

**Ram Lal Mallah and ors. Vs. Lall Chand Mallah**

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**Court :** Kolkata

**Decided On :** Jan-03-1956

**Reported in :** AIR1956Cal315,1956CriLJ745

**Judge :** J.P. Mitter and ;Sen, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 107 and 112

**Appeal No. :** Criminal Revn. No. 621 of 1955

**Appellant :** Ram Lal Mallah and ors.

**Respondent :** Lall Chand Mallah

**Advocate for Def. :** S.C. Taluqdar and ;Bansorilal Sarkar, Advs.

**Advocate for Pet/Ap. :** Gurudas Bhattacharjee, Adv.

**Judgement :**

Sen, J.

1. This revisional application is directed against an order under Section 107 taken with Section 118, Criminal P. c. binding down the petitioners to keep the peace for the period of one year.

2. The facts of the case briefly are as follows :

The petitioners are bargadars under the opposite party in respect of about one hundred bighas of land. The opposite party instituted Proceedings before the Bagchas Board for obtaining possession of the lands from the bargadars. Before the Bhagchas Board the petitioners filed petitions promising to surrender the lands voluntarily.

Thereafter he filed an application in the Court 'istafanamas' purporting to surrender the lands. This was in Aswin corresponding to September or October, 1954, but in Kartick (the first part of November, 1954) the petitioners ploughed the lands in disregard of the 'istafanamas' which they had executed. The opposite party protested and he was threatened and was therefore unable to stop the cultivation of the lands by the petitioners.

Thereafter he filed an application in the Court of the Sub-divisional Magistrate, Hooghly, for drawing up Proceedings under Section 107, Criminal P. C. against the present petitioners and also for an order under Section 144, Criminal P. C. on them. On 16-11-1954, Mr. N. Khastgir, after receiving the petition and hearing the lawyer

for the opposite party, issued notice on the present petitioners asking them to show cause why action should not be taken against them as prayed for.

On 22-12-1954, after considering the cause shown by the present petitioners and hearing lawyers of both Parties, Mr. K. Sen, Sub-divisional Magistrate, drew up proceedings under Section 107, Criminal P. C. directing the petitioners to show cause why they should not be ordered to execute bonds for the sum of Rs. 100/- each with one surety of like amount to keep the peace for one year.

Thereafter on 31-5-1955, Mr. K. Sen transferred the case for disposal to Mr. A. K. Banerjee, Magistrate, First Class, and the case was heard and disposed of by Mr. A. K. Banerjee who passed the order binding down the petitioners. There was an appeal to the Sessions Judge which was dismissed.

3. The first point urged by Mr. Bhatta-charjee appearing for the petitioners is that the Proceedings were illegal because Mr. Khastgir before whom the petition was filed did not record the substance of the information as required by 6. 112, Criminal P. C.

It appeals, however, that Mr. Khastgir did not draw up proceedings under Section 107, Criminal P. C. but merely issued notice asking the petitioners to show cause why proceedings under Section 107, Criminal P. C. should not be taken against them.

The proceedings were actually initiated by Mr. K. Sen, Sub-divisional Magistrate, on 22-12-1954, and Mr. K. Sen complied with the Provisions of Section 112, Criminal P. C., recording the substance of the information and the terms of the bond which were to be executed by the petitioners. Thus, there was no illegality and there is no substance in the first point urged by Mr. Bhattacharjee.

4. The second point urged by Mr. Bhattacharjee that the transfer of the case to Mr. a. K. Banerjee, Magistrate, First Class, on 31-1-1955, was illegal and that Mr. A. K. Banerjee had no jurisdiction, therefore, to try the case. It must, however, be held that there is no substance in this point also.

The case was transferred by Mr. Sen who was the Magistrate who actually initiated the proceedings under Section 107, Criminal P. C. Accordingly, it was Mr. Sen who had the power to transfer the case to any First Class Magistrate subordinate to him and the transfer was quite legal.

5. The next point urged by Mr. Bhattacharjee is that on the merits the order under Section 107, Criminal P. C. was bad because the petitioners were in continued possession of the disputed hundred bighas of land. It appears from the finding of the learned Sessions Judge that the petitioners are in possession' of the lands.

The learned Sessions Judge, however, upheld the order under Section 107, Criminal P. C. by observing that in view of the petitions which the petitioners had filed before the Bhagchas Board and in view of the 'istafanamas' which they had executed, the petitioners could not be said to be possessing the lands legally as bargadars but they must be deemed to be trespassers and as such their possession was wrongful and their continuance on the lands was likely to lead to a breach of the peace when the owners would try to take possession.

We must hold, however, that in such circumstances an order binding down the

Petitioners under Section 107, Criminal P. C. would not be justified. The petitioners are not likely to commit a breach of the peace or disturb the public tranquillity if they are left in possession of the lands which they have been cultivating as bargadars.

No doubt, proceedings under Section 107, Criminal P. C. may also be initiated against a person who is likely to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and it has been urged by Mr. Taluqdar appearing for the opposite party that the petitioners are doing a wrongful act. In continuing to be in possession after they had executed the Istafanamas' in favour of the opposite party.

It is clear, however, that this wrongful act is not such wrongful act as is contemplated by Section 107, Criminal P. C. The bargadars continuing in possession might be in possession illegally, but as they are admittedly in actual possession it cannot be said that their continuing in possession is such a wrongful act as would occasion a breach of the peace. A breach of the peace would only occur if the owners try to take forcible possession by ousting the petitioners.

In such circumstances the proper course for the opposite party would be to get an order from the Bhagchas Board for possession and to execute the order or to go to civil Court for possession. In such circumstances proceedings under Section 107, Criminal P. C. are not Proper. In view of the circumstances of the case, we must hold that on the merits the order under Section 107, Criminal P. C. was not justified and such order must, therefore, be vacated.

6. Accordingly, this Rule is made absolute and the order binding down the petitioners under S 107 of the Code is set aside.

J.P. Mitter, J.

7. I agree.