

Moidu Vs. State of Kerala

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Court : Kerala

Decided On : Mar-31-1982

Reported in : 1982CriLJ2293

Judge : Subramonian Poti, Ag. C.J.

Appellant : Moidu

Respondent : State of Kerala

Judgement :

Subramonian Poti, Ag. C.J.

1. Our learned brother Khalid J. doubted the correctness of the decision in Chirukandath Chandrasekharan v. State of Kerala. 1970 Ker LJ 61 and expressed the view that the principle enunciated in that decision needs reconsideration, Proceedings initiated under Section 107 of the Code of Criminal Procedure were sought to be quashed. The proceedings so taken under Section 107 of the Code were attacked in the said petitions under Section 482 of the Code of Criminal Procedure on the basis that the proceedings were grounded on accusations which formed the subject-matter of cases pending investigation of pending trial in courts. Our learned brother Sadasivan. J. in Chandrasekharan's case expressed the view that the incidents involved in such cases cannot be the ground for initiation of proceedings under Section 107 of the Code. The correct--ness of that view was doubted not only by our learned brother Khalid J. but by one of us. Justice Janaki

Amma, who had in the order on 26-9-198] referred a similar question for decision by a Division Bench. That case is still pending and necessarily the question therein will have to be answered in the light of the decision of this Full Bench.

2. If our learned brother Sadasivan J. was stating only a rule of prudence we may not have serious disagreement with it. But if the statement by the learned Judge to which we will presently refer is as a rule of law we feel the need for a closer examination.

3. Proceedings under Section 107 of the Code are taken up by a Magistrate, if, on the basis of information he is of opinion that a person is likely to commit a breach of the peace or disturb the public tranquillity. The apprehension about the conduct of a person must necessarily depend upon incidents or events of the past or at any rate such events or incidents or conduct of the person from whom such act is apprehended must be the background which may enable a Magistrate to form an opinion about the likelihood of the breach of the peace or disturbance of public tranquillity. A Magistrate may feel that a person who has been committing certain acts is likely to commit it again. It cannot be said that the past conduct of a person is unrelated to the possibility of conducting himself in a particular manner in the present or immediate future. If the past conduct alleged is the subject of investigation by the police or trial in a court could it be said that for that reason it should not furnish a basis for initiating action under Section 107 of the Code. Sri. T. V. Prabhakaran, appearing for some of the petitioners in these cases contends for the extreme position that past conduct irrespective of whether it is the subject of an investigation or trial is irrelevant as in the language of Section 107 no reference is made to such conduct as the basis for action under that Section, The position taken up by the Public Prosecutor is the other extreme, that, even incidents which are the subject-matter of investigation by the police and similar incidents which are the subject of trial in Criminal Courts could be the sole foundation for taking proceedings under Section 107 of the Code. Whether either of these positions could be said to be correct or whether the answer lies elsewhere has to be examined by us in these cases.

4. To take proceedings against a person under Section 107 of the Code there must be (1) receipt of information by the Magistrate (2) such information must be that a person is likely to commit breach of the peace or disturb the public tranquillity and (3) on such information the Magistrate must be able to form an opinion that there are sufficient grounds for proceedings. There is no controversy with regard to the first and the third elements. But it is really the scope of the second, namely, what should be the nature of the information concerning the likelihood of commission of the breach of the peace or disturbance of the public tranquillity that calls for consideration. No hard and fast rule can be laid down as regards the nature and source of the information, As observed in *C. S. Reddy v. State of A.P.* 1973 Cri LJ 1713 (Andh Pra) it may be that the past conduct and wrongful act is the safe guideline. It is not the likelihood of a breach of the peace at any point of time that is relevant. The breach of the peace must be imminent to justify action under Section 107. The information about the past conduct or wrongful acts of the past must not be remote or isolated but must be relatable to the present apprehension in the sense that it must have some relevance to the apprehension of likelihood of breach of the peace or disturbance of public tranquillity.

5. The contention that past conduct should not at all be the basis for taking proceedings under Section 107 does not appear to be sound. There is no justification to read such a limitation into the section. In fact it is the event of the past that would furnish material to infer about the tendencies of a person which in turn will have bearing on the likelihood of a similar conduct on his part in the present or immediate future. To quote the words of Venkatarama Iyer J. in *K. N. Joglekar v. Commr of Police* : 1957 CriLJ10 :

What a person is likely to do in future can only be a matter of inference from various circumstances and his past record will be valuable, and often the only record on which it could be made.

The same idea was expressed by the Supreme Court in *Ujagar Singh v. State of Punjab* : [1952]1SCR756 thus:

The past conduct or antecedent history of a person can be taken into account when making a detention order, and, as a matter of fact, it is largely from prior events showing the tendencies or inclinations of the man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order.

No doubt this was said about the conduct of a person in relation to the application of the law of preventive detention. But this is true as a general rule. Justice Chinnappa Reddy, then functioning as a Judge of the High Court of Andhra Pradesh, expressed the same idea in relation to proceedings under Section 107 of the Code of Criminal Procedure thus:

It is true that Section 107 is not punitive in nature, but is intended to prevent apprehended breaches of the peace. But that does not mean that past violent activities, specially those of the immediate past, cannot be taken into consideration to arrive at the conclusion that there is likelihood of a breach of the peace in the future.' (J. Venkureddy v. State of Andh Pra 1969 Cri LJ 685 (Para 4):

Justice A. D; V. Reddy, in Mallu Thimma Reddy v. State of A.P. 1972 Mad LJ (Cri) 635 said thus:

A proceeding under Section 107, Criminal procedure Code is to prevent future breach of the peace and events of the recent past are to be taken as a guide for coming to the conclusion whether any breach of the peace is likely to recur in the near future.

6. We cannot accede to the extreme contention that past acts shall not form the basic material for proceedings under Section 107 of the Code. It is really such acts that would serve as basic material in justification of the apprehension of similar conduct. But that would be subject to the proviso that in point of time and relevance the past acts are not re-mote.

7. Even so whether events which are subject of investigation by the police or which are subject of trial in courts could be the basic material is not a question easy to decide, In fact a categorical answer one way or the other may not be

possible. It appears to us for reasons, which we will presently show, that it cannot be said as a rule that these should not be the material furnishing the basis for action under Section 107 of the Code and it may not also be said that it could be the only material. That would depend upon facts and circumstances of each case. Normally Section 107 proceedings should not be used as parallel proceedings. But there may be need for proceedings under Section 107 and the material that is available for action under Section 107 may happen to be material on the basis of which investigation by the police is pending or trial before courts is on. Justice Sadasivan in Chan-draseskharan's case 1970 Ker LJ 61 expressed the categorical view that:

It has clearly been laid down in decisions of various High Courts that allegations of offences under the Indian Penal Code in respect of which cases have already been registered cannot be made the subject matter of security proceedings under Section 107, since such grounds are irrelevant.' The learned Judge followed the decision of the Supreme Court in *Sushanta Goswami v. State of West Bengal* 1969 Mad LJ (Cri) 665 : AIR 1969 SC 1004. The learned Judge quoted the following passage from that decision:

Where grounds of detention are mere allegations of offences under the Indian Penal Code and where the grounds of detention relate to matters for which penal or other action could be taken under the relevant statutes, detention for the maintenance of public order is not justified. Grounds which are so irrelevant that it is incomprehensible cannot be justified.

Sadasivan J. has not discussed the question independently. He has purported to follow the Supreme Court decision. Therefore naturally we are called upon to consider the view expressed by the Supreme Court which seems to have persuaded our learned brother to categorically state the law in the form already quoted in the above passage. The quotation from the Supreme Court decision is evidently a quotation from the headnotes in the M.L.J. report. We have gone through that decision carefully and we notice that the headnote is not an extract of any passage of the judgment and in fact it cannot be said that the judgment fully justifies the categorical statement in the headnote. Dealing with petitioner No. 5.

Debendranath Das, Grover J. observed thus:

The grounds of detention have been considered by us and we are of the opinion that they relate mainly to the question of law and order and are not relevant to public order.' Evidently this was the reason for holding that the petitioner could not be detained. But to this was added:

Moreover there are allegations of offences under the Indian Penal Code, for which prosecution could be launched.

It is this observation that has evidently led the Editor to paraphrase in a categorical manner that where grounds of detention are mere allegations of offences under the Indian Penal Code and where the grounds of detention relate to matters for which penal or other action could be taken under the relevant statutes, detention for the maintenance of public order is not justified. Since the decision of Sadasivan J. is not supported by independent reasoning and since the headnote on which the learned Judge relies cannot be said to reflect with precision the view expressed by the Supreme Court we think it will be only appropriate that we go into this question further.

8. In *Abdul Aziz v. District Magistrate.* : [1973]2SCR646 . an order of detention under the Maintenance of Internal Security Act 26 of 1971 was challenged in a petition under Article 32 of the Constitution on the ground that the two incidents relied on for the purpose of passing an order of detention were incidents relating to simple cases of murder and those could have no impact on the question of public order. That plea did not succeed as the Supreme Court expressed the view that such incidents had serious repercussions not merely on law and order but on public order. It was then contended that the order of detention was passed during the pendency of a prosecution launched against the petitioner for the very same incidents in regard to which the order of detention had been passed and thereby the order was vitiated. One of the incidents took place on 16-8-1971 and the petitioner was eventually discharged on 16-12-1971. The order of detention was passed prior to that discharge so that at that time the prosecution was pending. Referring to this circumstance the court approved of what had been said by the Supreme Court earlier in *Ashim Kumar Ray v. State of West Bengal* : AIR 1972

SC2561 , Justice Chandrachud, as the learned Judge was, speaking for the Bench said thus (Para 4):

It was held therein that the mere circumstance that a detention order is passed during the pendency of a prosecution will not vitiate the order.

9. We may once again advert to the decision in C. S. Reddy v. State of A.P. 1973 Cri LJ 1713. Speaking for the Division Bench of the Andhra Pradesh High Court. Chennakesava Reddy said thus (Para 9):

In Cri. M.P. No. 3001. of 1972 the learned Counsel for the petitioners raised another contention namely that the learned magistrate acted illegally in relying upon a wrongful act which is the subject-matter of a specific charge pending trial before the Criminal Court. In support of his submission he relied upon a decision of the Madras High Court in Konda Reddy v. King Emperor ILR 41 Mad 246 : 1917-18 Cri LJ 787 : AIR 1918 Mad 555. Retracing the *raison d'être* of the decision one would discern the inaptitude of that decision without any difficulty to the facts of this case. In that case the previous proceedings under Section 107, Criminal p. C. on the same set of facts had ended in discharge, It is not the petitioners' case that the incident involving violence relied upon by the learned magistrate was the basis of any previous proceedings. On the other hand, in a decision of the Madras High Court in Rangaswami Naidu v. King Emperor AIR 1943 Mad 394: 1943-44 Cri LJ 756 to which our attention was invited by the learned Public prosecutor. Horwill J. observed that there was no illegality in admitting the evidence in the security proceedings of a specific charge made under the Penal Code which the subject-matter of a current trial. The learned Judge further observed that the scope of the two proceedings was quite different one being concerned with the punishment of offences committed in the past and the other being concerned with the preventing of breach of peace. Therefore, the learned Judge rightly saw no reason why the evidence of the same evidence is relevant to both the cases. We record our respectful accord with the observations of the learned Judge. Therefore, this contention also fails.

10. Our attention has been drawn to the decision of the Supreme Court in Biram Chand v. State of U.P. : 1974 CriLJ817 . That was a case of a habeas corpus

petition under Article 32 of the Constitution of India directed against the order of the District Magistrate, Varanasi detaining the petitioner under the provisions of the MISA. One of the questions that was urged in the case was that it was not open to the detaining authority to choose two parallel proceedings against the detenu. Dealing with this question Goswami J, said thus (Para 10):

The fact that the ground of detention could be a subject-matter of criminal prosecution is not enough to vitiate a detention order if the detaining authority does not choose to prosecute him and only passes an order of detention in accordance with law. In that case it will be no answer that the detenu must be prosecuted in the criminal court in an open trial. The choice of the authority concerned for the mode of tackling the illegal activity cannot per se be illegal and the order of detention will be judged on the merits in accordance with the law laid down by this Court.

In paragraph 11 of the same judgment the learned Judge deals with two of the cases pending in the criminal courts in Bihar and observes thus:

If the District Magistrate in the instant case had not at all taken recourse to the facts of the criminal cases pending against the detenu in Bihar in coming to the conclusion about his reasonable satisfaction for making an order of detention, the matter would have been different.

It is clear that the District Magistrate has been influenced by the existence of the criminal prosecution in Bihar and he has chosen those grounds to furnish as aids to his satisfaction in order to make the order of detention. We are clearly of the view that the grounds with reference to the pending criminal prosecution in Bihar, could not provide a valid basis for making the impugned order of detention, particularly because those cases are pending trial in the criminal courts in Bihar and in view of the decision of the Patna High Court in connection with one of these cases. Since the detention order is based on these grounds, the same must be held to be invalid. The third submission of the learned Counsel is, therefore, accepted.

11. Apparently it would appear that what Goswami J, has said in this decision is contrary to what has been said by Justice Chandrachud in Asim Kumar Ray's case : AIR 1972 SC2561 . But on a closer examination it can be seen that there is really no contradiction in the statement of the law in the two decisions. In the latter decision the court was only stating that 'the grounds with reference to the pending criminal prosecutions in Bihar could not provide a valid basis for making the impugned order of detention.' If the detention order is passed on the basis of the fact that a criminal prosecution was pending that may not be a ground for detention. Merely because there is criminal prosecution against a person there would be no justification for detaining that person. The acts which have resulted in the criminal prosecution may furnish justification for detaining a person. In the latter case it is such acts that provide the ground for detention. A detention order may be bad if the detaining authority, only relies on the fact that there is criminal prosecution against a person. It need not be bad if the detention is because of certain acts which are also subject of the criminal prosecution, Goswami J. was referring to the case of the ground of detention being a pending criminal prosecution in Bihar. We therefore do not feel persuaded to accept the contention of the learned Counsel for the petitioners in these cases that the Supreme Court has categorically laid down the law that acts which are the subject of criminal prosecution should not be relied on for the purpose of detention. We should also remember that what was said by the court was in connection with a case of preventive detention and not proceedings under Section 107 of the Code,

12. We think it would be appropriate to notice a recent decision of the Supreme Court in Harnek Singh v. State of Punjab : 1982 CriLJ420 . That was a case where challenge was made to an order of detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974 by a petition under Article 32 of the Constitution before the Supreme Court. The basis of the impugned order of detention was the events leading to a case covering offences under Sections 307, 411 and 414 of the Indian Penal Code registered against a detenu at Police Station Lopoke in Amritsar on 27-2-1980. The detention order was, passed on 4-11-1980. Those acts which formed the only basis for the impugned order were also the subject-matter of prosecution launched against the detenu in the court of an Amritsar Magistrate. The detention order was struck

down by the Supreme Court but that was on the ground that the offences which were committed by the detenu as far back as 27-2-1980 could hardly form a ground for his detention on a date as late as 10th July, 1981 especially when no explanation had been furnished by the State as to why action was not taken earlier. Evidently the Supreme Court, did not think it objectionable to rely on these acts as the foundation for the detention. It was the absence of explanation for the time lag that made such acts irrelevant. We think that this supports the view that we are taking in this case.

13. Regard being had to the object of Section 107 of the Code and particularly the fact that it is not intended as a punitive action but preventive even where punitive action is taken preventive action may be called for if the character of the information is such that the Magistrate would be justified in acting on such information. As a rule of prudence it may be said that information about events which are the subject-matter of pending prosecutions may not by themselves be relied on by the Magistrate as information sufficient to warrant an order under Section 107 of the Code. Ultimately it would be for the Magistrate to consider whether on an overall consideration of the facts available to him by way of information he could form the opinion that the person against whom he was proposing to take action under Section 107 was likely to cause imminent breach of the peace Or disturb the public tranquillity. We make it clear that to the extent the decision of this Court in Chirukandath Chandrase-kharan v. State of Kerala 1970 Ker LJ 61 can be read as prohibiting reliance on such information in categorical terms, we do not agree. As we stated earlier, had it been stated as a rule of prudence or caution we may not have seen reason to disagree with it.

In the result we answer the question referred to us as above and we take up the cases in which this question appears for disposal on the basis of facts of each case.

Crl. MP 1652 of 1980

14. Now we will take up Crl. MP No. 1652 of 1980. The grounds forming the basis of the information on which the order was passed in this case as stated in the order are:

The counter petitioners are active workers of R.S.S. The relationship between the R.S.S. and Marxist Party workers have become worse owing to political rivalry between them. It is reported that the C. Ps. are prepared to do any unlawful activities to make bodily harm to their rival group creating imminent breach of peace in the area.

On 26-1-1980 C. Ps. 1, 2, 5 and some other 250 people assembled together with deadly weapons and made processions causing breach of peace in the areas of Pazhassi and Kolari. A case in Crime No. 11/80 has been registered in this connection at Mattannur Police -Station.

On 13-8-1979 at about 11.30 A.M.C. P. No. 1 and some other 10 persons joined together unlawfully and made injuries to one P. V. Prabhakaran of Mattannur N. S. S. College. The injured person is an S. F. I. student. A case in Crime No. 111/79 has been registered in this connection at Mattannur Police Station.

On 3-4-1977 C. P. No. 4 and six others joined together armed with deadly weapons at 'Vattiya' of Payam Amsom and made serious injuries to Marxist Party worker one Athikkal Valsan. A case in Crime No. 28/77 has been registered in this connection at Iritty Police Station.

On 30-9-1980 at 05.15 Hrs. C. Ps. assembled together unlawfully at Vayarod of Pazhassi Amsom with intention to create breach of peace and disturbance to public tranquillity. So the S.I. of Police, Mattannur arrested them on the spot.

We will consider each one of the items. The first one is general in nature. The counter-petitioners are said to be active R.S.S. workers and it is further said that the relationship between R, S. S. and Marxist Party workers has worsened due to political rivalry. It is then mentioned that the counter petitioners are said to be prepared to do any unlawful activities to cause bodily harm to the rival group. These statements are vague and do not refer to any overt acts. Therefore by themselves that cannot form any basis for invoking Section 107 of the Code.

15. The next is of an incident of 26-1-1980 relating to counter petitioners, 1, 2 and 5. The next one is of the incident of 13-8-1979 relating to counter petitioner No. 1

and the 4th incident of 3-4-1977 is relating to 4th counter petitioner. With regard to the incident of 26-1-1980 it is said that some 250 people assembled together with deadly weapons and made processions causing breach of peace and Crime Case No. 11 of 1980 has been registered. The incident of 13-8-1979 is one in which the first counter petitioner is involved. Counter petitioner No. 1 and some other 10 persons said to have caused injury to one Prabhakaran, an S. F. I. student. The incident of 3-4-1977 in which the 4th Cr. petitioner is said to be involved is said to be causing injury to one Marxist Party worker, one Valsan. These incidents, it may be noted, are more than 2 years old by this time and in fact one of the incidents is 5 years old. The last of the grounds mentions about the counter-petitioners assembling together unlawfully at Vayarod. No overt act is alleged.

16. We are not called upon to consider in this case whether the events which are the subject-matter of crime-cases should be the basis for proceedings under Section 107 of the Code. As we have indicated the latest of the events mentioned involving counter-petitioners 1, 2. and 5 is more than 2 years old. Section 107 of the Code by its very nature is a provision intended to arm the Executive Magistrate with power to pass an order to prevent imminent breach of the peace. That is the reason why the provision contemplates an order calling upon the person to whom it is addressed to execute a bond for keeping the peace for not exceeding one year. Naturally it is assumed that the Magistrate would be passing an order in a matter of this urgent nature immediately and not years later and therefore the period of one year though from the date of order would also be not much more remote from the date of the incident. In other words one year denotes roughly the period for which the preventive (sic) under the Code would be effective. Evidently this should be so, for, it is not fair to keep a person under the onerous obligation of a bond permanently or for a long period. It would then lose its preventive character and become punitive. We are not saying that on the expiry of the period of one year automatically this proceeding should terminate or the proceedings under Section 107 of the Code could not be continued. But the expiry of long period such as that as that in this case would itself be sufficient to indicate that under the scheme of Section 107 of the Code the court is not expected to exercise its powers to call upon any person to execute a bond to prevent breach of imminent peace. For this reason we are quashing the proceedings commenced against the

counter-petitioners in M. C. No. 16 of 1980 before the Sub-Divisional Magistrate, Tellicherry,

Crl. M. P. No. 1762 of 1980.

17. The grounds stated in the preliminary order passed under Section 111 of the Code of Criminal procedure in this case are:

The counter petitioners residing within my jurisdiction are active workers of R.S.S.

On 29-9-1980 when the S. I. of police Panoor was on law and order duty found the counter petitioners assembled together unlawfully at 'Diamond Mukku.' Since their intention was to create imminent breach of peace by way of their unlawful activities the S. I of Police arrested them at 21-00 hrs. under Section 151 Cr. P.C.

C. P. No. 1 is reported to be involved in Cr. No. 132/78, Cr. No. 7/80. Cr. No. 22/80 of Panoor Police Station and Cr. No. 59/80 of Tellicherry Police Station,

C. P. No. 2 is involved in Cr. No. 59/80 of Tellicherry Police Station and Cr. No. 132/78 of Panoor Police Station.

C. P. No. 3 is involved in Cr. No. 147/79 of Tellicherry Police Station.

Counter petitioners 4 and 5 are well known R, S. S. workers as other C Ps. and are close associates.

C. P. No. 6 is involved in Cr. No. 25/79 registered at Chockli Police Station.

There exists bitter enmity between R.S.S. and Marxist Party workers in Tellicherry and suburban areas and several clashes and murder cases have been reported from various Police Stations within my jurisdiction. It is also reported that the tension prevailing in various places may flare up at any time unless prevented.

The general statement that the counter-petitioners are R.S.S. workers and that there exists enmity between R.S.S. and Marxist Party workers in Tellicherry and suburban areas and there is tension prevailing in various places does not by itself justify action under Section 107 of the Code against the workers of either group.

The only other material stated is that there are some crime cases registered against the counter-petitioners. What those crime cases are and how they are related to the apprehension of the breach of the peace are not evident from the preliminary order. As we have pointed out in connection with the previous case, all the crime cases are of the year 1978, 79 and 80, too remote in point of time to be of relevance in determining the requirement of execution of a bond to prevent breach of the peace in future. Hence we Quash the preliminary order in M. C No. 17 of 1980 and the proceedings commenced pursuant thereof.

We are also told by the Public Prosecutor that the proceedings in this case have been dropped. We record this Crl. M P. No. 623 of 1980:

18. The grounds on which the preliminary order under Section 107 of the Code are based thus:

The counter-petitioners belong to the Ahamadiya Muslim. Jumayath, Moodali C. P. No. 2 is the son and the C. P. No. 3 is the nephew of the first counter petitioner. Dr. Mansoor Ahammed of Mattanur is the President of the above said Jumayath, since 1977. The C. Ps. have created hardships to the Jumayath due to their untoward incidents. It is reported that the C.P.S.. are frequently threatening the President of the Jumayath and the loyal members of the Jumayath. One Jaleel, husband of a niece of the first counter petitioner forged a certificate in the letter-head of the Jumayath purported to have been issued by Dr. Mansoor Ahammed, President and obtained a job abroad with the help of the said certificate. When the forgery came to light, Dr. Manzoor Ahamed filed a complaint and a case is pending in the AJFCM Court, Tellicherry against the said Jaleel. The counter-petitioners did not like the action taken against Jaleel by the Jumayath. The first C. P. filed a defamation suit against the President and the suit was dismissed.

On 10-6-1979 the C. Ps, removed a bridge on the public way to retaliate the supporters of Jumayath and to disturb the public peace. One Chovak-karantakath Mubarak filed a petition against this at Mattanur Police Station and the counter petitioners have been warned.

On 31-7-1979 C. P. No. 1 abused one Barkuthulla and threatened him. A complaint petition has been filed in this connection at Mattanur Police Station and the c. P. was warned.

On 24-8-1979 C. P. No. 2 scolded and threatened the abovesaid Barkuthulla and his brother and the C. P. was warned by the Police.

On 24-11-1979 C. p. No. 2 caused injuries to one Moideen Koya. A case in Crime No. 161/79 has been registered in this connection at Mattanur Police Station.

On 22-3-1980 C. P. No. 3 committed criminal trespass into the shop of one Safeer Ahammad and caused injuries to him. A case in Crime No. 39/80 has been registered in this connection at Mattanur Police Station.

On 22-3-1980 C. P, Nos. 1 'and 2 and some other members assembled together unlawfully and made injuries to one Mansoor Ahammed, A case in Crime No. 29/80 has been registered in this connection at Mattanur Police Station.

On 22-3-1980 a complaint petition has been filed against C. P. No. 3 by one Barkathulla to the Asst. Supdt. of Police, Tellicherry.

On 7-2-1980 C. P. No. 1 circulated a pamphlet containing unfounded allegation against the President of the Jumayath, Dr. Manzoor. This pamphlet would reveal the intention of the C. Ps. to create ill-feeling among the people and disturbance to public tranquillity.

It is reported that the counter petitioners are likely to commit a breach of the peace and disturbance to public tranquillity in the locality. It is also re-norted that the preventive steps taken by the police to discourage the counter petitioners have become futile.

Evidently the dispute is a private domestic dispute between the President and Secretary of a Muslim Jumayath. The incidents or events mentioned in the petition have no relevance now and the question of imminent breach of peace and public tranquillity does not arise in the background of the grounds stated. For that reason we quash the proceedings initiated under Section 107 of the Code which led to the

preliminary order.

Crl. M. P. No. 1599 of 1980.

19. The petitioner is A party No. 1 in M.C. 10 of 1980. The substance of information on the basis of which the parties were directed to execute a bond for keeping the peace or to show cause as seen from the order of the Magistrate reads thus:

SUBSTANCE OF INFORMATION.

Recently there are reports about the Marxist R.S.S. clash at Purathur. On 15-11-1980 at Padinharekkara it is reported that two Marxist workers were attacked by the R.S.S. and they were injured. The injured persons were admitted in the hospital. On 17-11-1980 at about 5 P. M, there was clash between the R.S.S. and Marxist and many persons were reported to have been injured and admitted in the hospital. Apart from this it is reported that there is likelihood of clash and disturbance to public tranquillity. The counter-petitioners referred to above are reported to be in the lead of all the activities and thus they have become a threat to public peace. I am convinced therefore that the counter petitioners are a threat to the peace of the area and that security proceedings under Section 107 Cr. P.C. have to be initiated against them. Hence this order.

There is no reference herein to A party No. 1, In fact there is no reference to any person in particular. According to A party No. 1 he is neither an R.S.S. nor a Marxist worker but is really one of the office bearers of Congress (I). We are really not concerned with this, Suffice to say that the matter referred to as the information does not implicate the petitioner. We are not concerned with other parties as they are not before us. No. overt act on their part is alleged, What is found is not that they are likely to commit breach of the peace or public tranquillity. It is said that all the counter petitioners are reported to be in the lead of public activities and they have become a threat to public peace. There is no concept of threat to peace in the scheme of Section 107 of the Code. Therefore the petitioner is entitled to succeed in his petition and the proceedings in M.C. 10 of 1980 will stand quashed so far as the petitioner is concerned.

Crl. M. P. No. 1687 of 1980.

20. The grounds on which the preliminary order under Section m is passed are the following:

The counter petitioners are active workers of R.S.S. and are prepared to do any wrongful acts creating breach of peace in the area. It is reported that the workers of R.S.S. and Communist Party (Marxist) are in inimical terms.

On 18-7-1979 at about 4.30 P. M. the followers of R.S.S. formed themselves into an unlawful assembly near 'Bhaskara Smaraka Vayamasala' at Thoova-kunnu and murdered one Moothakkat Chandran, a Marxist Party Worker. Subsequently the R.S.S. workers again assembled together with intention to create breach of peace in the area. Since the counter petitioners assembled together with intention to create breach of peace they were arrested by the Kolavallur Police at 01.45 hrs. on 18-7-1979 near Poyilur Post Office. A case has been registered against them in Cr. No. 27/79 and they were released on bail.

It is also reported that the attempt of the police to discourage the counter petitioners from indulging in unlawful activities has become futile.' The mere fact that the counter petitioners are R.S.S. workers or that they assembled together would not be a ground to invoke Section 107 against them. The mere statement that they assembled together would be too vague. The only other ground is based on murder of one Chandran, That incident has no relevance to the counter-petitioners. Apart from all these, the incidents referred to are of very ancient dates and therefore they are of no relevance to the proceedings. The proceedings are quashed.

Crl. M. P. No. 1967 of 1980.

21. The grounds on which the preliminary order is passed are:

The counter petitioners are active workers and sympathisers of R.S.S. The tension between R, S. S. and Marxist Communist party is prevailing in the area and murder cases have been reported from various places due to political rivalry.

A case in Cr. No. 43/79 has been registered at Panoor police station for attacking Dinesh Beedi Company at Kottyodi in Pattiam village. A case in Cr.

No. 49/79 has been registered against the R.S.S. workers for attacking the people of East Kadirur and for robbing two shops. It is reported that due to unlawful activities of the counter petitioners there is every likelihood of breach of peace and disturbance to public tranquillity. There is also credible information that the counter petitioners are prepared to do any wrongful acts creating breach of peace in the locality.' Counter-petitioners are said to be active workers of the R.S.S. That is not a ground to invoke Section 107 of the Code against them, even if there is rivalry between R.S.S. and Marxist workers. That some action has been initiated against some would not be a ground to invoke Section 107 of the Code against the petitioners. The vague statement that there is likelihood of breach of the peace is only a ritualistic recital. In these circumstances we see no reason to uphold the order. We quash the order under Section 111 of the Code and the proceedings which led to that order.

Crl. M. P. 1700 of 1980.

22. The grounds on which the preliminary order is passed in this case read:

The counter petitioners are active workers of R.S.S. and are bent upon creating breach of peace by indulging to unlawful activities. The tension between R.S.S. and Marxist Communist party is prevailing in the area now and they are in bitter enmity due to political animosity. The counter-petitioners are involved in murder case reported at Tellicherry police station and are in the habit of creating troubles in the locality continuously. Counter-petitioners 1 to 3 are involved in Cr. No. 130/79 of Tellicherry Police Station. C. Ps, 4, 5 and 6 in Cr. No. 147/79. C. P. No. 7 in Cr. No. 362/78 and C. Ps. 8 and 9 are involved in Cr. No. 113/79 of Tellicherry Police Station.

It is reported that the C. Ps. are prepared to do any wrongful acts creating breach of peace and disturbance to Dub-lice tranquillity.

The tension between R.S.S. and Marxist Communist party is prevailing in the area and may flare up at any time unless prevented.

As we have said earlier the mere fact that the counter-petitioners are R.S.S. workers would not be sufficient to invoke Section 107 of the Code in this case also. The counter-petitioners are said to be involved in murder case, but no details are given, it would be too vague a statement simply to say that the counter petitioners are 'involved' in some murder case. Whether they are accused in those cases, and how many cases there are have not been referred to. Reference is then made to a crime case. What this crime case is and what is its relevance to the future conduct of the counter-petitioners are not indicated. Moreover they are of the years 1978 and 1979 and there is no justification to base demand of security now as if imminent breach of the peace could be assumed on these facts. The last paragraph makes some general statement which would not be sufficient to warrant proceedings under Section 107 of the Code, The proceedings are quashed.

Crl. M.C. No. 3 of 1981.

It is submitted by the Public prosecutor that the counter-petitioners have been discharged on 3-1-1981. This is recorded. As such no further orders are called for.

The petitions are disposed of as above. No costs.

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