

PATNA HIGH COURT

Jagdish Prasad Verma

Vs

State (Patna)

Criminal Revn. No. 577 of 1956

(Banerji and Kanhaiya Singh, JJ.)

13.08.1956

JUDGMENT

Banerji, J.

1. The petitioners are railway employees and have been serving in various capacities within the Sub-Division of the district of Manbhum. On 8-5-1956, petitioner Jatindra Mohan Biswas was produced before the Sub-divisional Officer, Purulia, under arrest under Section 151, Criminal P. C., by the Officer-in-charge of the Adra Government Railway Police Station. He was released on bail on 9-5-1956, but, on 12-5-1956, after perusing a report submitted by the Sub-Inspector of the Government Railway Police Station at Adra, the learned Sub-divisional Officer drew up proceedings under Section 107, Criminal P. C., not only against petitioner Jatindra Mohan Biswas, but also against the three remaining petitioners directing them to appear before him on 23-5-1956, and to show cause as to why they should not be ordered to execute a bond of Rs. 2000/- each to keep the peace for a period of one year. He further directed the petitioners to execute ad interim bonds of Rs. 2000/- each 'to remain peaceful till the decision of the proceedings under Section 107, Cr. P. C. under Section 117(3), Cr. P. C.' He fixed 18-5-1956 for execution of the ad interim bonds.

2. A petition was filed on behalf of the petitioners on 18-5-1956, challenging the order purported to have been made under Section 117(3), Criminal P. C., but the prayer was turned down and it was ordered that the petitioners must furnish ad interim bonds on the date fixed.

3. On 23-5-1956, it was contended on behalf of the petitioners that normalcy had already returned in the locality concerned and there was no occasion now to furnish any ad interim bond. That prayer was also refused, and the petitioners have now come to this Court for setting aside the order purported to have been passed under Section 117(3), Criminal P. C., and also for quashing the entire proceeding under Section 107, Criminal Procedure Code.

4. Three points arise for decision in this case: firstly, it has to be determined whether the learned Sub-divisional Officer was justified in passing a composite order under Section 112 and under Section 117(3) of the Criminal P. C., secondly, whether he was bound to give reasons while

ordering the petitioners to execute ad interim bonds under Section 117(3), Criminal P. C., and, thirdly, whether it is a fit case for quashing the entire proceeding under Section 107, Criminal Procedure Code.

5. In order to appreciate whether a Magistrate is justified in demanding an ad interim bond under Section 117(3), Criminal P. C., while making an order under Section 112 of the Code to show cause under any of the sections, namely, Sections 107, 108, 109 or 110, a survey of the few sections, touching on the subject under Chapter VIII of the Criminal P. C. may best be made here. Chapter VIII relates to security for keeping the peace and for good behaviour. The jurisdiction of a Magistrate of the class mentioned in S. 107, Criminal P. C., arises under that section when such a Magistrate is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. If such a Magistrate is satisfied that there is sufficient ground for proceeding against such a person, he should order him to show cause why he should not execute a bond with or without sureties for keeping the peace for a particular period. As we are not concerned here with Sections 108, 109 and 110, Criminal P. C., I will not refer to those sections.

6. It has to be established, prior to a person being asked to show cause, that he is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. The next section is Section 112 of the Criminal P. C. which gives the details of the nature of the order that has to be passed by the Magistrate and has to be served on the person proceeded against. This section is in the following words:

"When a Magistrate acting under Section 107, S. 108, S. 109 or Section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and loss of sureties (if any) required."

If the person in respect of whom such order is made is present in Court, S. 113 requires that the order shall be read over to him or, if he so desires, the substance thereof shall be explained to him. Section 114 mentions the procedure in cases where the person so proceeded against is not present in Court. In those cases the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is, to bring him before the Court. If, in the opinion of the Magistrate, there is reason to fear the commission of a breach of the peace which cannot be prevented without the immediate arrest of that person, the proviso to Section 114 enables the Magistrate to issue a warrant for his arrest solely for the purpose of preventing a commission of a breach of the peace. The enquiry as to the truth of the information upon which action has been taken starts after the order under Section 112 has been read over and explained under Section 113 to a person present in Court or when any such person appears or is brought before the Magistrate in compliance with or in execution of a summons or warrant issued under Section 114. When proceeding to enquire into the truth of the information under Section 117, sub-section (1), Magistrate is empowered to take such further evidence as may appear to him to be necessary. Section 117, sub-section (3) runs as follows:

"117(3). 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 the person in respect of whom the order under Section 112 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, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded."

It appears that a temporary order under Section 117(3) is to be made in the case of an emergency and must have direct relation to the object for which the proceedings are taken. A review of the relevant sections mentioned above will show that two types of emergency may exist - one in the case of a person being proceeded against, prior to his appearance before a Magistrate, under the proviso to Section 114 and the other when he is already present in Court or is brought before a Magistrate in compliance with or in execution of a summons or a warrant. The nature of the two emergencies is quite distinct and separate. It is only when the person is present in Court or has been brought before the Court that a Magistrate can take into consideration whether circumstances do exist for taking immediate measures and, when he is fully satisfied that such circumstances do exist, then and then only he can direct the execution of an ad interim bond, but, before taking recourse to this action, he has to put his reasons in writing. It is manifestly clear that Section 112 and Section 117 provide two different procedures for two different ends and, therefore, a Magistrate has no jurisdiction to pass an order under Section 117(3) along with one under Section 112, as has been done in this case. At the time when he passed an order under Section 117(3), the persons proceeded against were not before him and he had not started to enquire into the truth of the information upon which action had been taken. An emergency order under Section 117(3) can only be made when the Magistrate has started to enquire into the truth of the information under Section 117(1) and, in the course of that enquiry, he considers that immediate measures are necessary.

7. Learned Advocate appearing on behalf of the petitioners has cited the decision in *In re, Venkatasubba Reddy*, AIR 1955 Andhra 96, where a single Judge of the Andhra High Court dissenting from the decision in the case of *Ranganadha Mudaliar v. Emperor*¹, held that an ad interim order was justified only after the parties appear in Court and the Magistrate proceeded to enquire into the matter. He has also cited the following decisions in support of his contention. These are *Jaswant Singh Jaswansingh v. Ranchod Nanda Dhakad*,² *Tejsingh v. State*³, and *Emperor v. Yusif Jumo*⁴, It is not necessary to discuss in detail these decisions which appear to me to be correct.

8. An order made under Section 117(3) is certainly bad if it is not accompanied by reasons recorded in writing why the Magistrate wants to take this emergency measure. It must be remembered that orders under Section 117(3) are not routine orders which have to be passed merely on the report of a police officer. Before a Magistrate contemplates making such an emergency order, he is bound to direct his consideration to the question of such an emergency and the necessity of a prompt and immediate measure. Such an order must also have a direct

relation to the object for which the proceedings are taken. If he does not state his reasons in writing prior to his taking an emergency measure under Section 117(3), it will be extremely difficult for a superior Court to know what fact or facts during the enquiry under Section 117(1) influenced the Magistrate to pass an ad interim order. The discretion exercised under this subsection has always to be examined to ascertain whether it has been done judiciously or capriciously, and this it is impossible to be done in absence of any reasons recorded by the Magistrate. In this particular case, the learned Magistrate did not give any reason, whatsoever, when demanding ad interim bonds from the petitioners. Later, on the date fixed for execution of the ad interim bonds, he merely expressed that the police report indicated that the members of the opposite party were likely to create a breach of the peace. To my mind, even this reason is not sufficient to pass an order under Section 117(3). The Magistrate is bound to state the reasons for which he thought there was likelihood of those persons committing a breach of the peace during the proceeding itself. I am satisfied, therefore, that the order passed under Section 117(3) was bad in law. Learned Additional Standing Counsel has not argued before us, and, indeed he was not in a position to argue on the facts and in the circumstances of this case, that the petitioners had not been prejudiced by a composite order and also an order passed under Section 117(3) for which no reason was recorded by the learned Magistrate. It is difficult to hold that the petitioners were not prejudiced when on the date fixed for execution of the ad interim bonds they had no opportunity to know what facts or circumstances weighed with the learned Magistrate in passing an emergency order.

9. On 23-5-1956, as already stated, it was urged on behalf of the petitioners that the condition in the alleged disturbed locality had returned to normalcy and, therefore, there was no occasion to proceed against them under Chapter VIII of the Criminal P. C. This fact was not challenged by the Court Sub-Inspector, but the prayer of the petitioners was turned down on the ground of a statement made by him (Court Sub-Inspector) that the members of the opposite party had been responsible for causing strike at other places and for circulating leaflets. What those leaflets are we do not know. It is clear that the strikes for which the members of the opposite party were being made responsible on that day were beyond the jurisdiction of the Magistrate in seisin of the proceedings.

10. Taking all the circumstances into consideration, therefore, I do not think there is any necessity to continue the proceedings against the petitioners. The proceedings are, accordingly, quashed and the order of the learned Magistrate passed under Section 117(3), Criminal P. C., is also set aside. The application is allowed and the rule made absolute.

Kanhaiya Singh, J.

11. I agree.

Rule made absolute.

Case Referred.

¹1934 Mad WN 1353

²AIR 1954 Mad Bha 192

³AIR 1954 Mad Bha 39

