

In Re: Sambandam and ors.

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Court : Chennai

Decided On : Mar-14-1955

Reported in : AIR1956Mad167; (1954)IMLJ497

Judge : Balakrishna Ayyar, J.

Appellant : In Re: Sambandam and ors.

Judgement :

ORDER

Balakrishna Ayyar, J.

1. The petitioners, nine in number were called upon by the Joint Magistrate of Negapattinam to show cause why they should not be directed to furnish security under Section 107, Cr P.C. for keeping the peace for a period of six months.

2. In response to the notice issued to them, the petitioners appeared before the learned Magistrate and submitted that one of the instances which had been referred to in the preliminary order under Section 112, Cr. P.C. formed the subject-matter of P.R. C. No. 3 of 1955 on the file of the Sub-Magistrate of Negapattinam and prayed for an adjournment of the security case till the disposal of P.R.C. No. 3 of 1955. This request for an adjournment was refused.

Thereupon, the first petitioner filed an application under Section 526(8), Criminal P.C. intimating the learned Magistrate that he intended to mover this Court for the

transfer of the case from his file and asking for an adjournment on that ground. Accordingly the Joint Magistrate adjourned the case to 14-3-1955. Immediately thereafter the Sub-Inspector of Police presented a report to the learned Magistrate praying that in the circumstances set out in it, interim security may be taken from the petitioners. The Joint Magistrate then passed an order in the course of which he observed:

Information has been laid before me that the situation in Pudupattur village remains tense and that the counter-petitioners continue to adopt an attitude threatening imminent breach of the peace. Since the filing of the charge-sheet in this case, a few more incidents have been reported and counter-petitioners are reported to be gathering men from all sides to intimidate persons in the village from giving evidence against them.

For these reasons he thought that it was necessary to obtain interim security from the petitioners and accordingly he made an order under Section 117 (3), Cr. P. C requiring them to execute bonds in a sum of Rs. 300, each with one surety for each in a like amount, each for keeping the peace for a period of six months or till the disposal of the case Whichever was shorter. The present petition has been filed to revise this order of the learned Magistrate.

3. Mr. Kailasam, the learned advocate for the petitioners raised two points. The first was that Section 526(8), Cr. P.C. imposes a statutory duty on the Magistrate to adjourn the case when an application under that section is made; and that after having so adjourned the case he had no jurisdiction whatever to take any step in the case. I do not think this argument is sound. Section 526(8), Criminal P.C. no doubt requires the Magistrate to adjourn the particular case before him, but it does not deprive him of jurisdiction to take, what may be described as ancillary or interim measures.

It will be appreciated that if the contention of Mr. Kailasam, were sound, serious consequences, prejudicial to the public peace may follow. Persons who are determined to break the peace and against whom proceedings are being taken may file an application under Section 526(8) and after having thus effectively tied up the hands of the Magistrate, utilise the time occupied by the pendency of the

transfer petition to commit with impunity wrongful acts, likely to create a breach of the peace. Nor do the terms of the section require such a construction.

Section 526 (8) of the Code begins: 'If in any inquiry under Chap. VIII etc.' Proceedings requiring a person to furnish security under Section 107 of the Code no doubt constitute an enquiry within the meaning of Chap. VIII. But a proceeding under Section 117(3) does not require any enquiry to be held at all. In fact, the section begins 'Pending the completion of the enquiry under Sub-section (1)...' These words make it clear that an order under Section 117(3) is in the nature of an interim order and that no enquiry need be involved in it.

No doubt, it will be open to the Magistrate to make an enquiry if he so desires but he is not bound to do so and that must be so for an obvious reason. The circumstances which make a Magistrate consider that interim security should be taken under Section 117(3) of the Code would in a large majority of the cases consist of the very circumstances in respect of which the enquiry under Section 117(1) is in progress. If an enquiry were required under Section 117(3) of the Code, then the enquiry under Section 117(1) would in the majority of cases be a repetition of it.

Besides, the power conferred under Section 117(3) is intended to be exercised in a situation where the Magistrate considers that 'immediate measures are necessary for a prevention of the breach of the peace or disturbance of the public tranquillity.' Very often immediate measures cannot be taken if an enquiry which would be an advance rehearsal of the enquiry under Section 117(1) have to be held. Finally Section 117(3) itself does not say that an enquiry should be held before interim security is required to be furnished.

4. Mr. Kailasam referred me to a decision of Burn J. in 'Ranganadham Mudaliar v. Emperor' 1934 MWN 249 (A). There the learned Judge did not say anything different from the views I have expressed. He observed:

I am not going to say that a Magistrate cannot in any case pass an order under Section 117 (3), Cr, P.C. before an enquiry begins. It may be highly necessary in some circumstances that such an order should be passed. But I am prepared to

say without hesitation that the order passed in this case under Section 117(3) is bad because (a) there was no necessity to pass it before the enquiry began and (b) it was passed without hearing these petitioners, though they appeared, when required and desired to be heard.

In other words, that decision proceeded on the particular facts of that case. In the result, this criminal revision case is dismissed.

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