

Paras Ram and ors. Vs. State

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Court : Himachal Pradesh

Decided On : Jun-18-1975

Reported in : 1976CriLJ568

Judge : D.B. Lal, J.

Appellant : Paras Ram and ors.

Respondent : State

Judgement :
ORDER

D.B. Lal, J.

1. This is a reference made by the Sessions Judge Mandi in a case under Section 107 of the Criminal P.C. and the recommendation of the learned Sessions Judge is that the order demanding security under Section 117(3) of the Code be quashed.

2. The facts of the case are that one Sant Ram filed a complaint under Section 107 against the accused in the Court of the Sub-Divisional Magistrate, Sundernagar alleging that there were some disputes relating to land and that the accused were likely to commit breach of peace in relation thereto. The learned Magistrate submitted the complaint to the Head Constable Durga Dass of Police Post Dehar for enquiry and report. On 28-10-1972 in the forenoon the enquiry

report was submitted, and the learned Magistrate was satisfied upon information received that sufficient ground existed for taking the action under Section 107. The accused were also brought under custody before the Magistrate on that day, As the order indicates, in the afternoon of that very day the learned Magistrate directed that notice under Section 112 be issued to the accused so that they might furnish objections regarding the giving of security and enter into a bond to keep peace. In the same order he directed that interim security be demanded from the accused under Section 117(3) of the Criminal P.C.

3. Before the learned Sessions Judge this order of 28-10-1972 was challenged on three specific grounds: (1) that the order under Section 112, Criminal P. C, was neither read over nor explained to the accused as required under Section 113(2) that there is a composite order demanding interim security under Section 117(3) which could not be passed, and (3) that the enquiry had not even commenced, what to say pending, which was sine qua non for an order demanding security under Section 117 (3). The learned Sessions Judge has held that the order itself is vitiated because of these objections, and accordingly he has recommended for the quashing of the said order.

4. After hearing the learned Counsel, I am in entire agreement with the decision of the learned Sessions Judge. Under Section 107; the satisfaction of the Magistrate was required to be obtained in the first instance as to whether sufficient grounds existed for initiating action demanding security from the respondents. This satisfaction was there when the enquiry report arrived on 28-10-1972, and to that extent the order of the learned Magistrate cannot be challenged. However, the error was committed when, the preliminary order under Section 112 was neither read over nor explained but still the order demanding interim security was made under Section 117(3). In fact, there was no compliance of Section 113 which readily applied, as the accused persons were present before the Magistrate. There is nothing to indicate that the order was read over and explained to them. Rather the direction was that the preliminary order be served upon them which was not even required under law. If the preliminary order was to be served upon the accused, the learned Magistrate should have waited till the service was effected. In the alternative, he' could have himself read over and explained that prudence.

He accused, and are that contingency Jet was no longer Required to be served. Therefore, the enquiry 'had not even cbwmehced and therefore the subsequent step j of asking, for interim security could not be legally taken. It is only after, an order under Section 112 is either been over and explained to the accused, or served upon them under Section 114, that the next step can be taken, demanding security from them. Therefore, the proceeding was vitiated at the very threshold and it has been rightly recommended by the learned Sessions Judge that the order demanding interim security need be set aside.

5. In fact a composite order was made on one and the same date, in the forenoon the enquiry report was perused and the satisfaction was arrived at under Section 107. Thereafter a preliminary order was to be drawn and explained to the accused or served upon them, as the case may be. This was not done, although the preliminary order may be stated to have been drawn by the Magistrate. The next step regarding interim, security was to follow at a stage beyond Section 113 or 114, which stage had not arrived. That is the flaw in the procedure which has in fact vitiated the entire proceeding.

6. In view of this fact, I accept the recommendation and. set. aside, today order under Section 117(3) demaaefuig interim security. The case shall go back to the learned Magistrate to proceed according to law.