MADHU LIMAYE & ANR. A

v.

VED MURTI & ORS.

October 28, 1970

[M. HIDAYATULLAH, C.J., J. M. SHELAT, G. K. MITTER, C. A. VAIDIALINGAM AND A. N. RAY, JJ.] B

Code of Criminal Procedure (Act 5 of 1898), s. 117(3)—Magistrate asking for interim bond pending completion of inquiry—'Pending completion of inquiry' meaning of.

Apprehending violent and destructive activities by the petitioners the police arrested them without a warrant and took them before the Magistrate to be bound over under s. 107 of the Code of Criminal Procedure. No proceedings were drawn up under s. 107 before the arrest, and after they were taken before the Magistrate, on the report of the police, the Magistrate drew up the order under s. 112 and it was read over to the petitioners. Thereafter, under s. 117(3) the Magistrate asked the petitioners to execute an interim bond, and as the petitioners refused to do so they were remanded to custody. The Magistrate did not take any sworn statement or make any enquiry into the truth of the information before asking for the interim bond and merely adjourned the case for examination of the petitioners without summoning any witnesses in support of the information. C D

On the question of the validity of the detention,

HELD : Under the scheme of the Code the Magistrate can only ask for an interim bond if he could not complete the inquiry. The expression 'pending completion of the inquiry' in s. 117(3) postulates commencement of the inquiry, which means, commencing of the trial according to summons procedure. The Magistrate cannot postpone the case and hear nobody and yet ask for the interim bond. [749 C-D] E

In the present case, if interim bonds were required from the petitioner the Magistrate ought to have entered upon the inquiry and satisfied himself, at least *prima facie*, about the truth of the information in relation to the alleged facts. Without making any such inquiry the Magistrate could not require them to be detained in custody. Therefore, the proceedings for asking interim bond and the remand to custody were completely illegal. [750 C] F

Sections 91 and 344 of the Code do not apply to persons like the petitioners who were brought before court under the provisions of Ch. VIII of the Code. [749 F] G

Madhu Limaye v. *Sub-Divisional Magistrate, Monghyr*, [1971] 2 711 S.C.R., followed.

ORIGINAL JURISDICTION : Writ Petition No. 307 of 1970. H

Petition under Art. 32 of the Constitution of India.

The petitioner appeared *in person*.

A *K. Rajendra Chaudhuri* and *Pratap Singh,* for petitioner No. 2.

L. M. Singhvi and *O. P. Rana,* for the respondents.

The Judgment of the Court was delivered by—

B Hidayatullah, C.J.—This is a combined petition by Madhu Limaye, M.P. a leader of the Samyukta Socialist Party of India and Ram Adhar Giri, Secretary of the same party in the District of Varanasi. This petition was heard along with Writ Petition No. 77 of 1970, filed earlier by Madhu Limaye, because both these petitions challenge the constitutionality of Section 144 and Chapter VIII C of the Code of Criminal Procedure. By an Order passed unanimously by a Special Bench of 7 Judges (of which we were also members) on that part of the arguments, the petitioners stand concluded on the constitutional points raised by them. The Special Bench holds that section 144 and the provisions of Chapter VIII of the Code of Criminal Procedure, when properly construed, D are constitutional and valid. Applying the construction which is elaborately indicated in that order we proceed to examine the petition.

The case of the petitioners is that on August 3, 1970 one of them (Madhu Limaye) arrived at Varanasi Airport from Calcutta and Ram Adhar Giri and others went there to receive him. E The two petitioners named here and one Narendra Shastri were arrested by the police at a level crossing when they were proceeding by car to the city. According to the petitioners they were not told the grounds of their arrest but were taken to Varanasi Police Station and afterwards to the City Magistrate's Court. On the way the Police Officers showed them the report made by the F Police to the Magistrate for taking action under sections 107/117 and 151 of the Criminal Procedure Code. When they appeared before the Magistrate he read out a notice under section 112 of the Code calling upon them to furnish security in the sum of Rs. 5,000 with two sureties in the like amount for keeping the peace. Narendra Shastri was however discharged as it was not proved that he was the right person. The petitioners refused to G accept the notice and the Magistrate thereupon adjourned the case to the following day and remained them to jail when the petitioners declined to offer bail.

On the following day (August 10, 1970) the case was again adjourned to August 17, 1970. Since then the case has stood H adjourned as the petition in this Court was pending and the petitioners were in the custody of this Court. As the remand was not extended by the Magistrate, the petitioners became free from custody and we declared them to be so. After the arguments

concluded, we held by an order that detention of the petitioners from August 9, 1970 was illegal and they were entitled to be free. Since they were not any longer in detention, we were not required to make an order. We now give our reasons for the order we made. A

The petitioners were arrested by the Police without a warrant under section 151 Criminal Procedure Code for purposes of taking them before a Magistrate to be bound over under section 107 of the Code of Criminal Procedure. The arrest of the petitioners being one for action under section 107 of the Code, the provisions of Chapter VIII applied. The Special Bench has analysed those provisions critically and we need refer to them only briefly here. The first sub-section of the section arms certain Magistrates of specified classes with the power to require a person, who is likely to commit a breach of the peace or to disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity, to execute a bond and furnish security for keeping the peace. The sub-section however lays down that the Magistrate shall proceed "in the manner hereinafter provided". The Chapter then contains elaborate provisions for the procedure which the Magistrate must follow. Since the liberty of the person is involved, not because of anything he has done but because of the likelihood of breach of the peace or disturbance of the public tranquillity by reason of some act on his part, the provisions must obviously be strictly followed. Since the action is taken on the mere opinion of the Magistrate, the provisions of the Chapter naturally ensure that no case of harassment arises. B C D E

The first requirement is that the Magistrate must pass an order in writing setting forth the substance of the information received, the amount of bond to be executed, the term for which it is to be in force and the number, character and class of sureties (if any) required under section 112. This order may be passed in the presence of the person to be bound over and even in his absence. This is clear from the provisions of the two sections that follow. Section 113 deals with the procedure when the person is present in the Court. Then the Magistrate must read over the order to the person and if he so desires, the substance of it must be explained to him. When the person is not present in Court, the next section applies. The Magistrate shall then issue a summons to him to appear and if he is in custody, the Magistrate shall issue a warrant to the person who has his custody to produce him before the Court. If there is need of immediate arrest of the person, the Magistrate on the report of the Police Officer or upon other information (the substance of which report or information F G H

A is to be recorded in writing by the Magistrate) may issue a warrant for the arrest of the person. This action can only be taken if there is reason to fear that a breach of the peace cannot be prevented except by the arrest of the person (section 114). Whenever a summons or a warrant is issued under section 114, a copy of the order made under section 112 must be sent and delivered B to the person (section 115). The Magistrate is empowered to dispense with the personal appearance of the person and allow him to appear by a pleader (section 116).

In all cases where the person is present in Court or is brought there by a warrant in the two cases mentioned or appears on summons and the order under section 112 is read over to him C or sent to him with the warrant, the Magistrate obtains jurisdiction over the person. He is then required to proceed under section 117. This section is divided into several sub-sections but we are concerned only with the first three sub-sections. Under the first sub-section, the Magistrate shall proceed to enquire into the truth of the information upon which he has so far acted and take D such further evidence as may appear necessary. Under the second sub-section the enquiry is a trial and the procedure applicable to the trial and recording of evidence in summons cases is enjoined. Under the third sub-section, a power has been conferred on the Magistrate to ask for a bond with or without sureties to keep the peace and be of good behaviour pending the completion of E the enquiry. This power is used if the Magistrate considers that immediate measures are necessary for prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety. He does so for reasons to be recorded in writing and if the person does not execute such bond, the Magistrate is empowered to detain him in custody till the bond is executed or the enquiry is concluded. The rest of F the provisions of the section as also of the Chapter need not be mentioned, for the case never went beyond this stage when the petitioner became free by reason of the expiry of the remand Order.

The matter arose on two reports said to have been made to G the Magistrate. The first was by one Brij Mohan, s/o Shri Ulhas Mistry of Lahirtara. His report was made at 9.15 A.M. on August 9, 1970. In this report, he has stated that members of the Samyukta Socialist Party and Samajvadi Yuvjan Sabha were indulging in violent activities and inflammatory speeches. that their leader Madhu Limaye and his companions were arriving in H Varanasi and with their help the parties would indulge in further looting and destruction in Courts and other places as a result of which there was danger to the life and property of general public. This report was entered in the general diary of Police Station

Cantonment in Varanasi. After the report was entered it is noted Brij Mohan went away. The second report was made at 9.30 A.M. at the same Police Station by Sub Inspector Ved Murti Bhatt. In this report also it is stated that the two parties above mentioned were indulging in violent activities and had damaged and looted the Radio Station at Sarnath and the P.T.I. Teleprinter. It is stated that after their leaders Madhu Limaye, Ram Adhar Giri, Narender Shastri and their companions reached Varanasi, there would be destructive activities and looting in the Courts and other places in the City and grabbing of the lands of others. There was therefore apprehension of violent, destructive activities. There was a fear in the general public and an imminent danger of breach of the peace.

Between these two reports came the arrest by the police under section 151 of Criminal Procedure Code, without a warrant from the Magistrate. In fact no proceedings under section 107 were drawn up before the arrest of the petitioners. They were arrested first and then taken to the Court by the Police with a view to being bound over. When the petitioners arrived in Court, the Magistrate drew up the Order under section 112 and read it over to the petitioners. They were asked to sign the Order which they refused to do and Madhu Limaye and Ram Adhar Giri made a complaint. They were not statements on the merits of the case but a minute of what had happened to them after their arrival at Varanasi. The notice under section 112 which was given to them stated briefly that a report was received from the Police Station Cantonment, Varanasi that the two petitioners were acting in such a manner "which gives an impression that there is an apprehension of danger to the life and property of general public, causing damage to public property and to occupy it unlawfully also". That there was "an apprehension to breach of the peace on account of their activities" and that there were sufficient grounds to take action. After the above notice was read over and was refused to be signed by the petitioners, the Magistrate passed an order adjourning the case to which we shall refer presently.

Before the action was taken, a report was made to the Magistrate by Shiv Narain Saxena, In-charge of the Police Station Cantonment in which it was stated as follows :

"Sir,

It is requested that there was immediate apprehension of breach of peace from the aforesaid persons. Therefore, arrest was made under section 151 Cr.P.C. There is a likelihood of breach of peace by them in

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future. Therefore, it is requested that in order to maintain peace they should be bound down under section 107/117 Cr.P.C. on furnishing suitable bail and muchalkas.

Sd/- Shiv Narain Saxena
B S.O.
9-8-70"

Under this report were names of six witnesses including Brij Mohan and five Police Officers.

C The Magistrate recorded a short order after the public prosecutor moved him by a request in writing for action under section 107 of the Code of Criminal Procedure. That Order was as follows :

"I have seen the police report dt. 9-8-70 and I am satisfied that there is an apprehension of breach of peace and public tranquillity from the side of O.Ps. Nos. 1 and
D 2 who are active members of S.S.P. engaged in land grab movement and wrongful acts to public property and in my opinion there are sufficient grounds for proceeding u/s 107 Cr.P.C. for the prevention of breach of peace and public tranquillity. A notice u/s 112 Cr. P.C. has been read over to O.Ps. Nos. 1 & 2 today, call-
E ing upon them to show cause why they should not be ordered to execute a personal bond of Rs. 5,000 with two reliable sureties each in the like amount for keeping peace for a period of one year. As regards O.P. No. 3, the S.O. Cantt. could not satisfy the court when questioned orally as to who he was and what was his address. In my opinion there is no necessity of taking any evi-
F dence on this point later on. In view of this I am not satisfied that there is an apprehension of breach of peace and public tranquillity from O.P. No. 3. Accordingly, I discharge him. Fix on 10-8-70 for statements of O.Ps Nos. 1 & 2.

G

Sd/- (Mohinder Singh)
City Magistrate, 1st Class, Varanasi
9-8-70"

It will be noticed that before the Magistrate took action to call
H for an interim bond, he did not make any efforts to enquire into the truth of the information as is required by sec. 117(3) of the Code. He only saw the Police report and was satisfied from it, without even questioning the Sub-Inspector. He did question him

with regard to Narender Shastri pho is described in the order as O.P. No. 3 but not others. It is also to be noticed that the case was fixed on the following day for statements of Madhu Limaye and Ram Adhar Giri and there is no mention that any witnesses were to be present. In fact even on the next day the Magistrate was not going to try the case but only take statements from the petitioners. On the following day there was a report by the Sub Inspector which reads as follows :

"It is requested that Shri Madhu Limaye, M.P. was sent to Jail on 9-8-70 under section 151, 107/117 Cr. P.C. and his case is to come up for hearing in your Honourable Court today, the 10-8-70. The programme of causing destruction and land grabbing is being carried out by the Samyukta Socialist Party in the City of Varanasi and its rural areas. Force has been deployed on duty. On account of the hearing of the case of Shri Madhu Limaye, M.P., in the Court, there is a likelihood of hindrance in the administrative arrangement.

There is a great expectation of disturbance of peace. In these circumstance, it is requested that the Court proceedings may be held in Jail so that situation may remain under control. Report is submitted.

Sd/- Shiv Narain Saxena.
Incharge Police Station Cant.,
Varanasi,
10-8-70".

The Magistrate ordered on this "Kept on File".

That day the Magistrate passed the folowing Order :

"Let the case be registered. I have seen the Police report dated 10-8-70 regarding holding of proceedings against O.Ps. No. 1 and 2 in District Jail instead of the court. In the interest of peace and public tranquillity these proceedings will be taken in the District Jail itself. As I am too busy with the law and order duty in the city, it will not be possible to take up the proceedings in District Jail today. Let it be fixed in the District Jail on 17-8-70. OPs were informed in Jail.

Sd/- Mohinder Singh
10-8-70"

A Again there was no order to keep the witnesses ready on the 17th.

It appears therefore that the Magistrate used the powers under section 117(3) without commencing to enquire into the truth of the information. No sworn statement of any kind was obtained B by him and he adjourned the cases for the examination of the petitioners without summoning the witnesses in support of the information. He, however, asked the petitioners to furnish an interim bond or go to jail.

It appears to us that the powers of the Magistrate to ask for an interim bond were not properly exercised in this case and con- C sequently the order to the petitioners to furnish interim bond could not be made. That stage had not been reached under the scheme of the Code of Criminal Procedure. The Magistrate could only ask for an interim bond if he could not complete the enquiry and during the completion of the enquiry' postulates a commencement of the enquiry, which means commencing of a trial according to D the summons procedure. It was not given to the Magistrate to postpone the case and hear no body and yet ask the petitioners to furnish a bond for good conduct. The Magistrate should have made at least some effort to get a statement from Brij Mohan or Ved Murti Bhatt or any of the witnesses named in the challan. Nothing of this kind was done. Therefore the proceedings for asking for an interim bond were completely illegal. E

Learned Counsel for the State attempted to put the matter under various sections of the Code of Criminal Procedure. He relied on section 344 or in the alternative on section 91 or in the alternative again on section 167.

F He was groping for some support from another part of the Code. Those sections have been dealt with by the Special Bench and held inapplicable to the facts of a trial under Chapter VIII which contains its own elaborate procedure for trial of a suspected person. It is not possible to overlook those provisions, which the Legislature has with great emphasis specified for the trial of such cases. In fact section 91 applies to a person who is present G in Court and is free because it speaks of his being bound over, to appear on another day before the Court. That shows that the person must be a free agent whether to appear or not. If the person is already under arrest and in custody, as were the petitioners, their appearance depended not on their own volition, but on the volition of the person who had their custody. This sec- H tion was therefore inappropriate and the ruling cited in support of the case were wrongly decided as was held by the Special Bench. Similarly section 344 deals with the adjournment of a case. It is not a substitute for section 117(3). Section 117(3) presumes

that unless the person is bound over, he would be able to perpetrate that act, which causes an apprehension of the breach of peace. It is not necessary to take a bond from a person who is already in detention and is not released. The danger arises when the man is free and not when he is in custody. It is to prevent his acting that the bond is taken or he is kept in custody till he he gives the bond. Section 344 deals with ordinary adjournment of a case and allows a person to be admitted to bail or the Court to remand him if he is in custody. This is not the case here. The petitioners were brought under the process of Chapter VIII. They were read over an order under section 112 and if interim bonds were required from them the Magistrate ought to have entered upon the enquiry and satisfied himself, at least, *prima facie*, about the truth of the information in relation to the alleged facts. Without making any enquiry, neither could the Magistrate order the petitioners to be detained in custody nor require them to execute a bond with or without surety.

A B C

It is quite clear that the Magistrate was too much in hurry. He did not read the law to inform himself about what he was to do. Having the petitioners before him and having read to them the order under section 112 it was his duty either to release them unconditionally or to ask them to give an interim bond for good conduct but only after he has started inquiring into the truth of the information. It was for this reason that we held that the Magistrate did not act according to the law and his action after August 9, 1970 in detaining the petitioners in custody was illegal. As the petitioners had already become free by reason of the remand having expired, we declared them to be free.

D E

V.P.S. *Detention held illegal.*