

Govinder Singh Verma and Another

Vs

Mrs. Bachubhai T. Pestonji and Another

Criminal Appeal No. 244 of 1968

(A.N. Ray, D.G. Palekar JJ)

21.10.1971

JUDGEMENT

RAY, J. -

1. This is an appeal by special leave from the judgment dated June 10, 1968 of the High Court at Bombay refusing to set aside the order dated December 11, 1967 passed by the Sub-Divisional Magistrate, Poona.
2. The order of the Sub-Divisional Magistrate came to be passed under the following circumstances. On March 3, 1967 the respondent Mrs. Pestonji filed an application and lodged a complaint in the Court of the Sub-Divisional Magistrate, Poona under Section 107 of the Code of Criminal Procedure alleging that the appellants had threatened to kill the son of the respondent Mrs. Pestonji and threatened to endanger the safety of the members of the respondent's family. On May 10, 1967 a notice was Sub-Divisional Magistrate, Poona and to show cause why they should not be asked to furnish a survey and a personal bond for a sum of Rupees 1000 each for a period of one year for ensuring non-committal of any act on the part of the appellants in future that might result in a breach of the peace. On May 10, 1967 the appellant Govinder Singh appeared before the Magistrate and this statement was recorded. The appellant Govinder Singh said that he was not ready to give in writing any survey or any bond. The appellant Narinder Singh was also examined by the Magistrate on May 10, 1967. He also said that he was not willing to give in writing any surety or any bond. The case was adjourned from time to time until August 3, 1967. On that date, the Sub-Inspector of Ghorpadi Police Station was examined. On November 11, 1967 the appellant Narinder Singh was not present in court. The case was adjourned till November 23, 1967. On that date the appellants attended the court.
3. On November 11, 1967 the Sub-Divisional Magistrate, Poona passed an order as follow :

"This is a case under Section 107, Cr.P.C. against two opponents Govinder Singh Verma, Narinder Singh Viridi and D. D. Zagade. There is sufficient evidence on record to show that there is a quarrel, threat, given to the applicant Bachubhai T. Pestonji. The statement of witness No. 1, Jarauddin Hanifuddin Sheikh, Police Sub-Inspector recorded on August 3, 1967 clearly shows that there is likelihood of a breach of peace and in order to prevent quarrel, thereafter and a cognizable offence being committed by the opponents, I order that the opponents should execute a bond of Rupees 1000 each with one surety of the like amount for their appearance in this Court under Section 91 of Cr.P.C."

4. The appellants then made an application under Section 435 of the Code of Criminal Procedure in the Court of the Additional Collector and the Additional District Magistrate, Poona against the order of the Sub-Divisional Magistrate passed on December 11, 1967. The Collector on December 19, 1967, upheld the order as one under Section 117 (3) of the Code of Criminal Procedure and found that the Sub-Divisional Magistrate wrongly mentioned Section 91 of the Code of Criminal Procedure in place of Section 117 (3) of the Code of Criminal Procedure.

5. On January 16, 1968 the appellants made an application in revision to the High Court at Bombay against the order of the Collector. By an order dated June 10, 1968 the High Court found that the Additional Collector rightly held that the order of the Sub-Divisional Magistrate was wrongly stated to be under Section 91 of the Code of Criminal Procedure and that the Additional Collector had confirmed the findings of the Sub-Divisional Magistrate by holding that the order was under Section 117 (3) of the Code of Criminal Procedure. The High Court held that the bonds in the present case were directed to be executed for keeping the peace.

6. Counsel for the appellants contended that the surety bonds in the present case would amount to furnishing bail. That is totally misreading the order. The Additional Collector and thereafter the High Court both correctly held that the surety bonds were directed for keeping the peace.

7. It was next said on behalf of the appellants that even under Section 117 (3) of the Code of Criminal Procedure Interim bonds can be directed only if there is a case under Section 108 or Section 109 or Section 110 of the Code of Criminal Procedure. It was submitted that in a case under Section 107 of the Code of Criminal Procedure the court could not direct interim bonds. This contention is unsound. The proviso to Section 117 (3) speaks of cases under Section 108 or Section 109 or Section 110 of the Code of Criminal Procedure. In proceedings under those sections bond for maintaining good behaviour can be asked for. The present case is not covered by the proviso to Section 117 (3) of the Code of Criminal Procedure.

8. Section 117 (3) of the Code of Criminal Procedure confers power on the Magistrate to direct the person in respect of whom order under Section 112 of the Code of Criminal Procedure has been made to execute a bond for keeping the peace. The respondent lodged a complaint under Section 107 of the Code of Criminal Procedure. The Magistrate examined the appellants and the Sub-Inspector. The Magistrate has also passed an order under Section 112 of the Code of Criminal Procedure requiring each of the appellants to show cause why he should not be asked to furnish a surety and a personal bond for maintaining the peace.

9. The High Court correctly held that the bonds which the appellants were directed to execute for keeping the peace were valid orders. For these reasons, the appeal fails and is dismissed.

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