

In Re: Thirunavukkarasu and ors.

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Court : Chennai

Decided On : Nov-12-1958

Reported in : (1959)2MLJ11

Appellant : In Re: Thirunavukkarasu and ors.

Judgement :

ORDER

Ramaswami, J.

1. This revision is sought to be filed against the order made by the ex officio First Class Magistrate, Chidambaram, in M.C. No. 2 of 1958, under Section 117(3) of the Code of Criminal Procedure.

2. In this case security proceedings under Section 109 of the Code of Criminal Procedure have been taken against 22 persons on a report of the Criminal Inspector of Police, Kurinjipadi. The order in writing made under Section 112 sets out the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the sureties required. The learned Magistrate has then proceeded under Section 117(3) and has taken interim bonds. The present revision is preferred against that order directing the execution of interim bonds. The grounds on which this revision is preferred are twofold viz., that there was no necessity to take interim bonds ; and secondly, part of the information itemised against the counter-petitioners as constituting the basis

for asking them to show cause consists of criminal cases in which they were acquitted.

3. Chapter VIII of the Code of Criminal Procedure dealing with prevention of offences and of security for keeping the peace and for good behaviour, is not intended to punish persons for every repetition but to guard society from them by placing them under such substantial but not excessive security as to prevent them from resorting to evil course. This Chapter is preventive and not punitive. *Mahabir Gope v. Samrathi Singh* : AIR1940 Pat252 , *Sukhlal Karnani v. Emperor* : AIR1938 Cal583 , *Baburam v. Emperor* A.I.R. 1932 Lah. 101, *Shadilal v. Emperor* A.I.R. 1931 Lah. 191, *Maruthapali Goundar, In re* : AIR1937 Mad356 , *Deo Ballam Singh v. Goraknath Singh* : AIR1947 Pat235 , *Inder Singh v. Harbans Singh* .

4. In other words, Section 107 is not intended for the punishment of past offences but for the prevention of acts that may amount or may lead to a breach of the peace hereafter. *Rangaswami Nayudu, In re* : AIR1943 Mad394 , *Shivaram Parashram, In re* (1904) Cri. L.J. 755, *Banarsi Raut v. Emperor* (1937) Cri. L.J. 952.

5. The institution of proceedings under Section 107 is not an accusation of an offence the itemised particulars given in Section 112 notice is not a catalogue of charges but information which according to the prosecution leads to the inference that the counter-petitioner is a person likely to commit a breach of the peace or disturb public tranquillity or do a wrongful act, etc., and against which the counter-petitioner is asked to show cause and therefore if for instance the information proves to be false, the Court has no power to act under Section 250, Criminal Procedure Code. Nor does the principle of *autre fois acquit* or *autre fois convict* (Section 403, Criminal Procedure Code) apply to such proceedings. Hence, where the person proceeded against is imprisoned for failure to give security, his subsequent trial for the acts on which the security proceedings were based is not barred under Section 403 of the Code or Article 20 of the Constitution of India. *Mathai Manjaram v. The State* A.I.R. 1952 T.C. 556. The person proceeded against is the person and not an accused and even before the amendment under Section 342, Criminal Procedure Code, was competent to give evidence on his

behalf; information under the section is not a complaint. The order binding over the person under the security proceedings is not a conviction. Several provisions of the Criminal Procedure Code are inapplicable to a person proceeded against under Section 107 as distinct from an accused under the Criminal Procedure Code, *Kartik Chandra v. Panna Lal* : AIR1958 Cal140 .

6. Section 107 is applicable notwithstanding that the acts alleged as giving rise to an apprehension of breach of the peace on the part of a person, constitute themselves specific offences for which he may be punished. It is also not illegal for a Magistrate in a proceeding under Section 107 to admit evidence on a specific charge or offence which is the subject of a separate current trial, as the scope of the proceedings is entirely different, one being concerned with offences committed in the past and the other being concerned with the likelihood of the breach of the peace in the future : *Khetrabasi Sahu v. Emperor* : AIR1918 Pat183 ; *Rangaswami Nayudu, In re* : AIR1943 Mad394 .

7. Any evidence which would be relevant to the information under enquiry would be admissible. The existence of a number of previous convictions or acquittals in a number of previous cases will not be substantive evidence in proceedings under Section 107 as in the case of proceedings under section No. The existence of previous convictions for offences such as theft is a matter which may and should be taken into consideration as indicating the character and disposition of the counter-petitioner in proceedings under Section 110(Section 54, Explanation 2, of the Evidence Act), though the existence of such a conviction is not by itself sufficient for an order for security. Weight and due regard must be given to the period that has elapsed subsequent to the last conviction in order to see whether during that period he has shown a disposition to conduct himself properly or whether there are indications that he has continued the previous course though he may not have actually brought himself within the clutches of law. Similarly cases of acquittal may be taken into consideration under section no because where evidence is taken as to reputation, the Court cannot and should not exclude the reasons which induced the members of the community to form a bad opinion of the accused and if their opinion is based wholly or partly on the belief that he had committed a crime which has not been brought home to him, the Court cannot rule

out as inadmissible all evidence on which the belief of the witness is based. Hence instances of specific crimes are admissible evidence although they are not supported by evidence of such amount and value as would secure a conviction for a substantive offence. It has been held that evidence relating to the incident which formed the subject-matter of the previous trial cannot be excluded ; the fact of acquittal although it may diminish and destroy value of the evidence, has not the effect of rendering such evidence inadmissible. Evidence of repute no doubt cannot be let in proceedings under Section 107 as in the case of proceedings under section No. But even in the case of proceedings under Section 107 reports or complaints by the several prosecution witnesses on various dates regarding the past conduct of the accused and his disposition to use violence, though not substantive evidence of the matters mentioned in them, are admissible under Section 157 of the Evidence Act to corroborate what the witnesses testify in Court that the person sought to be bound over is likely to commit a breach of the peace or disturb the public tranquillity or do a harmful act that may probably occasion a breach of the peace or disturb the public tranquillity. *Khetrabasi Sahu v. Emperor* : AIR1918 Pat183 , *Rangaswami Nayudu, In re* : AIR1943 Mad394 .

8. In taking interim bond under Section 117(3) the Magistrate who is the head of the Taluk, Division or District and is responsible for the maintenance of law and order there, is vested with a wide discretion. An order under Section 117(3) being in the nature of an interim order must be of a kind which could be made in a permanent order in the proceedings. It is not a mere routine order to be appended to an order under Section 112 and is not meant merely to anticipate the final order that may be made under Section 118. It is designed to meet an emergency. The Magistrate must direct his consideration particularly to the question of emergency and the necessity of immediate measures as a separate case. But this does not mean that he should conduct an enquiry within an enquiry, take evidence of witness on oath and their cross-examination in the usual manner. If the Magistrate is satisfied that an emergency exists and urgent orders are necessary, he can act upon the application of the Police Officer or upon the sworn testimony of a Police Prosecutor given in the witness-box or in the form of affidavits. An order under Sub-section (3) of Section 117 passed after considering the question of emergency as a separate question is not bad merely because the Magistrate has

based it on the same information which was the basis of his order under Section 112. Pir Shah v. Emperor 27 Cri. L.J. 1030, Bachal v. Emperor A.I.R. 1942 Sind 77, Emperor v. Ghulan A.I.R. 1943 Sind 122, Emperor v. Nabibu A.I.R. 1942 Sind 86, Emperor v. Ratnam A.I.R. 1943 Sind 173, In re Venkataswami : AIR 1955 AP96 , Jaswant Singh, In re A.I.R. 1954 Madh. Bha. 192, Surat Ishar Singh v. Jagat Singh Jiwan Ram A.I.R. 1955 N.U.C. Punj. 1614, Hurmat, In re : AIR1953 Pat132 , Ratlal, In re : AIR1956 Bom385 , Jagadish Prasad Verma v. The State : AIR1957 Pat106 , Ghaffar v. Saratalla : 22(1956)CLT508 (Orissa), Kartick Chandra v. Panna Lal : AIR1958 Cal140 .

9. An order passed under Chapter VIII of the Code is no doubt revisable by the High Court. The High Court, however, is not a Court of appeal and will not ordinarily interfere on the merits provided the lower Court shows in its judgment that it has really and not nominally considered the evidence on record and has approached the case in a fair way having regard to the interests of the prosecution as well as the defence.

10. Bearing these principles in mind, if we examine the facts of this case, there cannot be the slightest doubt that the detailed order of the learned Magistrate based upon relevant and admissible materials and showing that he has approached the matter from the point of view of emergency is irreproachable.

11. This Revision is dismissed.

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