

Mithya and ors. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Oct-16-1986

Reported in : 1987(1)WLN343

Judge : Guman Mal Lodha, J.

Appeal No. : S.B. Cr. Misc. Petition No. 380 of 1986

Appellant : Mithya and ors.

Respondent : State of Rajasthan and ors.

Disposition : Application allowed

Judgement :

Guman Mal Lodha, J.

1. A typical case of utter ignorance of law resulting in abuse of process of court and consequential harassment to the litigants, has come to lime light, by this miscellaneous petition of 15 Meenas belonging to the Scheduled Tribes of the Police Station, Gadmor, District Sawai Madhopur of Rajasthan.

2. At the stage of admission itself I have beard the learned Counsel for the petitioners and the learned Deputy Government Advocate S.N. Kumawat in respect of the new dimensions of validity of continuation of 107 Cr. P.C. proceedings after expiry of notice period of 6 months, issued under Section 111

Cr. P.C.

3. The precise point relating to above which I propose to decide by this miscellaneous petition under Section 482 Cr. P.C. would govern and be a direction to all the Magistrates of Rajasthan, relating to the proceedings under Sections 107 to 116 Cr. P.C.

4. Before I proceed to decide that on the broader horizon, I would like to mention the facts of the present case, which incidentally has brought this abuse of process to lime light. These 15 applicants in this court and non-applicants before the Magistrate were summoned by the Sub-Divisional Magistrate Gangapur. On 22nd February, 1986 the Sub-Divisional Magistrate Gangapur City directed the issue of warrant of arrest against all these 15 persons. Curiously enough he passed two orders one in English and Anr. in Hindi. The English version of the order is cryptic and it reads as under:

Presented by Shri Battee Lal through his Advocate Shri D.P. Sharma examined him orally and came to the conclusion looking to the circumstances persons from 1 to 11 and 13,14,15 and 19. These 15 persons be summoned through warrant of arrest. The case be registered.

5. The Hindi order is detailed and descriptive one in which it has been mentioned that the case has been registered under Section 107 Cr. P.C. and 116(c) and the non-applicants should show cause that why they should not be bound down for six months for keeping peace by giving bail bonds and personal bond of Rs. 100/- each.

6. It is interesting and also sad commentary on the Magistracy, that though on, 22nd February, 1986 the apprehension of breach of peace was expected for six months. Now we are in the month of October, 1986, six months have expired on 22nd August, 1986, and yet the case is a non starter only.

7. It appears that against this order a revision was filed and the non-bailable warrant probably was made bailable. It further appears that the case was adjourned from time to time on one reason or the other and the non-applicants are

still facing the proceedings of Section 107/116 Cr. P.C.

8. Section 107 & 116 are reproduced for ready reference:

Section 107(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner here in after provided, require such person to show cause, why he should not be ordered to execute a bond, (with or without sureties) for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit;

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

Section 116(1) When an order under Section 111 has been read or explained under Section 112 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 113 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;

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons cases;

(3) After the commencement, and before the completion of the inquiry under Section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of the breach of peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order

under Section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:

Provided that:

(a) no person against whom proceedings are not being taken under Section 108, Section 109 or Section 110 shall be directed to execute a bond for maintaining good behaviour;

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under Section 111;

(4) For the purposes of this section the fact that a person is a habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise;

(5) Where two or more persons have been associated together in the matter under inquiry they may be dealt with in the same or separate inquiries as the Magistrate shall think just;

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing the Magistrate otherwise directs:

Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention;

(7) Where any direction is made under Sub-section (6) permitting the continuance of proceedings, the Sessions Judge may, on the application made to him by the

aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse.

9. The important question which has emerged for consideration is, whether after expiry of the six months in cases where the notice itself directs that the non-petitioner should show cause that why should not be bound down for keeping peace for six months, proceedings under Section 107 Cr. P.C. can continue. A perusal of the relevant provisions, which are contained in the Criminal Procedure Code, under the caption 'Security for keeping the peace and for good behaviour' under Chapter VIII, would show that Section 107 Cr. P.C. is a preventive provision enabling the Magistrate to prevent disturbance of public tranquillity and breach of peace, by requiring the persons who are likely to cause disturbance to public peace, to execute bond with or without surety for keeping peace.

10. The ceiling of such a period for which the Magistrate can direct is one year but the Magistrate in his order or notice can direct for a lesser period because Section 107 Cr. P.C. Clause (1) provides that for such period, not exceeding one year, as the Magistrate thinks fit.

11. Sections 111, 112, 113, 114 and 115 Cr. P.C. provide the procedure and they need not detain us for the purpose of adjudication, of the relevant point which I have mentioned above.

12. Section 116 Cr. P.C. comes into play and the enquiry is to proceed on the information upon which the action has been taken. Clause (3) of Section 116 permits the Magistrate to direct execution of the bond until the conclusion of the enquiry. Sub-clause (6) of Section 116 Cr. P.C. is important and relevant because it expressly mandates that the enquiry is to be completed within a period of six months from the date of commencement and cannot be continued thereafter unless for special reasons the Magistrate otherwise directs. Proviso to Sub-clause (6) of Section 116 Cr. P.C. says that the detention of person would expire on six months from the date of detention.

13. Section 118 Cr. P.C. provides for discharge of such persons if the allegations are not proved in enquiry.

14. The peculiar situation has arisen in the present case because the Magistrate in his initial order has mentioned that notice is to be given to show cause for keeping peace for six months. The relevant order reads as under:

lkzekf.kr izfrfyfi vkns'k miftyk n.M+uk;d] xaxkiqj flVh fnukWd 22&2&1986 eqdnek uEcj 56@86 muokuh oRrhyky cuke ehfB;k oxSjk] rgr }kjk 107 tk-QkS-rk-jtw 22&2&1986 vk-is'kh 26&6&1986 A 22&2&1986

;g izkFkZuki= lk;y cRrhyky iq= JhpUn tkfr ehuk fuoklh VksM+k Fkkuk xxM+k dj 'kakfr Hkax djus ij vkenk gS A

geus izLrq bLrxkls dk voyksdu fd;k rFkk izLrq bLrxkls ds lkFk layXu gyQukeks dks ns[kk rFkk lk/kkj.k :lk ls tkap dh A ftlls ge Qksjh uqDtsveu ds vUns'k ls vk'oLr gS AxSj lk;yku ua- 1 Vw 11] 13] 14] 15 ,oa 20 ds fo:) dk;Zokgh dk;Zokgh 107&1163 lh&vkj-ih-lh-; ntZ jftLVj dh tkos A fd 6 ekg rd 'kkfUr cuk, j[kus gsrq 100&100 :lk;k dh tekur o eqpydks ls D;ks ugh ikcUn fd;k tkos A xSjl;yku dks tfj;s okj.V fxjrkjh ls ryc gksdj lk=koyh fnukad 3&3&1986 dks is'k gks A

gLrk{kj

mi ftyk n.Muk;d

xaxkiqj flVh

15. In the above order the following is very important:

xSj lk;yku dsk 111 lh- vkj- ih- lh- dk uksfVI tkjh fd;k tkos fd 6 ekg rd 'kkfUr cuk;s j[kus gsrq 100&100 :lk;k dh tekur o eqpydks ls D;ks ugh ikcUn fd;k tkos A

16. Now this order obviously contemplates that the maximum period for which the non-petitioners were required to keep peace was six months and the Magistrate has not directed that interim bonds should be taken during the pendency of the proceedings, which could have been done. Contrary to it the direction is that they must execute bonds for keeping peace for six months.

17. The sum and substance of the above order is that the Magistrate was convinced under Section 107, Cr. P.C. that the period for which these non-

applicants were required to be bound down, for keeping peace was six months. If that is so a very important question arises whether under the garb of these proceedings a Magistrate can continue the proceedings after expiry of six months. Obviously his satisfaction was that looking to the facts of the case all that is required is that the non-applicants should maintain peace for six months. This satisfaction was on 22-2-1986. Consequently on 22-8-1986 when six months expired, nothing remains in the form of apprehension of disturbance of public tranquilly.

18. I am therefore, convinced that the continuance of the proceedings after the expiry of six months, where the Magistrate initially while taking cognizance and registering the case mentions that the notice should be for six months only, would be gross abuse of the process of court. In all such cases after expiry of six months, proceedings must be dropped what ever may have happened in between and during this period. Of course in a given case the Magistrate would be justified in passing a fresh order on fresh facts or on the earlier facts with some supplementary information. But unless such orders are passed, the proceedings must come to an end 'ipso facto' without any order of the court in law, although in fact Magistrate must pass formal order terminating proceedings.

19. It may be mentioned that Section 107, Cr. P.C. provides the power to the Magistrate to secure such bonds and bound down the persons for keeping peace for such period which should not be more than one year.

20. In my opinion this one year should commence from the date of the satisfaction when the Magistrate takes cognizance and commences the proceedings under Section 107 Cr. P.C. and this one year which is maximum cannot be and should not be from the date of service of warrant or notice, nor it can be from date of first appearance of the accused. Of course, it is for the Magistrate concerned to satisfy himself at the stage when he starts proceedings under Section 107 Cr. P.C. whether he should issue notice to show cause for execution of the bond for one year or for lesser period, because Clause (1) of Section 107 Cr. P.C. permits such discretion depending upon the information.

21. However, once he has made the order for a particular period i.e. six months or nine months then he would become functus officio', so far as the proceedings under Section 107 Cr. P.C. are concerned on the expiry of that period of six months or nine months or what ever it may be. The learned Deputy Government candidly and fairly conceded to this interpretation of Section 107 Cr. P.C. and further pointed out that even under Section 116 Cr. P.C. after the enquiry commences sub Clause (6) makes it imperative that such enquiry should be completed within six months from the date of the commencement unless an express order is made for special reasons to continue them thereafter.

22. In consonance with the above object, there is a provision under proviso to Clause (6) of Section 116 Cr. P.C. that the detention of the persons cannot be more than 5 months.

23. It should be mentioned that preventive action under Section 107 Cr. P.C. of the Chapter VIII of the Criminal Procedure Code, is not meant to substitute the punishment or harassment or humiliation to the non-applicants who are summoned. The preventive action should not be based on personal vendetta nor it should be for the purpose of exhibiting the authority of the Magistrate or the police.

24. The provision of preventive action under Section 107 Cr. P.C. and subsequent sections is to be used only for the purpose of preventing breach of peace or tranquillity and that too for a limited period because it cannot be dragged like the criminal trials for substantive offences. The very object of this section is frustrated if the enquiry is not completed and the order is not passed within this period, of six months as the preventive action cannot be for a period of more than one year, the starting point being date of taking cognizance by Magistrate. Yet another fact of this discussion and debate is that if the preventive action is for a particular period and if during that period nothing happens then the objective is served and if something happens then the punishment is to be given for the offence which has been committed.

25. Although the petitioners have come up before this court only for exemption of their attendance but I deem it proper in the interest of justice to exercise my powers suo moto under Section 482 Cr. P.C. for preventing the, abuse of the

proces of the court not only in this case, but in other cases also. Other cases have come before this court where for years together proceedings under Section 107 Cr. P.C. or 109 Cr. P.C. are prolonged, and litigants have been incidentally detained for more than the statutory period mentioned in the section.

26. I had earlier occasion to deprecate such practise in Dharmendra Singh v. State of Rajasthan's case, in S.B. Cr. Misc. Application decided on 8-9-1986, I have observed as under:

In my considered opinion the present one is a case of abuse of process of court where when the surety came the bail bonds were not accepted one pretext or the other. It is surprising and shocking that from 20-12-1985 Dharmendra Singh is languishing in jail, only for proceeding under Section 110 Cr. P.C. when he has been acquitted in jail other cases of substantive offences, as per the report of the jailor of Jhalawar and is prepared to submit bail bonds. Obviously, the Sub-Divisional Magistrate and Executive Magistrate both have shown scant regard for liberty of a citizen. When the accused has been acquitted in all substantive offences and only proceeding sunder Section 110 Cr. P.C. were pending, he should not have been kept in judicial lock-up for such a long time. If there was no surety available then he should have been released on personal bond;

Depriving the citizen of liberty by proceeding under Section 110 Cr. P.C. solely on the ground that no person is coming forth for giving a surety or that some other cases, are pending, virtually tantamount to' making of unlawful effort to keep a citizen in jail for uncertain period. Then present one is a case where as per the report of the jailor, Jhalawar, the accused has been released in all cases of substantive offence and that being so, even if surety was not available after such a long time of detention of the non-applicant Dharmendra Singh should have been released on personal bond for appearance.

Consequently while deprecating the conduct of the SDM, Akkra and the Executive Magistrate, Akkra in showing scant regard for the liberty of the citizen and compelling the non-petitioner to languish in jail and to face detention without trial for such a long time, it is ordered that if any proceeding under Section 110 Cr. P.C. is yet pending against Dharmendra Singh he should be released on personal bond

of Rs. 1,000/- for his appearance in that case.

27. It is to safe guard against such abuse of process of court and to ensure liberty & dignity of living to individual citizens, as protected and guaranteed by Article 21 of the Constitution, that the High Court should have activist approach.

28. It is therefore, ordered that the proceedings against the present applicants would be dropped as a whole because notice of six months has expired on 22nd August, 1986. It is further ordered that a copy of this judgment would be sent to Magistrate concerned dealing with the cases under Section 107 Cr. P.C. read with Section 116 Cr. P.C. by the Chief Secretary, State of Rajasthan so that they examine each case and find out whether the period for which notice was given initially for keeping peace has expired or not. In cases where the period for which the notice was given under Section 107 Cr. P.C. for showing cause against submitting bonds for keeping peace has expired or the enquiry has been prolonged for more than six months, then as mentioned under Section 116 the proceedings should be dropped and the non-petitioners would be discharged.

29. It is however made clear that in case the Magistrate concerned receives fresh information or supplementary information on account of which he has apprehension of breach of peace then he would be at liberty to start proceedings afresh Under Section 107 Cr. P.C. even after the order of discharge in the pending cases. However such cases should be far and few between, and should be rare of the rarest cases. It must be ensured that under that garb the earlier proceedings should not be continued to harass the non-applicants for personal vendetta, for indefinite period. It should be remembered by the Magistrate concerned that the legal proceedings and the power which have been given for preventive action normally should be used in a manner that there should not be scope for the impression that they are being used for personal vendetta, or exhibiting power of the Magistrate or Police. A copy of this judgment should be circulated amongst all Magistrates of the State of Rajasthan. Copies must be sent to the District Magistrate throughout Rajasthan to ensure the enforcement of this order immediately, by the Home Commissioner, as Section 107 Cr. P.C. proceedings are generally under the domain of Executive Magistrate in Rajasthan.

30. Copies of this judgment should be sent to the Inspector General of Prisons, Chief Secretary and the Home Commissioner, so that they can send copies of this judgment to all the Magistrates and the Jail Superintendents and the Jailors, concerned for prompt action.

31. In cases in any jail any of the persons against whom the proceedings are being taken for keeping peace under Section 107 Cr. P.C. read with Section 116 Cr. P.C. are being detained for more than six months, then such persons after verification from the record should be produced before the concerned Magistrate for being released forthwith, unless otherwise he is required.

32. The Inspector General of Police should send detained report of compliance within one month to this court, in respect of jails.

33. This application under Section 482 Cr. P.C. is therefore accepted and the above directions are issued for compliance forthwith.

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