

JAMMU AND KASHMIR HIGH COURT

Gani Ganai

Vs.

State, (Jammu & Kashmir)

Criminal Revn. No. 28 of 1958

(J.N. Wazir, C.J)

24.07.1958

JUDGMENT

J.N. Wazir, C.J

1. This is a revision application directed against the order of the Sessions Judge dismissing the revision applications of Gani Ganai, Gulla Waza Ali Najar, Ghulam Rasul, Abdi Mir and Ali Hajam against the order of the Tehsildar Magistrate, first class, Kulgam dated the 10th and 11th March 1958.

2. It appears that a complaint under Section 107 of the Criminal Procedure Code was filed by the Police against the petitioner in the Court of the Tehsildar Magistrate and on the 10th March petitioners Nos. 1 to 4, Gani Ganai, Gulla Waza Ali Najar and Ghulam Rasul were present before the Court. An order was made calling upon these persons under Section 112 of the Criminal Procedure Code to show cause why security in the amount of ₹ 1,000 should not be taken from them under Section 107. At the representation of the Police the Magistrate passed a further order calling upon the above-named persons to furnish an interim bond in the amount of ₹ 1,000 for keeping good behaviour during the pendency of the enquiry. On the 11th March two other persons, namely Abdi Mir and Ali Hajam were produced before the same Magistrate and the Magistrate passed an order under Section 117(3) calling upon them to furnish interim security. Against these orders a revision was filed before the Sessions Judge, Srinagar, which was dismissed. Against that order the petitioners have come up in revision to this Court.

3. It is argued on behalf of the petitioners that the trial Magistrate had erred in law in passing a composite order under Sections 112 and 117 of the Criminal Procedure Code. It has been further argued that the Magistrate could not pass an order under Section 117(3) unless enquiry had been commenced under Section 107, Criminal Procedure Code against the persons who had been produced before the Magistrate.

4. The question for consideration is whether the order under revision is a composite order or not. On the 10th March the Magistrate passed an order, in respect of four persons who were produced

before him calling upon them to show cause why security should not be taken from them under Section 107 and after that the Police brought certain facts to the notice of the Magistrate and prayed that the petitioners be asked to furnish interim security. The Magistrate did not pass a routine order calling upon the persons present to furnish interim security but applied his mind to the facts presented to him by the Police and after considering all the circumstances called upon the persons present to furnish interim security in the amount of ₹ 1,000. The order passed by the Magistrate for furnishing interim security was quite a severable order from the first and was passed after giving cogent reasons for the same. In these circumstances there is no illegality or irregularity made out by the petitioners' counsel which vitiates this order.

5. The next question for consideration is whether the order passed under Section 117 could or could not be passed by the Magistrate before actually recording evidence under Section 107 against the persons present before the Court. The words used in Section 117(1) are as follows. :

"When an order under Section 113 has been read or explained under Section 113 to a person present in Court or when any person appears or is brought before a Magistrate in compliance with or in execution of a summons or warrant issued under Section 114, 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."

Section 117(3) reads as under :

"Pending the completion of the inquiry under Sub-Section (1) the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct fix person in respect of whom the order under Section 113 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry....."

6. Pending the completion of the inquiry does not mean that the Magistrate should record the evidence and then alone he can pass order under Section 117(3). The condition precedent is that the inquiry should be started which, is started when the Magistrate examines the papers put up by the Police and hears the persons presented before him. The inquiry does not commence only after the Magistrate has started taking down evidence but the consideration of the Police papers or hearing learned Advocates of the parties regarding the case may also be treated to be a preliminary stage in the enquiry contemplated under Sub-Section (3) even before any evidence has been recorded or any witness examined. In support of this view reliance may be placed on a ruling of the Calcutta High Court, *Dulai Chandra Mondal v. State*¹.

7. In the present case the order was passed under Section 112 and after considering the Police papers and also the statement of the Sub-Inspector of Police the Magistrate directed the persons present to execute interim securities under Section 117(3). The

¹ AIR 1953 Cal 238

order passed by the Magistrate was perfectly legal and cannot be disturbed in revision.

8. It has been argued that the amount of the security bond is excessive and the petitioners are too poor to furnish security in that amount. The amount appears to; be excessive and it is reduced to ₹ 500/-. The petitioners may execute personal bonds without any surety in the amount of ₹ 500/- for keeping the peace during the pendency of the proceedings taken against them under Section 107, Criminal Procedure Code. The order of the Magistrate is modified to the extent indicated above.

Order modified.