

Birdhaj Roy Vs. the State

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Court : Kolkata

Decided On : Dec-04-1952

Reported in : AIR1953Cal491,57CWN251

Judge : K.C. Das Gupta and ;Debabrata Mookerjee, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 107

Appeal No. : Criminal Revn. No. 829 of 1952

Appellant : Birdhaj Roy

Respondent : The State

Advocate for Pet/Ap. : S.S. Mukherjee and ;Kishore Mookerji, Advs.

Judgement :

K.C. Das Gupta, J.

1. The order against which this Rule is directed was passed by the Sub-Divisional Officer, Alipurduar and is in these words:

'Accused Birdhaj Roy brought under arrest under Section 151, Cr. P. C. in a Madarihat P. S. case under Section 107, Cr. P. C. by Alipurduar Police. Prayer for taking action under Section 117(3), Cr. P. C. is also made. Bail petition moved. He is allowed bail for Rs. 2000/- with two sureties of like amount. He is to show cause

why he should not sign a bond for Rs. 2000/- under Section 107, Cr. P. C. with two sureties for the maintenance of peace for a period of one year. A3 there is apprehension of breach of peace in the locality as it is apparent from the reports of the police and the tea-garden manager, I further direct the said accused under Section 117, (3), Cr. P. C. to sign a bond of Rs. 2000/- with two sureties for the maintenance of peace until the conclusion of the enquiry. For 29-6-52.'

The question was have to consider is whether the learned Magistrate acted in accordance with law in passing this order which clearly is not in conformity with the procedure laid down in the Code of Criminal Procedure. Under Section 107 of the Code when a Magistrate concerned is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, the Magistrate, if in his opinion there is sufficient ground for proceeding, may require such person to show cause why he should not be ordered to execute a bond. Section 112 of the Code provides that when a Magistrate deems it necessary to require only person to show cause in this manner, he shall make an order in writing, setting forth 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 number, character and class of sureties required. If the person in respect of whom such an order is made is present in Court, it shall be read over to him and the substance thereof shall be explained to him. This is provided by Section 113 of the Code. Section 114 of the Code provides that if such person is not present in Court, the Magistrate shall ordinarily issue a summons requiring him to appear, while under Section 115 of the Code every summons shall be accompanied by a copy of the order made under Section 112.

What is important is that the Magistrate should record in his order the nature of the information received. How important this is considered by the Legislature appears from the form which has been set out in Schedule V which contains all the forms for use for different purposes of the Code under Section 555, Cr. P. C. As the accused was in the present case brought up in custody, there was no occasion to issue summons under Section 114 of the Code, but that does not do away with the necessity of recording by the Magistrate of the substance of the nature of the information that he had received. It is important to notice that the amending Act of

1923 inserted in Section 107 the words 'If in his opinion there is sufficient ground for proceeding'. This undermines the importance of the Magistrate applying his mind to the facts of the matter and form his own opinion on the information available. We have looked in vain into the records in this case to discover whether the Magistrate did apply his mind to the facts of the case and form an opinion. The order of 16-6-1952, which has been set out above, does not indicate the nature of the information received to induce him to take action under Section 107, Cr. P. C. There is some indication that the learned Magistrate thought it necessary to act under Section 107, Cr. P. C. but that act would follow only if the Magistrate after applying his mind to the facts of the case had taken action according to law under Section 107, Cr. P. C. On consideration of the facts and circumstances of the case we have come to the conclusion that the learned Magistrate did not act in accordance with law and this omission has resulted in the miscarriage of justice.

2. Accordingly we set aside the order passed by the learned Sub-Divisional Magistrate and order that the proceedings be quashed.

3. If the petitioner is in custody, he must be set at liberty at once.

Debarata Mookerjee, J.

4. I agree.

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