

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 25TH DAY OF FEBRUARY 2013

BEFORE

THE HON'BLE MR.JUSTICE K.N.KESHAVANARAYANA

CRIMINAL PETITION No.3253/2012

BETWEEN:

Sri.Nithyananda Swamiji,
@ Thiru Rajashekaran,
Aged 34 years,
S/o. Sri.Arunachalam,
Resident of Nithyananda Dhyana Peetam,
Nithyanandapuri,
Kallugohalli Village, Bidadi Hobli,
Ramanagar District-562 109.

...Petitioner

[By Sri. C.V.Nagesh Senior Counsel for
M/s. Ravi.B.Naik Associates, Advocates]

AND:

1. District Magistrate
And Deputy Commissioner,
Ramanagar District,
Ramanagar.
2. State of Karnataka,
Bidadi Police Station,
Represented by Public Prosecutor,
High Court of Karnataka,
Bangalore.

... Respondents

[By Sri.G.M.Srinivasa Reddy, HCGP]

This Criminal Petition is filed under Section 482 of the Cr.P.C. praying to quash the FIR dated 14.06.2012 in Crime No.308/2012 of Bidadi Police Station, Ramanagar.

This Criminal Petition coming for admission on this day, the Court made the following: -

ORDER

In this petition filed under Section 482 of Cr.P.C., the petitioner has sought for quashing the FIR filed on 14.06.2012 in Crime No.308/2012 of Bidadi Police Station for the offences punishable under Sections 107 r/w. 151 of Cr.P.C. and the subsequent proceedings thereon culminating in the order passed by the District Magistrate, Ramanagara.

2) On the basis of suo-moto report by the Sub-Inspector of Police, Bidadi Police Station, Bangalore, the aforesaid case came to be registered under Sections 107 r/w. 151 of Cr.P.C.. A report to that effect was submitted to the District Magistrate, Ramanagara, who initiated security proceedings under Section 107 of Cr.P.C. In connection with the said proceedings the petitioner was arrested and

produced before the District Magistrate on 14.06.2012 and he was remanded to judicial custody for a period of 7 days and was directed to be kept in central prison, Mysore. Thereafter, on the same day, the District Magistrate proceeded to pass an order directing the petitioner to execute a bond for Rs.1,00,000/- to be in force for a period of one year undertaking not to commit breach of public peace and also to furnish two sureties for the like-sum.

3) I have heard Sri. C.V. Nagesh, learned Senior Counsel appearing for the petitioner as well as learned Government Pleader.

4) Learned Senior Counsel contended that the entire procedure adopted by the police as well as the District Magistrate is without authority of law and is liable to be quashed.

5) As noticed supra, the respondent-police registered the case in Crime No.308/2012 under Sections 107 r/w. 151 of Cr.P.C.. Reading of Sections 107 and 151

of Cr.P.C. indicates that, it does not deal with any offence, for which a crime case could be registered.

6) Section 107 deals with 'Security for keeping the peace in other cases'. According to sub-section (1), 'when an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may, in the manner provided therein, require such 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.

7) Reading of Section 111 of Cr.P.C. make it clear that on being satisfied about the existence of such situation, before proceeding to call upon a person to show cause as provided by Section 107, it is mandatory to pass preliminary order in writing as required by Section 111 of

Cr.P.C. and such an order should set-forth the substance of the information received, the amount of the 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.

8) Section 116 deals with the procedure regarding enquiry. As per this Section, in the enquiry as to the truth of the information, if the person to whom a show-cause notice is issued, appears or is brought before the Magistrate, the Magistrate should enquire into the truth of the information upon which action has been taken and to take such further evidence as may appear necessary.

9) Of course, sub-section (3) of Section 116 empowers the executive magistrate to direct such person to execute the interim bond during the period after the commencement of the enquiry and before the completion of the enquiry, if the Magistrate considers that immediate measures are necessary for the prevention of breach of peace or disturbance of the public tranquility or the commission of any offence or for the public safety. In such

event the magistrate is required to pass a reasoned order and direct the person in respect of whom a preliminary order under Section 111 has been made to execute a bond until the conclusion of the enquiry and in the event of the failure on the part of such person to execute the interim bond, or in the event of default, such person may be detained in custody till execution of such bond or until the enquiry is concluded. It is only after the conclusion of the enquiry as contemplated under Section 116, the magistrate is required to pass a final order directing the person so proceeded against to execute a bond.

10) Section 151 of Cr.P.C. deals with 'Arrest to prevent the commission of cognizable offences. According to the provision of Sub-section (1) of Section 151, *'A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented'*. Sub-section (2) directs that *'No person arrested*

under sub-section (1) shall be detained in custody for a period exceeding 24 hours from the time of his arrest unless his further detention is required or authorized under any other provisions of this Code or of any other law for the time being in force'.

11) Perusal of the FIR in the case on hand indicates that the respondent-police had registered the case for the offence under Section 107 r/w. 151 of Cr.P.C.. This court is not able to understand as to how the police officer could register the case for the offences under Sections 107 and 151 of Cr.P.C. when those sections does not deal with any offence and they deal only with the preventive measures. Therefore, the registration of the FIR under those Sections is without any authority, as those sections does not deal with any offences. Perusal of the certified copy of the proceedings before the District Magistrate would indicate the further illegality in the proceedings. Based on the FIR submitted by the respondent-police, the District Magistrate initiated the proceedings under Section 107 of Cr.P.C. On

the very same day, the petitioner was arrested and produced before the District Magistrate and the District Magistrate remanded the petitioner to the judicial custody for a period of seven days. As noticed supra, reading of Sections 107, 111, 116 and 151 of Cr.P.C., does not indicate any power on the part of the executive magistrate to remand the petitioner to judicial custody, since it is not shown that his detention was required in any other case nor his detention was authorized for any of the other offence. As noticed supra, the only circumstance in which the District Magistrate or the Executive Magistrate could detain a person in custody is, where the Executive Magistrate passes an order in writing directing the person to execute an interim bond pending enquiry in terms of Section 116 (3) of Cr.P.C., and failure or default on the part of such person to execute such interim bond. Even such detention would be upto the date of execution of the interim bond or upto the conclusion of the enquiry. There is absolutely no material on record to indicate that the District Magistrate in exercise of power under sub-section

(3) of Section 116 of Cr.P.C. directed the petitioner to execute an interim bond pending enquiry. Therefore, there was no compulsion on the part of petitioner to execute interim bond. Therefore, the District Magistrate had no authority to remand the petitioner to judicial custody, as such, the remand of the petitioner to judicial custody was without authority of law. The order dated 14.06.2012 passed by the District Magistrate directing the petitioner to execute a bond for a sum of Rs.1,00,000/- with two sureties for the like-sum to be in force for a period of one year, without holding any enquiry as required under Section 116, is contrary to law and without jurisdiction. There also appears to be no preliminary order as required by Section 111 of Cr.P.C.. Therefore, the entire proceedings before the District Magistrate, Ramanagara, initiated under Section 107 of Cr.P.C. and various orders passed therein are contrary to law and without any jurisdiction. Therefore, the FIR as well as the further proceedings taken thereon are required to be quashed.

12) In the result, the petition is allowed. The FIR registered by the respondent-police in Crime No.308/2012 and the proceedings thereon taken before the District Magistrate culminating in the orders directing the petitioner to execute the bond, are hereby quashed.

Sd/-
JUDGE

KGR*