

CALCUTTA HIGH COURT

Dulal Chandra Mondal

Vs

The State

(Guha and Lahiri ,JJ.)

20.08.1952

JUDGMENT

Guha, J.

1. This is a petition by one Dulal Chandra Mandal for revision of certain orders passed against him by the Sub-Divisional Magistrate of Barasat. It appears that on receipt of a police report the learned Sub-Divisional Magistrate drew up proceedings against the present petitioner under Section 110, Criminal P.C., on 26-6-1952, asking him to show cause why he should not be ordered to execute a bond of Rs. 500/- with two local sureties for good behaviour for a period of three years. The petitioner was present in Court and on the same day the proceedings drawn up against him under Section 112, Criminal P.C., were explained to him under Section 113, Criminal P.C. On the very same day, the learned Magistrate passed against the petitioner an order under Section 117 (3), Criminal P.C. directing that he be detained in custody until the conclusion of the enquiry or until a bond of Rs. 500/- with two local sureties was executed, as in the opinion of the learned Magistrate immediate measures were necessary for the prevention of breach of the peace and commission of offences and for public safety. This order under Section 117 (3), Cr. P.C., was it appears, passed on the basis of a police report submitted against the petitioner requesting that he might be dealt with under that section.

2. The main point that has been canvassed before us by Mr. Banerjee on behalf of the petitioner is that in view of the provisions of Section 117 (1), Criminal P.C., the learned Magistrate was not competent to pass an order against the present petitioner under Sub-section (3) of the same section before he had commenced the inquiry against the petitioner under Sub-section (1) by recording at least some evidence. Mr. Banerjee contends that on the plain reading of Sub-section (1), Section 117, Criminal P.C. the enquiry contemplated under that sub-section commences only after some evidence has been recorded. Admittedly, in the present case no such evidence has been recorded yet and the learned Magistrate passed the order under Sub-section (3) on the basis of the police report requesting action against the petitioner under Sub-section (3). Sub-section (1) says that when an order under Section 112 has been read or explained under Section 113 to a person present in Court --these provisions of the law were admittedly complied with in the

present case -- the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary. Then Sub-section (3) says that pending the completion of the enquiry under Sub-section (1) the Magistrate may, in certain circumstances, direct the person in respect of whom the order under Section 112 has been made to execute a bond. Reading the two sub-sections namely, Sub-section (1) and Sub-section (3) together it seems to us that it is open to the Magistrate in a suitable case to take action under Sub-section (3) against a particular person even before any evidence has been recorded. The enquiry does not commence only after the Magistrate has started taking down evidence. Consideration of the police papers or hearing learned Advocates of the parties regarding the case may also be treated to be a stage -- a preliminary stage, -- in the enquiry contemplated under Sub-section (3) even before any evidence has been recorded or any witness examined. All that Sub-section (3) says is that pending the completion of the enquiry under Sub-section (1) the Magistrate may direct the person in respect of whom the order under Section 112 has been made, to execute a bond. Looking at the plain words of the Statute, it seems to us that the requirements of this provision of law have been satisfied in the present case inasmuch as the proceedings drawn up under Section 112 were explained to the present petitioner under Section 113, Criminal P.C., and the learned Magistrate had also addressed himself to the facts mentioned in the police report requesting the Magistrate to take action against the present petitioner under Sub-section (3). This being the position, we are of opinion that so far as the legality of the order passed by the learned Sub-Divisional Magistrate against the present petitioner under Sub-section (3), Section 117, Criminal P.C. is concerned it cannot be validly challenged.

3. Next it was contended that the learned Magistrate was not justified in insisting upon local sureties. So far as this point is concerned, as has been pointed out by the learned Magistrate in his order dated the 21-7-1952 sureties offered by the petitioner living at a considerable distance from the latter's residence would not be able to exercise proper control over the accused were liable to be rejected.

4. It has been brought to our notice, however, that the police report against the present petitioner was wrong in so far as it was stated therein that he had been convicted previously under Section 392, Penal Code. It appears that the conviction was not under Section 392, Penal Code, but under Section 323, Penal Code. In view of this circumstance as also other circumstances of the case, it seems to us that it will meet the ends of justice if the present petitioner is required under Section 117(3), Criminal P.C., to be detained in custody until the conclusion of the enquiry or until a bond of Rs. 200/- with two local sureties of like amount each is executed and the order of the learned Magistrate is modified accordingly. Suitable opportunities should be given to the petitioner to furnish such bond.

5. With this modification in the order of the learned Magistrate the Rule is discharged.

Lahiri, J.

6. I agree.