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Devi Ram and ors. Vs. the State of Himachal Pradesh and anr.

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Court : Himachal Pradesh

Decided On : Jun-23-1976

Reported in : 1977CriLJ109

Judge : D.B. Lal, j.

Appellant : Devi Ram and ors.

Respondent : The State of Himachal Pradesh and anr.

Judgement :

D.B. Lal, J.

1. This is an application under Section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution and arises in this way. Proceedings under Section 107 of the Code started against Devi Ram and eight others. They appeared before the Magistrate on 18-12-1975 and after perusing the Police report and papers connected therewith a preliminary order was made by the Magistrate under Section 111 on the same day. In that order he issued notice to them to show cause why they should not be bound down for one year and the amount fixed in the bond was Rs. 2,000/-. Thereafter the order of the Magistrate gives an interesting reading. The Sub-Inspector (Police) who was present prayed that pending the enquiry under Section 116 it was necessary that immediate measures be taken for the prevention of a breach of peace. On that statement of the Sub-Inspector, the Magistrate on the very same day made the peremptory

order that pending the enquiry the petitioners be bound down and he enhanced the amount in the bond to Rs. 5,000/-. Since that order was incorrect the petitioners have come up with the present application.

2. As the very language of Section 116(3) indicates, the enquiry had to commence and it is only after the commencement of the enquiry and before its completion that the order could be passed by the Magistrate binding down the petitioners for prevention of immediate breach of peace. In fact the enquiry had not commenced at all. Therefore, the order to bind down the petitioners was prima facie incorrect. In this connection, assistance can be taken from Madhu Limaye v. Ved Murti AIR 1971 SC 2481 : 1971 Cri LJ 1715. Their Lordships have held that if interim bonds are required to be taken, the Magistrate should enter upon the enquiry and satisfy himself at least prima facie about the truth of the information in relation to the alleged facts. Without making any enquiry neither could the Magistrate order for immediate bonds nor the order could be sustained as valid under law. In the instant case, as is obvious, the interim bonds were taken without any enquiry. A request by the Sub-Inspector was made, and was acceded to by the Magistrate. As such he failed to exercise a jurisdiction vested in him. The order was prima facie illegal.

3. The application is allowed and the order of the Magistrate for interim bond dated 18-12-1975 is set aside. The case shall be sent back to the Magistrate for proceeding in accordance with law.

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