Kartick Chandra Ghosh and ors. Vs. Panna Lal Chatterjee

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Court : Kolkata

Decided On : Aug-19-1957

Reported in : AIR1958Cal140,1958CriLJ371

Judge : N.K. Sen, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 107, 117, 117(3), 117(5), 342 and 350(1)

Appeal No. : Criminal Revn. No. 435 of 1957

Appellant : Kartick Chandra Ghosh and ors.

Respondent : Panna Lal Chatterjee

Advocate for Def. : S.S. Mukherjee and ;Kishore Mukherji, Advs.

Advocate for Pet/Ap. : Chintaharan Roy and ;Arun K. Das Gupta, Advs.

Judgement :

ORDER

N.K. Sen, J.

1. The five petitioners in this case were ordered by Sri T.B. Sing, Magistrate, First Class, Barrackpore, to execute a bond, under Section 107 of the Code of Criminal Procedure, of Rs. 1,000 each with two sureties of the like amount for a period of one year. Their appeal to the Additional Sessions Judge of Alipore was also' dismissed.

2. The petitioners, who are all young men and residents of Kumarpara within the jurisdiction of Titagarh Police Station, are members of a local club named 'Kishore Sangh'. In the locality of Kumarpara there are several residential houses in some of which several Government servants, mostly optees from Pakistan, live with their families. Some of the residents have school going grown-up daughters. It is alleged that since 1950 some young men of the locality including the petitioners have been indulging in unbecoming activities by following the girls on their way to school much to the annoyance of the girls themselves. This conduct was resented by the guardians. The matter did not end there. The petitioners and their associates then started insulting and threatening the guardians and began throwing stones and crackers etc. at their houses. A number of complaints were made to the Sub-divisional Officer and Sub-divisional Police Officer, Barrackpore. A large number of general diary entries were also made against them at the thana. Sometime back a daughter of the opposite party Pannalal Chatterjee was kidnapped and one Mukunda

Ghose, a cousin of petitioner No. 5, Sudhir Ghose, married her which marriage was against the consent of the opposite party Pannalal Chatterji and was not approved of by him. There was a previous proceeding against the petitioners which was dropped on the undertaking given by the petitioners and others that they would not disturb public tranquillity. After the previous proceedings were dropped, there was a lull in their activities for some time but they again began to Insult the opposite party, threatened him and assaulted his son. They continued again troubling the residents of the locality. On a petitionby the opposite party made to the Sub-divisional Officer, Barrackpore, there was a police enquiry and on the police report proceedings were drawn up under Section 107 of the Code of Criminal Procedure. Sri B.B. Mukherji, Magistrate, to whom the case was transferred recorded the evidence of both the parties but before he could pass final orders he was transferred and the case taken up by the successor-in-office Sri T.B. Sing who heard arguments and passed final orders.

3. The point urged before me in the first instance is that Sri T.B. Singh should have held a de novo trial and should not have proceeded to judgment on the evidence recorded by his predecessor. There is no substance in this point, firstly, because the petitioners did not make any such prayer before the learned Magistrate and next, the amended Criminal Procedure Code does not make it obligatory on the part of the Magistrate to do so. Mr. Chintaharan Roy appearing on behalf of the petitioners did not, however, seriously urge this point.

4. In this connection the case of Kali Charan Duary v. State, : AIR1954Cal577 , may be seen. That was a judgment of Das Gupta and Debabrata Mookerjee, JJ., in a case where the question of applicability of Section 350 of the Code arose in connection with a proceeding under Section 110 of the Code of Criminal Procedure. At p. 1039 (of Cal WN): (at pp. 578-579 of AIR), their Lordships repelled the argument advanced that an order requiring security was in substance a conviction and also the argument that by reason of Sub-section (2) of Section 117 of the Code, all the provisions of the Code relating to trial, wherever they occur, were attracted. Their Lordships pointed out that Ch. VIII of the Code dealt with prevention of offences and a person proceeded against under Section 107 of the Code was a competent witness to his own case. The difference between enquiry and trial was also pointed out.

4a. The next point raised by the petitioners was that the present proceedings under Section 107 of the Code of Criminal Procedure were not maintainable inasmuch as a previous proceeding ended in the discharge of the petitioners. In my view, there is no substance in this point either. The previous proceedings did not terminate after a proper enquiry. The petitioners there gave an undertaking not to disturb the public tranquility or cause breach of the peace whereupon the matter was not allowed to proceed any further and dropped. The present proceedings cover instances not covered by the former. Moreover, the very nature of the proceedings indicate that for fresh happenings fresh proceedings can be drawn up.

5. The point which had been urged with some amount of force was that there was no examination of the petitioners under the provisions of Section 342 of the Code of Criminal Procedure. This argument is untenable. Section 342 does not apply to an enquiry under Ch. VIII of the Code because the person called upon to give security is not an accused within the meaningof Section 342 of the Code of Criminal Procedure. The case of Binode Behari v. Emperor : AIR1924Cal392 , is an authority on the point. In the case of : AIR1954Cal577 , their Lordships also pointed out that Sub-section (2)

of S. 117 only enjoined compliance with the types of procedure for two types of security proceedings. The significant words are 'as nearly as may be practicable'. Their Lordships also held that by reason of this Sub-section provisions of general character like Chs. XXIV and XXV are attracted to enquiries. I am therefore unable to hold that an examination under Section 342 of the Code of Criminal Procedure of the persons proceeded against was at all necessary. The point therefore fails.

6. The learned Advocate for the petitioners has cited the case of Hopcroft v. Emperor, ILR 36 Cal 163 (C), decided in 1908 by Sharfuddin and Coxe, JJ. It was in connection with the applicability of Section 443, as it then was, to an enquiry under Section 107 to European British subjects. This case was noticed by their Lordships when deciding the case reported in : AIR1954Cal577 . Another case cited before me, reported in Raghubar Dayal V. Emperor : AIR1934All735 , a decision of single sitting Judge of the Allahabad High Court, is no authority for the proposition that an examination under Section 342 in these proceedings was necessary.

7. The next point urged is that the preliminary order dated the 19th of August 1953, only indicated that it was only the likelihood of the disturbance of the public tranquillity which disturbed the Magistrate's mind but the learned Magistrate did not show anywhere that there was any breach of public tranquillity. On this it was argued by Mr. Roy that the order passed by the learned Magistrate was at variance with the proceedings drawn up. To my mind, this is an extremely hollow argument. There can be no. purpose for asking for a bond for keeping the peace unless it was for the prevention of a breach of public tranquillity.

8. Mr. Chintaharan Roy on behalf of the petitioners has also argued that Section 118 of the Code read with Section 112 lays down that the class of sureties should be fixed. The order of the learned Magistrate requires that the persons proceeded against should execute a bond of Rs. 1,000 each with two sureties of like amount for a period of one year. In consideration of all the facts and circumstances the learned Magistrate held that the order was necessary for keeping the peace. This is quite in accordance with the terms of the proceedings dated the 19th of August 1953. I do not think that the order of the learned Magistrate could be clearer. One cannot omit to notice the very important words 'if any' appearing in Section 112.

9. On the merits, it will be seen that both the Courts below have discussed the evidence of witnesses and have elaborately referred to the activities of the petitioners which required action to be taken against them for preventing them from committing the breach of the peaceor disturbing the public tranquility. The learned appellate Court has aptly put the matter and I entirely agree with him that 'the 'kishores' and 'kumars' of Kumarpara have organised themselves into a fraternity of local bullies and have their own way of doing things according to their pleasure.'

10. Mr. Roy has argued with a great deal of force and in fact he urged that this was his strongest point that the cases of the individual petitioners have not been separately considered and neither of the Courts below has come to any findings as regards the cases of individual petitioners.

11. I am not unmindful of the fact that when called upon to show cause the petitioners never showed any. This is noted in the order sheet of the learned Magistrate dated the 21st of November 1953, but there is a good deal of force in Mr. Roy's argument on this point. I do not agree with the Court of appeal below that there

was no need of any specific finding against each of the members of the second party. In view of this, I have myself examined the evidence and I find that evidence is abundant against all the petitioners except petitioner No. 2 Arun Ghose.

12. Ground No. 16 in the petition before this Court shows that the order of the learned Magistrate does not require the petitioner No. 3 Nitya Ranjan Ghose to execute any bond and that this was pointed out to the learned Judge in the Court below. It is true that there is no reference to this in the judgment of the Court of appeal below. It may be mentioned that the said Nitya Ranjan Ghose preferred an appeal to the learned Sessions Judge although it was contended that there was no order passed against him to execute any bond. In this connection the order of the learned Magistrate dated the 15th of December 1956, may be seen. It runs thus:

'Seen petition filed by the 1st party. It appears that through oversight the name of opposite party Nitya Ranjan Ghose has been omitted. The order under Section 107, Cr. P. C., binding all the members is equally binding upon him also. 1st party is ordered to bring this matter to the notice of the learned Sessions Judge.'

In the circumstances, it is quite clear that Nitya Ranjan Ghose was also ordered by the learned Magistrate to execute the bond in question.

13. While I am fully satisfied that the order passed in the case was justified, I do not feel so in the case of petitioner No. 2 Arun. I, therefore, set aside the order so far as petitioner No. 2 Arun Ghose is concerned and make the rule absolute so far as he is concerned. The rule so far as the other petitioners are concerned must be discharged and the order against them confirmed.

14. I am grateful to Mr. Chintaharan Roy and Mr. S.S. Mookerjee for rendering me valuable assistance in this case.