

RAJASTHAN HIGH COURT

Laxmilal

Vs.

Bherulal

Criminal Ref. No. 113 of 1957

(D.S. Dave, J.)

05.02.1958

ORDER

D.S. Dave, J

1. This reference comes on the report of the learned Sessions Judge, Udaipur, dated 30-9-1957.

2. The facts giving rise to it are that one Bherulal presented an application in the Court of the Magistrate First Class, Udaipur, on 23rd October, 1957, against five persons for taking proceedings against them under Section 107 of the Criminal Procedure Code. On 26-11-1956, the Magistrate passed an order under Section 112, Criminal Procedure Code and directed summonses to issue against the opposite party along with a copy of the said order. During the course of the proceedings, he passed another order on 24-4-1957, under Section 117 (3) directing the persons, in respect of whom the order under Section 112, Criminal Procedure Code was passed, to execute a bond with a surety to the tune of Rs. 501/- each for keeping peace, pending the conclusion of the enquiry. Against this order, the non-petitioners filed a revision application in the Court of the learned Sessions Judge. The learned Judge has reported that the order passed by the Magistrate on 24-4-1957, is illegal and therefore it should be set aside. According to the learned Sessions Judge, the Magistrate had not commenced the enquiry by 24-4-1957, that an order under Section 117 (3), Criminal Procedure Code could be passed only on the commencement of the enquiry and therefore the said order was illegal.

3. Neither party has cared to appear in this Court. Learned Deputy Government Advocate opposes the reference and I think rightly too. It appears that the learned

Sessions Judge did not apply his mind to the explanation which was made by the Magistrate under Rule 80, Criminal Rules. In that report it has been mentioned that his order under Section 112 dated 26-11-1956, was served on all the non-petitioners along with the summonses before 17-12-1956.

Thereafter, some of the non-petitioners made their appearance in person, while others put in their appearance through their counsel. This explanation of the Magistrate is supported by the orders which have been passed by him from time to time. It appears that after 17-12-1956, adjournments were given mostly at the request of the non-petitioners. I may refer to the order sheet of 3-4-1957, in which it has been clearly mentioned that the petitioner, the non-petitioner, Laxmi Lal and counsel for the remaining non-petitioners were present, that the counsel for the non-petitioners requested the Court that their reply was not ready and therefore they should be given an adjournment. It further appears from the order sheets that the case was again adjourned for 9-4-1957, 20-4-1957, and lastly for 24-4-1957. On the last date, the petitioner again requested the Court that the non-petitioners were threatening him with violence and that unless they were bound down, there was a danger about the breach of peace. The Magistrate took that request into consideration and after he had applied his mind, he passed the order which is sought to be impugned by the non-petitioners.

4. The question which arises for determination is as to when an enquiry as contemplated by Section 117 (3), Criminal Procedure Code should be deemed to commence. To my mind, the answer is provided in sub-section (1) of Section 117 itself. It provides that if the person against whom an order is made under Section 112 is present in the Court, it should be read over to him or explained to him as provided in S. 113. The enquiry in this case would be deemed to commence as soon as the Magistrate proceeds in the matter after reading or explaining the order to the person concerned. In case such a person is not present in the Court at the time when the order under Section 112 is made, then the Magistrate should proceed under Sections 114 and 115 and a summons or warrant should be issued against him and it should be accompanied with the order passed under Section 112. In this case, the enquiry will be deemed to commence when the person, against whom the order under Section 112 has been made, appears before the Magistrate in compliance with or in execution of the summons or warrant issued against him under Section 114. Ordinarily, when such person appears before the Magistrate he should at once show cause against the order passed under Section 112. There may be some rare cases in which such a person may request for an adjournment. But simply because the Court grants adjournment, at his

request, it cannot be said that the enquiry has not commenced. The enquiry would be deemed to commence as soon as the person (referred to above) appears in the Court personally or through his counsel and a stage is set for the Magistrate to enquire into the truth of the information upon which action has been taken. It is not contemplated by Section 117 that such a person should, on the one hand, go on asking for adjournments and contend, on the other hand, that the enquiry has not commenced and therefore the Magistrate is not authorized to pass an order against him for keeping peace or maintaining good behavior until the conclusion of the enquiry.

5. A similar question arose in the case of *Jallaludin Kunju v. State*,¹ In that case it was held that

"an order for interim security under Section 117 (3), Criminal Procedure Code cannot be passed by a Magistrate unless and until the enquiry referred to in Section 117 (1) is commenced. An enquiry under Section 117 (1) can be said to commence when the persons sought to be proceeded against are brought or appear before the Court to answer the charge against them. The mere fact that due to the exigencies of the work of the Court the case has to be adjourned from time to time would not mean that the enquiry has not become yet one pending before the Court."

It would suffice to say that the above observation fittingly applies to the facts of the present case. In this case also all the non-petitioners were served both with the processes and the order which was passed by the Magistrate under Section 112 of the Criminal Procedure Code. Some of them had personally put in their appearance, while others were present through their counsel. The enquiry had, therefore, started and it was at the request of the non-petitioners' counsel that adjournments were given to them. The learned Sessions Judge was, therefore, not correct in saying that the Magistrate had proceeded to pass his order under Section 117 (3), Criminal Procedure Code even before the commencement of the enquiry.

6. There is thus no good ground for interfering with the order of the Magistrate. The reference is rejected.

Reference rejected.

Cases Referred.

1. AIR 1952 Trav Coch 262