

Bipinkumar Vs. State

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Court : Gujarat

Decided On : Mar-02-1962

Reported in : (1963)GLR163

Judge : V.B. Raju, J.

Appellant : Bipinkumar

Respondent : State

Judgement :

V.B. Raju, J.

1. This criminal revision application is treated as appeal. In this case, an order was passed Under Section 1U9, Cr IPC without holding an inquiry on the ground that /the person concerned had expressed his willingness to give surety and to furnish security. Section 117(1), Cri. Pro. Cede., reads as under:

When an order Under Section 112 has been read or explained Under Section 113 to a person present in Court or when any person appears or is brought before a Magistrate in compliance with, or in execution of a summons or warrant, issued Under Section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

Even when the person is willing to give surety, Section 117(1) requires that the Magistrate shall proceed to inquire into the truth of the information and to take such further evidence as may appear necessary. Section 118(1), Cr. Pro. Code, provides that if upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behavior, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly. It is only if these facts are proved that an order can be passed under Section 118, Cr. Pro. Code.

2. The order passed by the learned Magistrate is, therefore, set aside, and he is ordered to comply with the provisions of Sections 117 and 118, Cr. Pro. Code. The accused, who is in jail, should be produced before the Magistrate for passing necessary orders.

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