

Ram Charan vs State on 28 September, 1951

Equivalent citations: AIR1953ALL375, AIR 1953 ALLAHABAD 375

ORDER

Agarwala, J.

1. A complaint was made against Ram Charan applicant under Section 325/149, I. P. C., before a Magistrate of Bareilly. Several other cases seem to have been filed against the applicant in other Courts. One of them was under Section 107 in the Court of the City Magistrate of Bareilly. While the case was pending against the applicant in the Court of Sri S. M. Tyagi, Magistrate, Sri T. R. Barker, the City Magistrate, passed an order as follows:

"There are several cases pending in other Courts. These 'Courts will be requested to consider taking an action under Section 106. These proceedings will be taken up after those cases have been decided, Bonds under Section 117 (3) will continue."

This order was communicated to Sri Tyagi on 9-6-1950. Sri Tyagi recorded the evidence of the parties and convicted the applicant under Section 326, I. P. C., and sentenced him to one year's Rule 1. He also passed an order under Section 106, Cr. P. C., directing the applicant to execute a personal bond for Rs. 400, and furnish one surety in the like sum to keep the peace for a period of three years. No reasons were given for passing this order.

2. In appeal the learned Sessions Judge confirmed the conviction of the applicant under Section 326, I. P. C., but reduced the sentence to six months' Rule 1. He also set aside the order under Section 108 on the ground that the Magistrate had given no reasons for taking action against the applicant under that section. He further observed that "There is no material on the record in support of his order binding down the appellant to keep the peace for a period of three years. It appears that he passed this order on account of the two letters of the City Magistrate, Bareilly, requesting the Courts to consider the advisability of taking action under Section 106, Cr. P. C. Those two letters are on the record and they were sent by the City Magistrate in connection with a case pending before him under Section 107, Cr. P. C., against the appellant and others. Such a request by the City Magistrate was highly undesirable and contrary to all principles of justice. If there was a case pending in his Court under Section 107, Cr. P. C., against the appellant and others, that could be no ground to make a request to the Courts to consider the advisability of taking action under Section 106, Cr. P. C., against the appellant. His letters undoubtedly influenced the decision of the lower Court, inasmuch as without giving any reason and without any material on the record, the learned Magistrate bound down the appellant to keep the peace for a period of three years."

3. In this revision application before me, it has been urged by Mr. Gopal Behari, learned counsel for the applicant, that the Magistrate passed an order under Section 106, Cr. P. C., without any rhyme

or reason simply because the City Magistrate had written certain letters to him, that there is likelihood that the Magistrate might have been influenced in the decision of the case itself and that it is quite possible that if the letters were not there, he might have come to a different conclusion. I think the complaint of the applicant is not unfounded. The Magistrate apparently passed the order under Section 106 under the influence of the request made by the City Magistrate. The conclusion to which the learned Sessions Judge was led to is amply supported by the omission of the Magistrate to give reasons for his order under Section 106. If he was so influenced with respect to one part of his order, it cannot be said that he was not equally influenced in convicting the accused on the main part of the case. It has been said times without number that justice should not only be done but should seem to be done. In a case of this kind, where there is a reasonable suspicion that a Magistrate may have been influenced by an extra-judicial consideration, the order of the Magistrate cannot inspire confidence. In the interest of the purity of the administration of justice, such an order should not be allowed to stand. I have, therefore, no hesitation in accepting this application.

4. I accordingly set aside the order of the Magistrate convicting the applicant and of the learned Sessions Judge confirming the applicant's conviction and order that the case shall be retried by a Magistrate, other than Sri Tyagi, competent to hear the complaint.

5. I may add that the action of the City Magistrate, Sri T. E. Barker, in requesting the Magistrate to consider the advisability of passing an order under Section 106, Cr. P. C., was very improper. Proceedings under Section 106, Cr. P. C., are not administrative proceedings. They are no doubt proceedings for prevention of offences and not for punishment of persons committing offences. Nevertheless they are judicial proceedings. It is highly improper for any Magistrate to make to the Court trying a case, any recommendation in connection with an order that may be passed by him in his capacity as a Court in that case. The City Magistrate in this case was an officer superior to the Magistrate who was trying the case. His request was likely to be interpreted as an order and to influence the judicial mind of the Magistrate concerned. If the City Magistrate, as an executive officer, wanted that proceedings under Section 106, Cr. P. C., should be taken against the applicant, he should have instructed the State counsel in the case to apply to the Magistrate concerned to consider the advisability of passing an order under that section. It is high time that the magistracy in the State should understand that they should not interfere with the judicial work of their sub-ordinates except in a manner warranted by law.