section 107, the magistrate is convinced by evidence, or other materials of which he is permitted to take judicial notice, that the respondent is no longer likely to do anything which might lead to a breach of the peace, it is open to him to make an order under Section 119 discharging the respondent. This is the only way in which proceedings under Section 107 can be brought to an end.

6. This is exactly what the learned magistrate did in the case on hand.

7. The magistrate passed the order under revision on 9th May 1951. More than one year has elapsed since, and nothing untoward would seem to have happened in the meanwhile. If the counter-petitioners who have been discharged prove a menace to the peace and tranquillity of the District, the magistrate's order will not stand in the way of a fresh proceeding being started against them. For this and other reasons referred to above I do not find my way to interfere with the order sought to be revised. The petition is rejected.