

(1987) 12 DEL CK 0002

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 1499 of 1987

Abdul Nahid Khan and Others

APPELLANT

Vs

State (Delhi Administration)

RESPONDENT

Date of Decision : 02-12-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107

Citation : (1988) 2 ARBLR 248 : (1988) 1 Crimes 184 : (1988) 34 DLT 48

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Advocate : M.S. Siddique and Meera Bhatia, for the Appellant;

Judgement

Malik Sharief-Ud-Din, J.

(1) The petitioners are aggrieved of proceedings u/s 107/ 151 Cr.P.C. pending against the before the Court of Shri S.B S. Tyagi, Special Executive Magistrate, North District Delhi, Since 6th of Aug. 1986. It seems that the Petitioners 1 to 3 are sons of petitioner No. 4 from a different wife while two sons, namely, Nasir Khan and Shakir Khan who are in fact behind the proceedings u/s 107 Cr. P.C. are the other two sons of petitioner No. 4 from a different wife whom he has divorced. According to the petitioner there is long history of enmity between the parties and it was actually the other side who has started an aggression on the petitioners on 5th of August 1986 when they came to the shop of petitioner No. 1 situated at 804 Ballimaran Street Delhi-6, when they had allegedly misbehaved and abused the petitioners Petitioner No. 4 has been throughout complaining against these people but to no effect. He has even public a published notice on 4th of August 1987 in a dally Urdu newspaper mashriq Awaz" publishing that he had severed all his relations with Nasir Khan and Shakir Khan and that he has divorced their mother Sageera Begum. Even on 6th of August 1986 petitioner No. 4 seems to have lodged a written complaint in police station Hauz Qazi but no action has been taken thereon. It is in respect of the incident of 5th of August 1986 that the police initiated proceedings against the petitioner u/s 107/151,

Cr.P.C. on the pretext that there was likelihood of breach of peace.

(2) It is apparent that in initiating these proceedings no mention has been made to the Magistrate or in the complaint about the complaints lodged by petitioner No. 4 from time to time nor has it been communicated as to what action has been taken thereon by the police. The proceedings against the petitioners u/s 107 Cr. P.C. are now pending for the last more than 15 months. The notice issued to the petitioners is to the effect that :

"WHEREAS from the report of S.H.O., P.S. Town Hall compliant filed by Pardeep Kumar dated 6.8.1987 it appears that you Abdul Nahid s/o Abdul Ahad, H. No. 1640, Mohalla Rodgaran Bazar, Lal Kuan, Delhi-110006 which may cause breach of peace or disturb the public tranquility within the local limits of my jurisdiction, I am, therefore ,satisfied that there are sufficient grounds for initiated proceedings against you u/s. 107 Cr. P.C. S B.S. Tyagi, Special Executive Magistrate, North, District, Delhi, hereby require you to show cause as to why you should not be ordered to execute a personal bond in a sum of Rs. 5,000.00 with one two surety in the like amount for keeping peace for a period of one year."

(3) The very contents of notice reveal that there has been total no application of mind as the contents of notice reveal that it is neither here nor there. The notice further indicates that the petitioners were to show cause why they should not be bound down for keeping peace for a period of one year. The proceedings have now been pending for the last more than 15 months and no breach of peace has taken place. Under these circumstances it will be a sheer persecution and not prosecution to allow these proceedings to continue. This is particularly so because the various complaints lodged by the petitioner No. 4 from time to time have gone unheeded. The petition is allowed and the proceedings against the petitioners u/s 107/151 Cr. P.C. pending in the court of the Special Executive Magistrate are quashed.

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