

Bashir Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Aug-03-1976

Reported in : 1976WLN488

Judge : M.L. Jain, J.

Appeal No. : S.B. Cr. Misc. Petition No. 320 of 1975

Appellant : Bashir

Respondent : The State of Rajasthan

Judgement :

M.L. Jain, J.

1. The fact's Of this petition are that the petitioner Bashir was arrested by the police on 28-6-75 under Section 151 Cr.PC But there is no record of his arrest However, he was present, perhaps brought by the police, in the court of the City Magistrate, jodhpur on the same day when the police filed a complaint against him, under Section 107 Cr. PC The substance of the complaint was that the accused had formed a group and with its help is always ready to enter into a braw He is a quarrel some fellow first rate and enjoyed such reputation. These cases under Sections 147, 452, 323, 440 and 324 IPC have already been registered and challenged against him. A company under Section 107 Cr.PC was filed against him on 19-2-73. Another case under Section 110 Cr.PC was also instituted against

him on 13-12-74. The police requested the Magistrate that in the interest of maintenance of peace it was necessary to bind him in an appropriate amount. The Sub Inspector also appended an unsworn affidavit along with his complaint.

2. The learned Magistrate made a conditional order dated 28-6-75 under Section 111 Cr.PC requiring him to show cause why he should not be bound down in the amount of Rs. 5,000/ with similar surety for a period of six months. The learned Magistrate then read and explained his order to him. The petitioner did not plead guilty and the Magistrate fixed 10-7-75 for further proceedings but at the same time the learned Magistrate purporting to set under Sub-section (3) of Section 116 of served that there was emergency imposed in the country, the petitioner was a 'BADHMASH' and a dangerous man and there was immediate danger of breach of peace and directed him to furnish interim bonds and surety in the aforesaid amount.

3. The petitioner then submitted the requisite bonds. But the learned Magistrate was not satisfied with the pecuniary position of his surety, sent the same for verification by the Tender and remanded the petitioner to judicial custody.

4. On 10-7-75 petitioner produced another surety but the learned Magistrate did not (sic) any action on thereon and adjourned the case saying he was busy in some other urgent work, and fixed 17-7-75 as the next date. However, on 11-7-75 the learned Magistrate verified the interim bonds and further, demanded and verified bad bonds for the appearance of the petitioner. After this he was released from judicial custody the same day.

5. On 17-7-75 the learned Magistrate directed that witnesses be summoned even though no list of witnesses was appended by the police along with their complaint.

6. Mean while, the petitioner Bashir filed an appeal in the court of Sessions, Jodhpur against that part of his order of the learned Magistrate dated 28-6-75 by which his surety was not accepted by the learned Magistrate. The learned Section Judge set aside the order of the Magistrate in so far as it related to the direction for verification of solvency of the sureties, He also directed the Magistrate to take immediate decision this way or that way regarding the sufficiency of the

surety bonds The order of the learned Sessions judge is dated 2-7-75, He also decided certain contentions raised before him. He did not accept the contention that no surety can be asked for under Section 107 Cr. PC. He also rejected the contention that before an order under Sub-section (3) of Section 116 Cr.PC is passed, an inquiry under Sub-section (1) is a must. According to him, an inquiry begin either when an order under Section 112 is read or is explained or when a person appeared after service of the summons or warrant under Section 113 and 114 Cr.PC.

7. Aggrieved by all the aforesaid proceedings, the petitioner has filed this petition under Section 482 Cr. PC.

8 It was firstly contended by the learned Counsel for the appellant that the order of the learned Magistrate was illegal in as much as he was asked to furnish surety in proceedings under Section 107 Cr.PC which provides only for execution of a bond, The learned Public Prosecutor on the other band relies upon the provisions of Section 111 which provides for setting forth in the order the number, character and class of sureties. He further pointed out that Sub-section (3) of Section 116 Cr.PC which lays down that after the commencement, and before the completion of the inquiry under Sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbances of the public tranquility or the commission of any offence of for the public (sic), may for reasons to be recorded in writing, direct the person in respect of whom an order under Section 111 is made to execute a bond with or without surety for keeping the peace or maintaining good behaviour until a conclusion of the inquiry and may detain him in such (sic) until such bond is executed or in default of such execution, until the inquiry is concluded He urged, as was also held by the learned Sessions, Judge, that at least in case of interim bonds surety can also be demanded by the Magistrate. But this argument is not correct because the proviso (b) of Section 116(3) further lays down that the conditions of such bond whether as to the amount thereof or as to the provisions of sureties or the number thereof or pecuniary extent of their liability shall not be more onerous than those specified in the order under Section 111 Cr. PC. which cannot be trade otherwise than in accordance with the principal provisions contained in Section 107 Cr.PC. It

will be noticed that the Code of Criminal Procedure, 1973 has done away with the previous provision of giving surety.

9. If no surety can be asked for under Section 111 Cr.PC bond in a case under Section 107, then in virtue of the express provision contained in proviso (b) to Sub-section (3) of Section 116 no surety bond can be asked even for the inquiry period. The surety bonds which are mentioned in Section 111 and in Sub-section (3) of Section 116 relate to proceedings under Sections 108, 109, and 110 Cr.PC and not to the under Section 107. The new code has made this distinction that surety bonds will be required when a person is bound for good behavior but not just for keeping the peace.

10. I therefore, agree with the contention that the learned Magistrate while acting under Section 107 was absolutely in the error when he demanded a surety bond by his order made under Section 111 Cr.PC. He repeated his mistake by asking a surety bond for the interim period.

11. The learned Counsel then contended that interim bond can be taken only after the commencement and before the completion of the interim bond was made on 28-6-75, no inquiry had commenced. The argument is deduced from the wordings of Sub-section (1) of Section 116. It provides that when an order under Section 111 Cr.PC has been read, or explained or appears or it brought before the Magistrate he shall proceed to enquire into the truth of the information upon which action is being taken and to take further evidence as may appear necessary. Such inquiry shall be made as nearly as may be practicable in the manner prescribed for conducting the trial and recording evidence in summons cases. Commencement of the inquiry therefore, means commencement of an inquiry according to the summons proceeding and the Magistrate should have made some effort to get some statement recorded. If nothing of this kind is done, the order is illegal. Reliance was placed upon *Madhu Limaya v. Ved Murli* AIR 1971 SC 2481. Since no witness was examined in this case, no inquiry had commenced so as to give jurisdiction to the Magistrate to ask for interim bonds.

12. Now, the procedure for summons trial is contained in Section 251 to 259 of Chapter XX of the Code of Criminal Procedure, In such trial the particulars of the

offence are stated to the accused when he appears or is brought before the Magistrate. He is then asked whether he pleads guilty or has any defence to make. The trial therefore, in a summons case commences when the particulars of the offence are stated to the accused. In proceeding under chapter VIII, an order under Section 111 Cr.PC is read over and if desired explained to the person concerned, if he is present before the Magistrate. If he is not so present, then, his presence can be secured then through summons or warrant which shall be accompanied by a copy of the order. In either case he gets acquainted with the particulars of the order, which (sic) the substance of the information, and if he admits the truth of the information then action under Section 117 may be taken. In case he does not admit or refuses to admit the truth of the information then, the Magistrate is required to proceed to enquire into the truth of the information on which action has been taken and to take such evidence as may appear necessary. The Magistrate, if he finds upon inquiry that the information is not true, he may (sic) charge the person but if he finds that the truth of the information has been proved, then (sic) page No. 492

material which was considered by him. By and large this consideration shall almost always be a subjective aspect only. But I must indicate strong disapproval of this court of the way the petitioner was remanded to custody pending verification of the solvency of the surety by the Tehsil. Even if one could overlook the fact that surely bonds were asked for in ignorance of the current position of law, it is difficult to countenance the facts that the petitioner was not given any time to have the solvency verified by the Tehsil nor were the bonds sent to the Tehsil for that purpose by the learned Magistrate. It was only nine days after the verification of surety bonds and the petitioner produced a new surety, that he could be released on 11-7-75.

15. A further contention was raised that there was no power in the police to arrest a man under proceeding under Section 107 nor in the Magistrate to direct execution of bail bonds for appearance before the Magistrate after the accused appears before the Magistrate either on his own or in pursuance of a summons or a warrant, issued against him. In *Madhu Limaye v. S.D.M. Monghyi* (3) the Supreme Court observed that there was no room for invocation of section of Sections 55(41 new) and 91 (88 New) Cr.PC. Section 91 (New 83) is not available

after the order under Section 111 is drawn up. It was contended that the police acted without any authority in arresting the petitioner under Section 151 Cr PC According to Section 151 a police officer can arrest a person if he comes to know of design to commit any cognisable offence and the commission of such an offence cannot be otherwise prevented. Even in Section 41, no arrest can be made except of a person falling in one or more of the categories specified in that section of Section 109 or Section 110. I therefore, agree with the contention that the police officer has no power to arrest a man for the purposes of Section 107 Cr.PC. It is only the Magistrate Who can issue a warrant of arrest in case the summons is not complied with. The arrest of the petitioner therefore, if made, under Section 551, then, it was certainly invalid. But there is no record in the lower court's file that the accused was so attested at all. I further uphold the contention that the order of the Magistrate asking for bonds for personal appearance in the proceedings in question was not in accordance with law and therefore illegal.

16. Lastly, it was submitted that according to Sub-section (6) of Section 116 Cr.PC the inquiry is required to be completed Within a period of six months from the, date of the commencement, and if such inquiry is not so completed, the proceedings shall on the expiry of the said period stand terminated unless for special reasons recorded in writing the Magistrate otherwise directs. Where any person has been kept in detention pending such inquiry, the proceedings against that person shall stand terminated on the expiry of such period of detention. It was submitted that here the proceedings began on 28-6-75. A year has gone by and therefore the proceeding stand terminated and the Magistrate, be directed not to proceed, with inquiry any more. I have given my careful consideration to this aspect as well There is no doubt that the requirement of the law is that the inquiry should be completed within a period of six months, and if it is not so completed then, the proceedings shall stand terminated on the expiry of six months completed from the commencement of the proceedings or from the date of detention, whichever is earlier. But the Magistrate at the same time is empowered for special reason to be recorded to extend this period if the person is already not in detention. The Magistrate in this case have had at no time to apply his mind to this aspect of the matter. Some time was lost in the proceedings which went on before the learned Sessions Judge and more time was lost in the proceedings which have been

pending in this court. It may be that during this period the reasons for binding the accused may have ceased but that is a matter for the Magistrate to decide and if he feels otherwise then he shall have a right to extend this period for any reason which is found special.

17. The result of the foregoing discussion is that this is a fit case in which the powers under Section 482 Cr.PC should be invoked in order to prevent abuse of the process of court and to serve the ends of justice. Accordingly, I direct that the order of the learned Magistrate dated 20-6-76 is illegal in so far as a direction to execute a (sic) bond (and not only the personal bond) is concerned, and is to this extent set aside, and the interim surety bond furnished by the petitioner is hereby cancelled. Further, the direction to executed bail bonds for appearance mentioned in the order of the learned Magistrate dated 11-7-75 is also quashed and the bail bonds for appearance are hereby cancelled.

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