

Mohammedali Vs. State of Kerala

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Court : Kerala

Decided On : Jul-21-2003

Reported in : 2003(3)KLT221

Judge : R. Basant, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 107, 111 and 482

Appeal No. : Crl. M.C. No. 4161 of 2003

Appellant : Mohammedali

Respondent : State of Kerala

Advocate for Def. : Noorji Noushad, Public Prosecutor

Advocate for Pet/Ap. : Babu S. Nair and; Smitha Babu, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

R. Basant, J.

1. The petitioners have approached this Court with a request that the powers under Section 482 Cr.P.C. may be invoked to quash the proceedings in MC. 5/03 initiated by the Sub Divisional Magistrate, Perinthalmanna against them under

Section 107 Cr.P.C. Annexure-A order under Section 107 read with Section 111 Cr.P.C. has been issued against the petitioners and two others, calling upon them to show cause why they should not be ordered to execute bond for Rs. 10,000/- with two solvent sureties with like sum for keeping peace for a period of one year under Section 107 Cr.P.C. The petitioners (first among them is an Advocate) did not appear before the Sub Divisional Magistrate and have instead, moved this Court by filing this petition.

2. The learned Public Prosecutor was directed to take instructions. The file of the Sub Divisional Magistrate has been produced before this Court. It shows that F.I.R. under Section 107 Cr.P.C. was registered on 19.2.2003. It was registered suo motu by the Sub Inspector of Police of the Melattur Police Station. He conducted necessary enquiries. After such enquiries, a report has been filed by the Sub Inspector of Police through the Deputy Superintendent of Police before the Sub Divisional Magistrate. In the report it is reported that apprehension of breach of peace is perceived by the police. The reasons thereof are also mentioned. The Sub Divisional Magistrate after perusing the report and various documents produced along with the report had further recorded the statement on oath of the Sub Inspector and it was thereafter that the decision to proceed under Section 107 Cr.P.C. was taken.

3. The learned counsel for the petitioners assails the impugned order on various grounds. At the very outset, I must take note of the broad purpose and object of proceedings under Section 107 Cr.P.C. It is not a punitive proceedings. Proceedings are primarily meant for maintenance of peace and tranquility in the locality. An order under Section 107 Cr.P.C. read with Section 111 only calls upon the persons proceeded against to show cause why they should not be directed to execute a bond to keep the peace. I am in total agreement with the learned counsel for the petitioners that sufficient and cogent reasons must be available, before the Executive Magistrate can call upon a person to execute such a warrant. The powers cannot be lightly invoked. It certainly is an interference with the rights and liberty of an individual. Therefore, careful application of mind is certainly necessary.

4. The powers and jurisdiction, of this Court under Section 482 Cr.P.C. must also be alertly borne in mind. Interference with the proceedings of the Sub Divisional Magistrate, initiated under Section 107 read with Section 111 Cr.P.C. must be done only sparingly and in fit cases. Unless the Court is convinced that the proceedings are initiated with oblique motives or for want of no sufficient reasons at all, the attempt of the Executive Magistrate to take action to prevent breach of peace should not be interfered with.

5. The first contention is that the F.I.R. has been wrongly registered. Crime No. 30/03 of Melattur Police is seen registered by the Sub Inspector of Police under Section 107 Cr.P.C. The counter petitioners in the proceedings are shown as accused in the F.I.R. The learned Public Prosecutor was requested to explain how an F.I.R. has been registered under the provisions of 107 Cr.P.C. The learned Public Prosecutor, after taking instructions, concedes that no cognizable offence is revealed. Therefore, strictly, registration of a crime while initiating proceedings under Section 107 Cr.P.C. is not necessary or justified. The decision to consider action under Section 107 Cr.P.C. is seen recorded in the book meant to be maintained under Section 154 Cr.P.C. The learned Public Prosecutor makes no attempt to support the conduct of the police registering the F.I.R. The learned Public Prosecutor only submits that the fact that the F.I.R. has been registered, perhaps unnecessarily, cannot initiate against the validity of the proceedings initiated under Section 107 Cr.P.C. I agree with the learned Public Prosecutor. I am unable to place my finger of any provision of Cr.P.C, which justifies the registration of F.I.R. under Section 154 Cr.P.C. when the officer in charge of the police station contemplates the need to take action under Section 107 Cr.P.C. But that apart, the fact that such an F.I.R. has been registered by itself cannot in any way affect, or detract against the validity, of the proceedings under Section 107 Cr.P.C. initiated by the Sub Divisional Magistrate. Section 107 Cr.P.C. makes it very clear that action can be initiated by the Executive Magistrate when he 'receives information' that any person is likely to commit a breach of the peace or disturb the public tranquility etc.' The Sub Divisional Magistrate must receive information. That information can certainly be furnished by the police officer in charge of the local police station. He is the most competent person to place such information before the Sub Divisional Magistrate. The mere fact that he has,

perhaps unnecessarily, registered an F.I.R. while contemplating initiation of action under Section 107 Cr.P.C. the decision in any way affect the information placed by him or the action taken by the Sub Divisional Magistrate on the basis of such information.

6. The second contention is that none of the persons proceeded against are the residents of any locality falling within the jurisdiction of the police station where F.I.R. has been registered. The local Sub Inspector who submitted the report before the Sub Divisional Magistrate through the Deputy Superintendent of Police has no jurisdiction over the place of residence of the counter petitioners. This again according to me cannot affect the validity of the proceedings initiated as the question is clearly covered by Section 107(2) Cr.P.C. Jurisdiction exists where the apprehension of breach of peace exists as also at the place where the alleged miscreants reside. The fact that within the jurisdiction of the Sub Divisional Magistrate concerned there is only apprehension of the breach of peace and that all those who are suspected would be responsible for breach of the peace reside outside such jurisdiction, is of no consequence at all. The second objection raised cannot also hence succeed.

7. Thirdly, it is contended that no crime whatsoever has been registered at Melattur police station within the jurisdiction of which the apprehension of breach of peace was allegedly perceived. I must in this context note that even the registration of one crime may not be sine qua non for initiation of proceedings under Section 107 Cr.P.C. An alert officer in charge of the police station and the Sub Divisional Magistrate need not wait for the first incident of violence before proceedings under Section 107 are initiated. What is of importance if not whether any previous incident of violence had taken place or not? The previous occurrence may support and justify the apprehension. But that is far from saying that in the absence of any incident of violence, such apprehension of violence or breach of peace cannot be entertained by the officer in charge of the local police station or the Sub Divisional Magistrate having jurisdiction. In these circumstances, the fact that no crime has been registered at all within the jurisdiction of Melattur police station by itself is of no consequence at all provided there are materials to show that the apprehension of breach of peace is justified.

8. It is contended that the circumstances narrated in the order passed under Section 111 Cr.P.C. are not sufficient to instil in the mind of the police officer or the Sub Divisional Magistrate any reasonable apprehension of breach of the peace. I have gone through the report very carefully. The report shows that the second counter petitioner who is the brother of the first counter petitioner (1 st petitioner herein) has an extent of 20 acres of property within the jurisdiction of Melattur police station. He had employed workmen to do work in that property. These workmen had allegedly insulted local women generating considerable amount of opposition, ill-will and antagonism among the local people. Tension and passions were running high and it is in these circumstances that the alleged apprehension of breach of peace was perceived by the Sub Inspector as also the Sub Divisional Magistrate. A convoy of vehicles was allegedly found moving through the adjacent police station and they were intercepted. Considerable amount of men and arms were collected in those vehicles. When they were intercepted they along with the weapons were taken into custody. That seizure mahazar is available in the file of Sub Divisional Magistrate. The F.I.R. registered is also available in the file. There are indications to show that such persons after collecting the requisite weapons were proceeding to property of the second counter petitioner. The apprehension of breach of peace in the property, in these circumstances, cannot be said to be unfounded. A crime was registered at the Manjeri police station as crime No. 27/03. Thereafter, two more petitions were filed though no crime, as such had been registered. Taking the totality of the facts and circumstances into account it is impossible at this stage to come to a conclusion that there is no merit or substance in the apprehension of breach of peace reported by the Sub Inspector through the Deputy Superintendent of Police to the Sub Divisional Magistrate and the threat to breach of peace perceived by the Sub Divisional Magistrate on the basis of available materials. Relying on a decision reported in Moidu v. State of Kerala (1982 KLT 578 (F.B.)) it is contended that the reasons stated in the impugned order passed under Section 107 read with Section 111 Cr.P.C. even if accepted in toto are not sufficient to apprehend any imminent danger to peace and tranquility in the locality. I have been taken, in detail, through the decision of the Full Bench. I am unable to agree that the requirement of imminent danger highlighted in the cases dealt with in that decision, is not available in the facts and circumstances of

this case. At any rate, I am satisfied that invocation of the powers under Section 482 Cr.P.C. is not necessary or warranted against the proceedings initiated under Section 107 Cr.P.C. on that ground.

9. The learned counsel for the petitioners then contends that the action initiated by the Sub Inspector is vitiated by mala fides. After the crime registered at the Manjeri police station the first petitioners had filed complaint against certain police officials of that police station. The Sub Inspector of the Melattur police station is only acting against the petitioners because of such complaints filed by first petitioner. Admittedly, the complaint is not directed against the Sub Inspector who registered the crime or the Deputy Superintendent of Police who forwarded the report to the Sub Divisional Magistrate. The brotherhood of the police is prompting them to initiate action against the petitioners under Section 107 Cr.P.C., it is contended. This allegation which remains in the realm of unsubstantiated assertions, cannot again persuade this Court to invoke its jurisdiction under Section 482 Cr.P.C.

10. The learned counsel finally contends that specific overt acts are not alleged against the petitioners herein. Admittedly, all the petitioners are accused in the crime registered by the Manjeri police. In these circumstances the absence of specific overt acts alleged cannot also clinch the issues.

11. I am in these circumstances satisfied that there is absolutely no reason to interfere with the proceedings which have already been initiated under Section 107 Cr.P.C. It is for the petitioners to appear before the Sub Divisional Magistrate and satisfy the Sub Divisional Magistrate that there are no circumstances which would justify the insistence that they must execute bond.

12. In the result, this petition is dismissed.

13. I may hasten to observe that it shall be open to the petitioners to raise all their contentions before the Sub Divisional Magistrate and the Sub Divisional Magistrate must consider them all untrammelled by any observation made in this order.