

## Bhup Narain And Ors. vs State on 23 July, 1953

**Equivalent citations: AIR1954ALL29, AIR 1954 ALLAHABAD 29**

ORDER

Randhir Singh, J.

1. This is an application in revision against an order of the Sessions Judge dismiss-ing an appeal against the order of a Magistrate requiring the applicants to furnish personal bonds in the sum of Rs. 500/-, to keep the peace under Section 107, Criminal P. C.

2. It appears that there was presumably some likelihood of a breach of the peace and the police made a report to the Sub-Divisional Magistrate, Hardoi, asking proceedings to be taken under Section 107, Criminal P. C. against two sets of persons of village Bawan. There were two factions in the village, one headed by Bhup Narain and Lakshmi Narain and the other headed by Kamarul Hasan, Ram Shanker, Ram Saran and one other. On receipt of this report the Magistrate made an order under Section 112, Criminal P. C. and sent notices to the applicants, as also to some others, to show cause why action should not be taken against them as reported by the police. The substance of the information received was set forth in the notice issued to the applicants, and 4-3-1952 was fixed for hearing.

On 4-3-1952, the applicants were examined and five of the applicants, viz., Bhup Narain, Lakshmi Narain, Bam Narain, Manohar and Laraitey, confessed that there was a likelihood of a breach of the peace while the remaining five of the applicants denied any such apprehension. Ultimately 26-3-1952 was fixed for further inquiry into the matter. On the 26th of March, an application was made on behalf of the applicants and some others volunteering to offer security provided the other set of persons to whom notices had been issued, were also asked to furnish security for keeping the peace. The Magistrate seems to have taken this offer of the applicants as a plea of guilty and ordered them to furnish bail bonds in the sum of Rs. 500/- each. The applicants then went up in appeal and their appeal was dismissed by the Sessions Judge. They have now come up in revision.

3. The applicants can be classed into two categories, that is, those who admitted that there was an apprehension of a breach of the peace and those who denied that there was any apprehension of a breach of the peace. It has been argued on behalf of the applicants that the learned Magistrate was not justified in ordering the applicants to furnish bail bonds without making a regular inquiry into the matter as to whether there was any likelihood of a breach of the peace. In support of this contention a ruling of this Court has been cited, vide -- 'Jagdat Tewari v. Emperor', AIR 1920 All 29 (A). In this case Walsh J. observed as follows :

"To entitle the Magistrate to act upon consent in such a case as this he must, if it is open to him to act upon consent at all, obtain, a full admission from each of the

persons called upon to show cause that he is likely to commit breach of the peace, and the circumstances under which or reasons why he is likely to commit a breach of the peace, and that he fully understands that it is for that reason that he is to be bound over and that if he fails to find the sureties he may have to go to prison."

This view was subsequently modified by the same learned Judge in a later case, -- 'Emperor v. Ghariba', AIR 1924 All 269 (B). Both these cases were further considered in a Division Bench ruling of this Court in -- 'Emperor v. Kish Narain', AIR 1928 All 270 (C) and it was held that a Court is entitled under Section 107 to act upon a solemn and free consent amounting to a plea of guilty given before it by the person summoned. In such a case the person summoned might waive the formal production of evidence.

The view which has, therefore, crystallised is that it is open to a Magistrate to accept the plea of the persons summoned to appear before him and to refrain from making any further inquiry. If the persons so summoned admit that there is a likelihood of a breach of the peace, the Magistrate need not record any further evidence and is entitled to act on this plea and order the accused to furnish security or bail bonds. A distinction may, however, be made if the accused do not admit that there is a likelihood of a breach of the peace but they offer to furnish security. The offer to furnish security may be referable to their desire not to undergo the trouble of a further hearing in the case, or to their desire that there was a likelihood of a breach of the peace. If it appears to the Court that the accused are willing to furnish security as they admit that there was a likelihood of a breach of the peace, a Magistrate may not proceed to record evidence and may accept the offer of the accused and order them to furnish security. If, however, the offer to furnish security cannot be interpreted, as an admission of a, likelihood of a breach of the peace, further evidence in support of the report made by the police could be necessary.

4. In the present case five of the applicants had clearly admitted that there was a likelihood of a breach of the peace and there was therefore evidently no necessity for the Magistrate to proceed further with the inquiry or to record evidence in the case. He was perfectly justified in asking these applicants to furnish bail bonds.

5. With regard to the other five persons the case is slightly different. They never admitted there was a likelihood of a breach of the peace and the learned Magistrate acted upon their offer contained in the application dated 26-3-1952 wherein they volunteered to offer security. The learned Magistrate, however, did not examine the application carefully. The offer was only conditional. The applicants had clearly mentioned in their application dated 26-3-1952, that they were willing to offer security provided all the 25 persons of the opposite party were also asked to furnish security. This would not be tantamount to a plea of guilty, and the learned Magistrate, was, therefore, not justified in taking this offer as a plea of guilty. He should have either asked the accused clearly if they did not want further evidence to be recorded and were agreeable to furnish security or if they were willing so to do only if an order requiring security from the other set of persons was passed. The order made by the learned Magistrate against these five persons who did not admit in their statements that there was a likelihood of a breach of the peace cannot be held to be justified. The order was passed more than a year ago and the period for which the applicants were asked to furnish personal bonds has

also expired. No useful purpose will, therefore, be served by remanding the case against the five applicants for a free inquiry.

6. As a result, the order passed by the Magistrate against Bhola Ram, Beni Prasad, Ram Dayal, Ram Kumar and Shyam Charan is set aside and their bail bonds are cancelled. The order passed against the remaining applicants shall stand and the revision to that extent is dismissed.