

**In Re: Nagireddy Kondareddy and ors.**

**LegalCrystal Citation :** [legalcrystal.com/799955](http://legalcrystal.com/799955)

**Court :** Chennai

**Decided On :** Apr-30-1917

**Reported in :** AIR1918Mad555; 41Ind.Cas.990

**Judge :** Abdur Rahim and ;Napier, JJ.

**Appellant :** In Re: Nagireddy Kondareddy and ors.

**Judgement :**

1. In this case notice has been issued by the Head Quarters Deputy Magistrate of Nellore, calling on the petitioners to show cause why they should not give security under Section 107, Criminal Procedure Code. The matter has a long history. It appears that in the village of Kaluvoy there are two factions, one headed by the first petitioner Nagireddi Kondareddi who has under his protection a number of Muhammadans, some of whom are also petitioners in this matter, and on the other side are the rest of the influential Hindus of that locality. For some time there has been a dispute as regards the right to play music during the mohurram before the Hindu temples. On the other hand the Hindus claim the right to play music during their festivals before the local mosque. There seems to be also a private quarrel between the first petitioner on the one side and some of the other leading Hindu residents of that village on the other. There have been a number of cases and proceedings going on since 1914 between the parties and, strange to say, in all these cases the persons accused of the offences were either acquitted or discharged and the proceedings taken under Section 107 fell through. The proceedings now in question are the last of the series. Two objections are taken to them. The first is that the facts and the information upon which the proceedings were had, had already been the subject of enquiry in previous proceedings under Section 107 and also in certain criminal charges, and that in those proceedings and charges the present petitioners were discharged.

2. This is undoubtedly so, and further it is clear that there are no fresh materials of any importance available on which it could be said that fresh apprehension arose of a breach of the peace being committed by the petitioners. It is also a fact that since at least September 1916, when the Police applied for proceedings to be taken under Section 107, there has been no breach of the peace. We are quite clear that the Magistrate was not entitled to initiate proceedings upon facts and information which had already been the subject of enquiry under Section 107, or in connection with charges under the Penal Code brought against the petitioners. The same facts cannot form the subject of repeated proceedings either under the Penal Code or the Criminal Procedure Code. If fresh facts had occurred upon which the Police and the Magistrate were apprehensive that there was a likelihood of a breach of the peace, then there would have been justification for the initiation of proceedings under Section 107. If there had been any such information forthcoming, it was the duty of the Magistrate to

set out the substance of such information in the proceedings, but on looking at the preliminary order, we find that the information therein referred to is only what had already been before other Magistrates in connection with other proceedings and had been the subject of orders which must be taken to be final so far as those matters are concerned. The wording of the notice we may also point out in passing, is vague to a degree. All that is stated there is that seven persons headed by Nagireddi Kondareddi the first accused, a rich and influential resident of Kaluvoy, are addicted to crimes of violence and others involving a breach of the peace and threatened injury to the lives and property of several persons and there is an imminent danger of a breach of the peace.' It does not at all state when these threats were uttered, who are the persons who were threatened and when this apprehension of a breach of the peace arose. We think that this above objection is good in law and the proceedings must be quashed on that ground.

3. But there is also another valid objection to these proceedings. Under Section 107, Criminal Procedure Code, it is the District Magistrate or Sub-Divisional Magistrate or any Magistrate of the first class, who is informed that a person is likely to commit a breach of the peace, that may require such person to show cause why he should not be bound down. Sub-Section 1 Cri. L. J. 344. says that proceedings shall not be taken under this Section unless the person informed against and the place where the breach of the peace is likely to occur, are within the local limits of the Magistrate's jurisdiction.' From the operation of this provision the District Magistrate is excepted in so far that he can take cognizance of a matter like this, if either the person informed against or the place where the breach of the peace is likely to occur is within the local limits of his jurisdiction. Then Sub-section (1901) A. W. N. 203. empowers a Magistrate who is not authorised to act under Sub-section 1 Ind. Cas. 78. to order the arrest of a person who is likely to commit a breach of the peace, and send him to the Magistrate who is empowered to institute proceedings under the section. These provisions of Section 107 seem to us to be very specific and clear in laying down this imperative prohibition with regard to Magistrates other than a District Magistrate. Now a Magistrate cannot be said to have taken proceedings under Section 107 until he issues notice to the person charged to show cause why he should not be proceeded against under that section. In this case it is clear that the Police reported the matter to the District Magistrate who ordered, without stating that in his opinion as head of the District there was a likelihood of a breach of the peace, the case to be transferred to the file of the Head Quarters Deputy Magistrate within whose jurisdiction neither the accused resided, nor was the place where there was a likelihood of the breach of the peace occurring situate. It was the Head Quarters Deputy Magistrate of Nellore, that issued notice to the accused under Section 107 and he must, therefore, be taken to have initiated proceedings under that section. It was suggested that under Section 192, the District Magistrate could make over the case to the Head Quarters Deputy Magistrate before any notice was issued. Section 192 of the Criminal Procedure Code is a general Section which empowers a District Magistrate to transfer any case of which he has taken cognizance, for enquiry or trial, to any Magistrate subordinate to him. In the matter of proceedings under Section 107, it could not be said that a District Magistrate, to whom the Police reported certain facts, had taken cognizance of a case against the accused by reason of that fact alone. Nor do we think that Section 528 of the Criminal Procedure Code empowers the District Magistrate in a case under Section 107 to make over the initiation of proceedings to a Magistrate who has no local jurisdiction over the matter. That is a general Section which empowers a District Magistrate to withdraw any case or recall any case on the file of a Subordinate Magistrate and make it over to any

such Subordinate Magistrate. But Section 107 is a specific provision dealing with certain preventive proceedings and its Sub-section 1 Cri. L. J. 344. expressly prohibits proceedings being instituted except by certain Magistrates. It is the District Magistrate or Sub Divisional Magistrate or any other 1st Class Magistrate who is in executive charge of a certain area that is the best person to judge whether there is a likelihood of a breach of the peace within the local limits of his jurisdiction and whether it is necessary or desirable that preventive proceedings should be taken under Section 107. It appears to us that the Legislature purposely left it to the discretion of such a Magistrate to say whether proceedings ought to be taken or not, and in this respect the provision of Section 107 stands on a very different footing from the provision of Section 177. Section 177 says: Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed. Here the Legislature has, advisedly, used the word 'ordinarily' which does not occur in Section 107.

4. This view of the law finds support from a number of rulings, see *Nirbikar Chandra Mukherji v. Emperor* 1 Ind. Cus. 78 *Surjya Kanta Roy Chowdhry v. Emperor* 1 Cri. L. J. 344. and *King-Emperor v. Munna* (1901) AWN 203. The proceedings, therefore, in this case were without jurisdiction. On these as well as the other grounds, already mentioned, the proceedings must be set aside.

**LegalCrystal - Indian Law Search Engine - [www.legalcrystal.com](http://www.legalcrystal.com)**