

In Re: Maruthapalli Goundar

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SooperKanoon Citation : sooperkanoon.com/814680

Court : Chennai

Decided On : Dec-02-1936

Reported in : 169Ind.Cas.97

Judge : Pandrang Row, J.

Appellant : In Re: Maruthapalli Goundar

Judgement :

Pandrang Row, J.

1. The petitioner in this case is the village Munsif of Kallanai and he was ordered by the Joint Magistrate Dindigul, to furnish security for keeping the peace for one year by executing a bond for Rs. 2,000, with two sureties each for a like sum. That order was confirmed in appeal by the Sessions Judge of Madura. So far as the evidence in the case goes the finding of the Magistrate have not been seriously attacked in the course of the hearing of this petition but it has been contended that the preliminary order itself was without jurisdiction and that this is not really a case to which the provisions of Section 107, Criminal Procedure Code, apply. The preliminary order which was passed on the March 29, 1935, gives details of the information received by the Magistrate and in substance runs as follows:

Whereas from information laid before me it appears to me that you have been committing and will continue to commit breaches of peace and wrongful acts likely to lead to breaches of the peace or disturbance of public tranquility unless you are

restrained from doing so, you are hereby directed to show cause etc.

2. It will thus be found that the preliminary order does not mention that the counter-petitioner was likely to commit any particular or definite wrongful act or breach of the peace. It is a general charge that he has been committing such acts and breaches of the peace and will continue to do so, a charge akin to the charge in proceedings for taking security for good behavior. It does not appear that there was any information before the Magistrate to show that the counter-petitioner was likely to commit any particular breach of the peace or that he was likely to commit any particular wrongful act which was likely to lead to a breach of the peace. The information was entirely confined to the past acts of the counter-petitioner and there was nothing to show that he was contemplating doing anything in particular which would involve a breach of the peace. The object of Section 107 is to guard against apprehended breaches of the peace or wrongful acts which might probably lead to a breach of the peace. The view taken of this section so early as 1876 by this High Court is to be found in *Queen-Empress v. Kadir Khan* 2 Weir 49, there the Magistrate called upon certain persons to show cause why they should not be bound over to keep the peace because complaints had been made against them that they were constantly creating disturbance in certain bazars, and they were required to enter into Wonds for keeping the peace. The High Court expressed the opinion that the act of which information is given and in respect of which security is required must be an act which is shown to be in contemplation at the time of the information given and not merely one a repetition of which may be expected or apprehended from past misconduct of this kind without anything further. This ruling is directly applicable to the present case, and no subsequent case in which it was departed from or modified has been brought to my notice by the learned Public Prosecutor. On the other hand from the decisions quoted on the side of the petitioner, viz., *Peer Ali v. Emperor*, 21 Cri. L.J. 453 : 56 Ind. Cas. 437, *Sheikh Jinnat Chowdury v. Sheikh Hussain* 7 C.W.N. 32, and *Shadi Lal v. Emperor* 12 L. 457 : 131 Ind. Cas. 585 : A.I.R. 193 Lah. 191 : (1931) Cri. Cas. 311 : 32 Cri. L.J. 1207 : Ind. Rul. (1931) Lah 969, it would appear that so far as proceedings under Section 107, Criminal Procedure Code are concerned, information regarding past acts alone would not be enough to justify an order requiring a person to show cause why he should not be directed to furnish security for keeping the peace and

that something more is necessary, viz., the likelihood of the commission in the near future of a particular breach of the peace or a wrongful act likely to lead to a breach of the peace. In this case there was no information before the Magistrate and no evidence before him to show that the counter-petitioner was about to do any such thing in future. Both the Magistrate and the Sessions Judge have proceeded on the basis that if a man has been doing various acts involving a breach of the peace in the past that by itself is sufficient to justify an order directing the man to furnish security for keeping the peace. The preliminary order itself is one which cannot be justified in view of the provisions of Section 107, Criminal Procedure Code, and the order directing the petitioner in the High Court to furnish security for keeping the peace must, therefore, be regarded as having been passed without jurisdiction. The order is accordingly annulled and the bond executed by the petitioner will also be annulled.