

ANDHRA PRADESH HIGH COURT

Venkatasubba Reddy

Vs.

State (Andhra)

Criminal Revision Case No.733 of 1954 and Criminal Revn. Petn. No.685 of 1954

(Chandra Reddy, J.)

24.08.1954. 10.11.1954

ORDER

Chandra Reddy, J.

1. The petitioners in this case seek to have the order passed by the Sub-Divisional Magistrate (Executive), Madanapalle, under Section 117(3), Criminal Procedure Code, revised.
2. On information laid before him by the Police, that the petitioners were likely to commit a breach of the peace, and disturb the public tranquility, and also do wrongful acts which might occasion a breach of the peace, or public tranquility, the Magistrate issued an order under Section 112, Criminal Procedure Code. As a part of it, he also directed the petitioners to execute interim bonds as he considered that immediate measures were necessary for the prevention of the breach of the peace or public tranquility. It is this order that is under revision.
3. It is urged by Mr. Bhujanga Rao in support of this Revision Case that a Magistrate issuing an order under Section 112, Criminal Procedure Code, cannot pass an order under Section 117(3), Criminal Procedure Code, before the enquiry starts, under sub-section (1) of Section 117, Criminal Procedure Code. There is substance in this contention. Under Section 112, Criminal Procedure Code, the Magistrate has to issue notice to the persons concerned setting forth the substance of information received, the amount of the bond to be executed, the term for which it is to be enforced and the number, character and class of sureties required. The procedure to be followed in holding the enquiry is laid down under Section 117, Criminal Procedure Code. Section 117 (3), Criminal Procedure Code, contemplates a direction for executing interim bonds pending the completion of the inquiry if the Magistrate considers it necessary to do so in the interests of peace and order. It looks to me that under this section it is only after the parties appear in court and the Magistrate proceeds to inquire into the matter he finds the necessity to do so, he could take action in that behalf, I do not think it is permissible for the Magistrate to call

upon the persons concerned to execute interim bonds even before the inquiry starts, and as a part of the order under Section 112, Criminal Procedure Code. Again it is also necessary under Section 117(3), Criminal Procedure Code, that the Magistrate should give reasons in support of the order directing them to execute interim bonds. In this case, the Magistrate has not adduced any reasons for his action. So another requirement of the section has also not been complied with.

4. This view of mine gains support from a judgment of Somasundaram, J., in Criminal Revision Case No.470 of 1953 (Mad) (A). In- '*Ranganadha Mudaliar v. Emperor*¹', Burn, J., observed that he was not prepared to say that a Magistrate cannot in any case pass an order under Section 117(3), Criminal Procedure Code, before the inquiry begins, though in that particular case he thought that the order sought to be revised was unsupportable. With deference to the learned Judge, I feel that Section 117(3), Criminal Procedure Code, cannot be invoked before the parties appeared before the Magistrate as required under Section 112, Criminal Procedure Code, and the enquiry starts.

5. It follows that the order calling upon the petitioners to execute interim bonds is unsustainable, and it is set aside. But this does not preclude the Magistrate from requiring the parties to execute bonds, if the necessity for such a course is revealed after the inquiry begins.

6. Order set aside.

Petition allowed.

¹1934 Mad WN 1353