

Court No.  
32  
Item 18  
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10.02.  
2021

**IN THE HIGH COURT AT CALCUTTA**  
**Criminal Revisional Jurisdiction**

Before:

**The Hon'ble Mr. Justice Jay Sengupta**

**C.R.R. 230 of 2021**

**Bhola Sardar @ Mongol**  
**Versus**  
**The State of West Bengal**

For the Petitioner : Mr. Rajdeep Majumder  
Mr. Moyukh Mukherjee  
Mr. Pritam Roy  
Mr. Avijit Singh  
.....Advocates

For the State : Mr. Prasun Kumar Datta  
Mr. Md. Kutubuddin  
.....Advocates

Heard on : 10.02.2021

Judgement on : 10.02.2021

**Jay Sengupta, J. :**

This is an application challenging a proceeding in  
NGR Case No. 723 of 2020 under Section 110 of the Code  
of Criminal Procedure pending before the learned Special  
Executive Magistrate, Bidhannagar Police  
Commissionerate.

A report dated 08.02.2021 filed on behalf of the State was earlier taken on record. A further report dated 10.02.2021 filed on behalf of the State is also taken on record. From the reports, it appears that the petitioner is in custody in connection with the present proceeding.

The impugned proceeding was initiated against the present petitioner on the allegation that he was a habitual offender and was an accused in as many as 11 cases. On 21.12.2020, the learned Special Executive Magistrate was, inter alia, pleased to record as follows-

“ I hereby ordered under Section 111 Cr.P.C, why he should not be asked to execute a good behavior bond under Section 116 (3) Cr.P.C. for maintaining peace in the locality for a period of three years and he is also direct to appear before this Court on the next date of hearing.”

Learned counsel appearing on behalf of the petitioner submits as follows. First, if an order is passed under Section 111 of the Code, 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 are to be specifically mentioned in the said order. However, in the

impugned order, although the term for which the bond was to remain in force was mentioned, no other details were set out. Secondly, a question of taking the petitioner is in custody would arise only if he failed to execute a bond as required. Although, enquiry in terms of Section 116 (1) of the Code had not commenced, yet the petitioner is languishing in jail purportedly in terms of Section 116 (3) of the Code. Reliance is placed on a decision of this Court in case of Paresh Chandra Hati & ors. -vs- Ahitosh Panda & another reported in 1978 CRI.L.J. 1171, on the procedure that is to be followed in a proceeding under Section 116 of the Code.

Learned counsel appearing on behalf of the State submits as follows. The error present in the impugned order is a curable one and does not vitiate the impugned proceeding. The petitioner is a habitual offender and a local rowdy and a proceeding under Section 110 of the Code ought to be initiated against him.

I have heard the submissions of the learned counsels appearing on behalf of the petitioner and the State and have perused the revision petition and the reports filed on behalf of the State.

In *Gopalanachari vs. State of Kerala*, 1980 Supp SCC 649, a Three Judges' Bench of the Hon'ble Apex Court, inter alia, held that "the constitutional survival of Section 110 certainly depends on its obedience to Article 21, as this Court has expounded."

It appears that on 21.12.2020, the learned Special Executive Magistrate issued a production of warrant against the accused because the accused was in the Dum Dum Correctional Home in connection with another case. On 24.12.2020, another order was passed for production of the accused on 07.01.2021. However, from the order dated 04.01.2021 passed by the learned Additional Chief Judicial Magistrate, Bidhannagar in G.R. Case No. 884 of 2020, it appears that the petitioner was granted bail in connection with the case in respect of which he was in a judicial custody. It appears that it was at that stage that the petitioner was taken into custody for production before the learned Special Executive Magistrate. Even on 07.01.2021, the learned Special Executive Magistrate did not record that the petitioner was taken into custody and was being remanded. However, in effect, the petitioner is in custody in connection with the present proceeding. The

manner in which the petitioner was taken into custody is questionable, to say the least.

It is apparent from the records that the impugned order did not say anything about the amount of bond to be executed and the nature of number, character and class of sureties that were required to be furnished. This is a clear violation of Section 111 of the Code.

Since the order passed under Section 111 of the Code suffers from serious illegality, it cannot be said that the petitioner was asked, as per law, to show cause as to why he should not execute the bond in question.

In *Surendra Ramchandra Taori vs State of Maharashtra & Ors.*, 2001 SCC Online 571, a Division Bench of the Hon'ble Bombay High Court held that the Magistrate must pass a preliminary order under Section 111 as a first step in the proceeding. No final step can be taken without giving the respondent an opportunity to show cause. It is thereafter that the preliminary order under Section 116(3) of the Code can be passed.

Therefore, the impugned order cannot be treated as an order passed under Section 116(3) either because then the exercise under Section 111 of the Code cannot be said

to have been exhausted. By then, the petitioner was also not present before the learned Magistrate.

Moreover, in the instant case no cogent reasons were recorded in writing as envisaged in Section 116(3) of the Code for taking immediate measures directing the person against whom an order has been made under Section 111 of the Code to execute a bond for keeping the peace or maintaining good behavior till the execution of which or in default of the execution of which, the said person could be detained till the inquiry is concluded.

All these render the consequent detention of the petitioner absolutely illegal and violative of Article 21 of the Constitution of India.

In the present case, the procedure as contemplated under Sections 110, 111 and 116 of the Code has not been followed.

In view of the above and in the interest of justice, I set aside the order dated 21.12. 2020 and the subsequent orders passed in the impugned proceeding and remand back the matter to the learned Special Executive Magistrate for passing an order afresh after strictly adhering to the mandates of Sections 110, 111 and 116 of

the Code, as expeditiously as possible. Consequently, the petitioner shall be released from custody on his personal bond forthwith in connection with the instant case subject to condition that he shall appear before the learned Special Executive Magistrate on the next date of hearing.

With these observations, the revisional application is disposed of.

The personal appearance of the inquiry officer is noted and dispensed with.

Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

**(Jay Sengupta, J.)**