

RAM NARAIN SINGH AND OTHERS

A

V. STATE OF BIHAR

July 28, 1972

[I. D. DUA AND H. R. KHANNA, JJ.]

Code of Criminal Procedure (Act 5 of 1898), s. 107—Lapse of time between date of incident and disposal of proceedings—Danger of breach of peace non-existent—Expediency of requiring bonds under section.

B

Section 107, Cr. P. C. is designed to enable the Magistrate to take measures with a view to prevent commission of offences involving breach of peace or disturbance of public tranquillity. It is not correct to say that once the period for which the bond was ordered to be executed had expired the order becomes nugatory, because, it would lead to the result that the proceedings under the section would have to be dropped if the person proceeded against succeeds in protracting the proceedings even though the apprehension of breach of peace or disturbance of public tranquillity still persists. [740B-F]

C

But the court is not precluded from taking into account subsequent events. If the material on record discloses that the danger of breach of peace has disappeared the Court can drop the proceedings and discharge the person proceeded against. Even in the absence of positive evidence of reconciliation between the opposing parties, if the Court finds that since the date of the incident complained of, a very long period had elapsed during which nothing untoward had happened the Court may draw the inference that the danger of breach of peace has vanished.

D

[740F-H]

In the present case, the appellants were ordered in 1959 to furnish bonds under the section. The amount of the bonds was reduced by the appellate court. A revision by the appellants to the High Court against the order to furnish the bonds was dismissed. The bonds, however, were not executed because of stay orders passed by the courts. The appeal against the High Court's order was disposed of by this Court in 1972, and during the 13 years that the matter was pending in the lower Courts and this Court, the appellants had not done anything which may cause apprehension of breach of peace. [740H; 741A-B]

E

Therefore, it was not expedient to compel them to execute the bonds.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 63 (N) of 1968.

Appeal from the judgment and order dated July 10, 1967 of the Patna High Court in Criminal Revision No. 932 of 1967.

G

U. P. Singh, for the appellants.

N. S. Bindra and *R. C. Prasad*, for the respondent.

The Judgment of the Court was delivered by

Khanna, J.—This is an appeal by special leave by Ram Narain Singh and six others against the judgment of Patna High Court, whereby their revision petition was dismissed *in limine*.

H

There was a dispute between the appellants on the one side and Ram Prasad and others on the opposite side in respect of

- A** plot No. 23 situated in village Deayapur in District Patna. Proceedings under section 144 of the Code of Criminal Procedure were taken in September, 1958 because of that dispute. In October, 1959 dispute again arose between the parties because of the alleged breaking of the idol of Durga by some of the appellants. The idol was stated to have been installed by Ram Prasad.
- B** The breaking of the idol gave rise to a criminal case against Ram Narain Singh and Arjan Singh. The accused were, however, stated to have been acquitted in that case. On May 7, 1959 Ram Prasad filed an application before the Sub Divisional Magistrate Dinapur against the appellants and some others for taking action under section 107 of the Code of Criminal Procedure. In
- C** that application it was stated that there was a good mango crop in the land of Ram Prasad and the appellants and their companions wanted to cause loss to Ram Prasad. The appellants, it was further stated, used to carry lathis and held out threats to Ram Prasad. The learned magistrate sent that application to the police. The police then submitted a report and two cross
- D** cases were started against the opposite parties under section 107 of the Code of Criminal Procedure. Notices were thereafter issued to the parties to furnish bond. The appellants denied the allegations against them and stated that they were peace loving citizens. They denied having held out any threat to Ram Prasad or having removed his mango fruits. The learned magistrate ordered the appellants to furnish bonds in the sum of Rs. 2,000
- E** with two sureties each for the same amount for one year, and in default to undergo simple imprisonment for a period of nine months.

On appeal the Additional Sessions Judge Patna reduced the amount of bond to Rs. 1,000 with the sureties of Rs. 500 each for a period of one year. In default each of the appellants was

F ordered to undergo simple imprisonment for a period of nine months. The appeal of one Arjan Singh, who had also been ordered to be bound down, was allowed. The High Court dismissed *in limine* the criminal revision filed by the appellants.

Mr. U. P. Singh on behalf of the appellants has contended in this Court that as the matter relates to the year 1959, it would not be aproper to bind down the appellants in the year 1972. It is pointed out that because of the stay orders granted by the different courts, no bond has so far been furnished by the appellants. As against that, Mr. Bindra on behalf of the State has urged that this Court should not interfere with the order of the courts below.

G

H Under section 107 of the Code of Criminal Procedure, a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class may require a person to show cause

why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for a period not exceeding one year as the Magistrate thinks fit to fix, if such Magistrate is informed that the said person is likely to commit breach of peace or disturb public tranquillity or to do any wrongful act that may occasion breach of peace, or disturb public tranquillity and if the Magistrate is further of the opinion that there is sufficient ground for proceeding against that person. The underlying object of the section is preventive and not penal. The section is designed to enable the magistrate to take measures with a view to prevent commission of offences involving breach of peace or disturbance of public tranquillity. Wide powers have been conferred on the magistrates specified in this section and as the matter affects the liberty of the subject who has not been found guilty of an offence, it is essential that the power should be exercised strictly in accordance with law.

The question with which we are concerned in this appeal is whether because of an incident which took place in 1959, the appellants should be compelled in 1972 to furnish bonds for keeping the peace, for that would be the necessary consequence of the dismissal of the appeal. We may at the outset state that we find it difficult to accede to the submission made by Mr. Singh that once the period for which bond was ordered to be executed has expired, the order becomes nugatory and the proceedings under section 107 of the Code of Criminal Procedure must be dropped. The proceedings under section 107 of the Code, in our opinion, can continue despite the fact that the period for which the bond was required to be executed has expired. To hold otherwise would lead to the result that the proceedings under the section would have to be dropped if the person proceeded against succeeds in protacting the proceedings, even though the apprehension of breach of peace or disturbance of public tranquillity still persists. At the same time, the court is not precluded from taking into account the subsequent events. If the material on record discloses that though there was a danger of breach of peace at one time, because of the happening of a subsequent event the danger of breach of peace has disappeared, the court can drop the proceedings and discharge the person proceeded against. Even in the absence of some positive evidence of reconciliation between the opposing parties, if the court finds that since the date of incident complained of, a very long period has elapsed during the course of which nothing untowards has happened, the court may well draw the inference that the danger of breach of peace has vanished.

In the present case the proceedings against the appellants were initiated in 1959. The proceedings relate to an incident also of 1959. There is nothing to show that during the period of 13

- A** years since then, the appellants have done anything as may cause apprehension of breach of peace. In the context of the above circumstances, we are of the opinion that it would not be expedient or essential to compel the appellants to execute bonds under section 107 of the Code of Criminal Procedure in the year 1972. We therefore accept the appeal and discharge the appellants.
- B**

V. P. S.

Appeal allowed.