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In Re: Saroja

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Court : Chennai

Decided On : Sep-24-1954

Reported in : AIR1955Mad596; 1955CriLJ1505

Judge : Ramaswami, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 106

Appeal No. : Criminal Revn. Case No. 809 of 1954 and Criminal Revn. Petn. No. 764 of 1954

Appellant : In Re: Saroja

Disposition : Petition allowed

Judgement :
ORDER

Ramaswami, J.

1. The accused having pleaded guilty to an offence under Section 75, City Police Act, the legality and propriety of the sentence alone are open for consideration.

2. The offence viz.. fighting, no doubt, merited the fine of Rs. 10/- or in default one week's Rule I.; but I see no reason whatsoever to uphold the binding over to keep peace under Section 105 Cr. P. C. for a period of six mouths on her own bond for Rs. 50/- with one surety for a like sum for two reasons, namely, that there is no

indication even, in the judgment, as to why the Magistrate was of opinion that it was necessary to require petitioner to execute a bond for keeping the peace; and secondly, In the instant case the binding over is an undesirable course.

3. The Honorary Magistrate, Bench Court, has not even indicated as to why he consideredin the circumstances of this case that the security to keep peace with one surety should be asked for a period of six months, especially when he knew that asking for security would be tantamount to keeping this woman in jail for a period of six months, which punishment could not be awarded for the petty offence itself.

4. Though it is not necessary to give an express finding with respect to the facts which in his opinion makes Section 106 applicable to the caste in cases where the offence of which the accused is convicted is one which ipso facto involves the use of violence, still the Magistrate should record his opinion that it is necessary in the case to require the convicted persons to execute a bond for keeping the peace. Otherwise an appellate or Revisional Court would not be able to find out whether in terms of Section 106 (first part) the Magistrate has applied his mind and passed a judicial order:

-- 'Baidyanath v. Nibaran, 30 Cal 93 (A); --'Rafatulla Pramanik v. Rajek Sardar : AIR1930 Cal646 ; -- 'Abdul Gaffar v. Mohamed Mirza', : AIR1931 Cal645 ; -- 'Jib Lal v. Jagmohan', 26 Cal 576 (D), -- 'Sheo Bhajan Singh v. Mosawi', 27 Cal 983 (E); -- 'Abdul All v. Emperor', AIR 191G Cal 883 (F); -- 'Haroon v. Emperor', AIR 1932 Sind 87 (G); -- 'Rajaram v. Govinda', AIR 1925 Nag 36 (H); -- 'Bam Gopal v. Kmpcror AIR 1939 Oudh 45 (I); -- In re, Ramaswami Thevan', AIR 1923 Mad 618 (1); --'Kunbikanan v. Emperor', 1934 MWN 98 (K); distinguishing -- 'Muthia Chetty v. Emperor, 29 Mad 190 (L); and -- In Re 'Thirumal Reddi, AIR 1923 Mad 133 (M); -- In re 'Subbiah Thevan', AIR 1942 Mad 501 (N); distinguishing -- 'Muhammad Rahim v. Emperor : AIR1926 All144 ; and -- 'Jai Singh v. Emperor', AIR 1927 Pat 37(P).

Secondly, it is generally undesirable where a person is charged with some petty offence as here to tack on to some small sentence of fine an order under Section 106 Cr. P. C.. which in most cases in view of the poverty of the accused persons

would necessitate the remaining in jail for a long period which very much exceeded the punishment legally permissible for the offence of which the accused were charged. This section should be very sparingly invoked where the offence committed is a petty one as under the Madras Town Nuisances Act, III of 1889 -- In re, 'Arumugha Tevar,' AIR 1913 Mad 169 (Q), -- In re, 'Balian', AIR 1938 Mad 795 (R).

5. Therefore, 1 have no hesitation in setting aside the order binding over the accused to keep peace for a period of six months on her own bond with one surety. The result is the accused will be released from custody if she is detained for not executing the bond with one surety.

6. This Revision petition is allowed to the above extent and it is to be hoped that Honorary Magistrates will not abuse Section 106, Cr. P. C. as in the instant case.

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