

Sukhlal Biruly v. The State of Jharkhand , 2022 PLRonline 4105, 2022 Scej 0530

HIGH COURT OF JHARKHAND, RANCHI

Sanjay Kumar Dwivedi, J.

Sukhlal Biruly v. The State of Jharkhand

Cr.M.P. No. 1045 of 2018

04.05.2022

Cr.P.C. S. 107 - Magistrate is not empowered to give effect to delivery of possession of the property - Magistrate can proceed if the person is within his jurisdiction or the place of the apprehended breach of the peace or disturbance is within the local limits of his jurisdiction and only to that effect the Magistrate can pass the order under section 107 Cr.P.C. - Under section 107 Cr.P.C., the Magistrate is not empowered to put possession to any person and it is done by order dated 09.5.2017 which is not the spirit of section 107.

For the Petitioner :- Mr. Krishanu Ray, For the O.P.No.2 :- Mr. Anjani Kumar, Advocate For the O.P.No.3 :- Mr. Ajay Kumar Sah, Advocate For the State :- Mrs. Nehala Sharmin, APP

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This petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

2. This petition has been filed for quashing the order dated 23.9.2017 passed in Criminal Revision No.30 of 2017, whereby the learned Sessions Judge, West Singhbhum at Chaibasa has been pleased to dismiss the criminal revision preferred by the petitioner on the ground that the petitioner was not a party to the proceeding in connection with which the revision application was preferred and also for quashing the order dated 09.5.2017 passed in Misc. Case No.57 of 2016 instituted in terms of section 107 of the Cr.P.C whereby learned Sub Divisional Magistrate, Sadar, Chaibasa has been pleased to direct the Circle Officer to effect delivery of possession of the property in question in favour of the O.P.nos.2 and 3.

3. Mr. Krishany Ray, the learned counsel appearing on behalf of the petitioner submits that a proceeding under section 107 Cr.P.C was instituted on 22.09.2016 against the O.P.no.3 by O.P.no.2. He submits that that the petitioner is owner of the land in question as he has purchased the land in question from O.P.no.3 vide sale deed dated 31.08.2015 contained at Annexure-1 to the petition. He submits that order has been passed under section 107

Cr.P.C by which possession has been put into to the O.P.No.2. he submits that, that power is not there to the learned Magistrate to put into possession. By way of referring section 107 Cr.P.C, he submits that the learned court is only required to look into that if any breach of peace or any disturbance is there, he can order to execute a bond for one year only and by the impugned order the possession has been given to the O.P.no.2. He submits that it is not in the light of section 107 Cr.P.C. He further submits that section 107 Cr.P.C was considered by the Hon'ble Supreme Court in the case of "Madhu Limaye v. Sub-Divisional Magistrate", (1970) 3 SCC 746 and he relied on paragraph nos.32, 33 and 35 of the said judgment, which are quoted hereinbelow:

"32. The gist of Section 107 may now be given. It enables certain specified classes of Magistrates to make an order calling upon a person to show cause why he should not be ordered to execute a bond, with or without sureties for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix. The condition of taking action is that the Magistrate is informed and he is of opinion that there is sufficient ground for proceeding that a person is likely to commit a breach of the peace or disturb the public tranquilly or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. The Magistrate can proceed if the person is within his jurisdiction or the place of the apprehended breach of the peace or disturbance is within the local limits of his jurisdiction. The section goes on to empower even a Magistrate not empowered to take action, to record his reason for acting, and then to order the arrest of the person (if not already in custody or before the court) with a view to sending him before a Magistrate empowered to deal with the case, together with a copy of his reasons. The Magistrate before whom such a person is sent may in his discretion detain such person in custody pending further action by him.

33. The section is aimed at persons who cause a reasonable apprehension of conduct likely to lead to a breach of the peace or disturbance of the public tranquillity. This is an instance of preventive justice which the courts are intended to administer. This provision like the preceding one is in aid of orderly society and seeks to nip in the bud conduct subversive of the peace and public tranquillity. For this purpose Magistrates are invested with large judicial discretionary powers for the preservation of public peace and order. Therefore the justification for such provisions is claimed by the State to be in the function of the State which embraces not only the punishment of offenders but, as far as possible, the prevention of offences

35. We have seen the provisions of Section 107. That section says that action is to be taken 'in the manner hereinafter provided' and this clearly indicates that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is very salutary because the liberty of the person is involved and the law is rightly solicitous, that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned. It behoves us, therefore, to emphasise the safeguards built into the procedure because from there will arise the consideration of the reasonableness of the restrictions in the interest of public order or in the interest of the general public."

4. Looking to section 107 Cr.P.C., it is crystal clear that the Magistrate can proceed if the person is within his jurisdiction or the place of the apprehended breach of the peace or disturbance is within the local limits of his jurisdiction and only to that effect the Magistrate can pass the order under section 107 Cr.P.C. Under section 107 Cr.P.C., the Magistrate is not empowered to put possession to any person and it is done by order dated 09.5.2017 which is not the spirit of section 107 Cr.P.C. The entire order sheet has been annexed with the petition and it transpires that the case was registered on 22.9.2016 and by the next order dated 09.05.2017 without calling to file show cause on behalf of the other parties, the order has been passed which is again without following the due process of law as without considering the show cause the said order has been passed. The order is passed without jurisdiction. If any illegality is going on, the said cannot be allowed to continue further. In revisional order the learned court has dismissed the petition on the ground that the petitioner is barred by time and the petitioner is not party in the proceeding. The sale deed annexed with the petition suggest that the petitioner has purchased the land in question. It was incumbent upon the O.P.No.2 to made the petitioner party in the petition which has not been done by the O.P.no.2 and in absence of the petitioner the order has been passed that does not mean that the petitioner is not entitled to challenge the said order if the right is being infringed in such a way.

5. Accordingly, impugned orders dated 23.9.2017 passed in Criminal Revision No.30 of 2017 passed by learned Sessions Judge, West Singhbhum at Chaibasa and 09.05.2017 passed in Misc. Case No.57 of 2016 passed by learned Sub Divisional Magistrate, Sadar, Chaibasa are set aside.

Cr.M.P. No.1045 of 2018 is allowed and disposed of. I.A., if any, also stands disposed of.