

**AinuddIn and ors. Vs. Emperor**

**AinuddIn and ors. Vs. Emperor**

**SooperKanoon Citation :** [sooperkanoon.com/876477](http://sooperkanoon.com/876477)

**Court :** Kolkata

**Decided On :** Jul-16-1920

**Reported in :** 71Ind.Cas.694

**Judge :** Chatterjee and ;Cuming, JJ.

**Appellant :** AinuddIn and ors.

**Respondent :** Emperor

**Judgement :**

1. The question raised in this Rule is whether the proceedings instituted against the petitioners under Section 107 of the Criminal Procedure Code are without jurisdiction.

2. It appears that there is a dispute between one Jnanada Sundari Choudhurani and her adopted son, Promode Chandra Roy Chaudhuri, with respect to a Mouza, Nowapara, which is claimed by the former as her personal property, while the latter claims it as part of his adoptive father's estate. On the 26th February 1920 one Akhoy Kumar Dutt, the naib of the lady, put in a petition before the Additional District Magistrate of Mymensingh to the effect that he had gone to the village Nowapara, to collect rents from the tenants, that the opposite party, Promode Chandra, deputed his manager and other officers to obstruct him in realizing rents and drive him from the village, that with the said object the men of the opposite party, about 100 to 125, armed with lathis were hovering in the village and

terrorizing the tenants if they paid rents to the lady and preventing them from paying rents to her. Some specific acts of oppression were alleged to have been committed by the men of opposite party. It was further stated that there was apprehension of a serious breach of the peace, and it was prayed that proceedings under Section 107, Criminal Procedure Code, might be drawn up against Promode Chandra and several other persons (named in the petition). The Magistrate directed the Deputy Superintendent of Police to enquire into the matter and report. The latter thereupon made the enquiry and submitted a report to the effect that 'there was a dispute between Jnanada Sundari and her adopted son, Promode Chandra Roy Choudhuri, with respect to Mouza Nowapara, and that on the 24th February 1920 some peadas and barakandazes of the second party had gone to village Nowapara and threatened the tenants and asked them not to pay rent to the first party. They also threatened the naib (complainant) and Abdul Sheikh, mentioned above. It has also been proved that the complainant first party, Akhoy Kumar Dutt, called one Lochan Ramdas, barkandaz of Char Pubail, to his cutchery and abused and threatened him for his not paying the rent. Up to date there has been no riot and unlawful assembly, but there is every likelihood of it in the near future, as the first party will try to realize rent from the tenants and the second party will prevent them from doing so. There is, therefore, every likelihood of a breach of the peace between the parties unless they settle the matter amicably. There is no chance of an amicable settlement at present, that the proceeding may be drawn up against both the parties and their officers and other servants whose names are given in column 4 of the report who are all interested in the affair under sum noted against each for a year to keep the peace. I have already issued warning notices under Section 154, Indian Penal Code, to the parties concerned.'

3. On the 22nd March 1920 proceedings under Section 107, Criminal Procedure Code were ordered to be drawn up in accordance with the said, report. The second party on the 3rd June 1920 put in a written statement, and prayed that if any preventive action was considered to be at all necessary, proceedings under Section 145 might be instituted. The Magistrate thereupon made the following orders: 'I shall not convert the ease into one under Section 145, Criminal Procedure Code.'

4. The second party thereupon moved this Court and obtained this Rule on the second ground mentioned in the petition which runs as follows: 'For that, there being no allegation of any wrongful act likely to be done by any of your petitioners which may probably occasion a breach of the peace, the proceedings under Section 107, Criminal Procedure Code, against your petitioners are' wholly without jurisdiction and are fit to be quashed.'

5. There is no doubt that a person cannot be bound down under Section 107 unless it is shown that such person is likely to commit a breach of the peace or disturb the public tranquillity or do any wrongful act that may occasion a breach of the peace or disturb the public tranquillity. That question, however, will be considered when evidence is gone into. But what is contended is that before the Court can institute any proceeding under Section 107, there must be some materials on the record to show the person called upon to show cause (why he should not be bound down) was likely to do any of the things mentioned in the section and that there were no such materials in the present case.

6. In the present case the Police report did not state that any of the petitioners was likely to commit any breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. It stated that there was a dispute between the Zemindars and that, although no riot or unlawful assembly had taken place there was an apprehension of a breach of the peace. That would be sufficient justification for drawing up proceedings under Section 107, Criminal Procedure Code, but it must appear from the Police report that the particular persons against whom the proceedings are drawn up, were likely to commit a breach of the peace or anything likely to cause a breach of the peace. In the present case it appears that proceedings have been taken against the Zemindar, Promode Chandra, his manager, and other officers and several other persons, but it does not appear from the Police report that any of them had anything or even had instigated others to do anything to cause a breach of the peace or disturb the public tranquillity. They may be persons interested but that by itself would be no ground for proceeding against them. We do not think that the mere fact that a dispute exists between two rival Zemindars would justify proceedings being taken against all their officers and servants unless there are

materials to show that they are likely to commit any breach of the peace. As pointed out by Straight, Officiating Chief Justice, in the case of Jaiprakash Lal, In the matter of the petition of 6 A. 26 : A.W.N. (1883) 208 : 3 Ind. Dec. (N.S.) 641, 'Information of the kind mentioned in Section 107 must be of a clear and definite kind, directly affecting the person against whom process is issued, and it should disclose tangible facts and details, so that it may afford notice to such person of what he is to come prepared to meet,' and referring to the facts of that case it was observed, 'the Sub-Inspector's report upon which he appears to have issued process was of the vaguest and most inadequate description, and that, so far as the Diwan was concerned, it did not contain a particle of information directly justifying the inference that he personally contemplated committing or had instigated others to commit a breach of the peace.' We think that these observations apply to the present case. It may be that some of the persons mentioned in the Police report are likely to commit a breach of the peace, while others are not likely to do so, but all of them have been lumped up together because they are all interested in the dispute. In one sense, all the members of Zemindar's family are interested in a dispute relating to a property comprised in the Zemindari, but that by itself would be no ground for taking proceedings against them all. It may not be necessary to specify particular acts against each in the cases where the persons belonging to the same party are acting in concert with a common object in view, but we think it is essential that the information upon which process is issued should disclose 'tangible facts and details so that it may afford notice to such person of what he is to come prepared to meet.' The petition filed by Akhoy Kumar Dutt does contain some tangible facts though the persons charged are not specifically named. The Magistrate, however, did not proceed upon that petition; he referred it to the Deputy Superintendent of Police and the report submitted by the latter, as stated above, did not mention that the persons, against whom process was applied for were likely to do any of the acts mentioned in the section.

7. The present proceedings must accordingly be set aside.

8. The Rule is made absolute.

9. It will, however, be open to the Magistrate to take fresh proceedings upon proper materials.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**