

Karnataka High Court

Nandi Bevoor Virupakshappa vs State Of Karnataka on 31 October, 1985

Equivalent citations: ILR 1985 KAR 4025

Author: Kudoor

Bench: Kudoor

ORDER Kudoor, J.

1. The matter though listed for admission is heard finally by consent of the Learned advocates appearing for both parties.

2. This Revision Petition, one under Section 397 of the Code of Criminal Procedure, 1973 (for short the 'Code') is by the respondents before the Sub-Divisional Magistrate, Hospet in Proceedings No. MAG. 36/8586, a proceedings initiated upon a complaint filed by the Sub Inspector of Police, Hirehadagali to take action under Section 107 of the Code. They have assailed in this Revision Petition an order passed by the Sub-Divisional Magistrate under Section 111 of the Code.

3. The Learned Counsel appearing for the petitioners contended inter alia that the order in question is defective inasmuch as the Learned Sub-Divisional Magistrate has exceeded his jurisdiction in calling upon the petitioner to show cause why they should not be ordered to execute a bond for maintaining law and order in addition to keeping the peace as required under Section 107 of the Code, It seems to me, this objection raised by the Learned Advocate appearing for the petitioners is well-founded.

4. Section 107 of the Code requires that when an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may require such person to show cause why he should not be ordered to execute a bond for keeping peace for such period not exceeding one year as the Magistrate thinks fit. Section 111 of the Code requires that when a Magistrate acting under Section 107 deems it necessary to require any person to show cause under Section 107, he shall make an order in writing setting forth the substance of the information received, the amount of the bond to be executed, the term of which it is to be in, force and the number, character and class of sureties, if any, required.

5. If we analyse the terms and conditions of the order under challenge, the order in question is clearly erroneous to the extent of calling upon the petitioners to execute a bond as stated therein for maintaining law and order at Hirehadagali village for a period of one year. To this extent, the order in question is beyond the scope of Section 107 of the Code.

6. As regards the other contentions urged by the Learned Advocate appearing for the petitioners such as the Magistrate has not set-forth the substance of the information received in the order or that the order in question was not in writing as stipulated under Section 111, I find little substance. In the order, the Learned Magistrate has set out the substance of the information and the order in question is an order appeared to have been dictated and got typed by the Learned Magistrate. The

extreme contention urged by the Learned Advocate for the petitioners that the order to be made under Section 111 to be in writing, should mean writing by hand using pen on the paper appears to me far-fetched and it cannot be in my opinion the intent and import of the content of Section 111 of the Code. However, the order under challenge is liable to be quashed for the infirmity pointed out in the preceding para of this order.

7. In the result, for the reason stated above, the revision is allowed, the impugned order is quashed and the matter is remitted to the Court below for fresh consideration in accordance with law keeping in view the defect and the infirmity pointed out in the impugned order regarding the making of an order under Section 111 of the Code when it relates to Section 107 of the Code.