
(2009) 04 BOM CK 0089

In the Bombay High Court

Case No : Criminal Writ Petition No. 25 of 2009

Dattaram Krishna Pedamkar

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 107, 108, 109, 110, 111

Citation : (2009) 04 BOM CK 0089

Hon'ble Judges : A.S. Oka, J

Bench : Single Bench

Advocate : Vinod Wash, for the Appellant; H.J. Dedhi, APP, for the Respondent

Judgement

A.S. Oka, J.—Rule. Learned APP waives service for respondents. Taken up for hearing.

2. The challenge in this petition under Article 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the said Code") is to a show cause notice issued by the second respondent in purported exercise of power u/s 111 of the said Code. By the said notice, the petitioner has been called upon to show cause as to why proceedings in accordance with Section 110(e)(g) of the said Code should not be initiated and the petitioner should not be directed to furnish bond in the sum of Rs. 10,000/-. By the said notice the petitioner was also called upon to show cause as to why interim bond should not be taken from him pending the proceedings.

3. The submission of the learned Counsel appearing for the petitioner was that an order u/s 111 of the said Code has not been passed which is a condition precedent for initiating an action. Therefore, I had called upon the learned APP to produce the record of the chapter proceedings. Accordingly, the record has been produced. The record shows that a proposal for initiating the proceedings under Chapter-VIII of the said Code was submitted by the Senior Inspector of Police of Worli Police Station, Mumbai. On the said proposal there is a short and cryptic

order passed by the second respondent running into six lines. The order merely states that on perusal of the papers received from the Senior Inspector of Police, he is satisfied that in future there is likely to a breach of peace on account of the activities of the petitioner and, therefore, it is necessary to take bond from the petitioner.

4. The learned APP on instructions of the second respondent submitted that what has been issued to the petitioner is only a show cause notice and it is not a summons issued u/s 113 of the said Code and, therefore, it was not necessary to pass an order u/s 111 of the said Code.

5. With a view to appreciate the aforesaid submission of the learned APP, it will be necessary to refer to the relevant provisions of Chapter-VIII of the said Code. Section 110 empowers an Executive Magistrate to require a person against whom allegations mentioned in clauses (a) to (g) are attracted, to show cause as to why he should not be ordered to execute a bond with sureties for his good behaviour for such period not exceeding three years, as the Magistrate thinks fit. It must be stated here that the section specifically states that "such Magistrate may, in the manner hereinafter provided, require such person to show cause". Thus, the procedure to be followed is provided in subsequent sections. The procedure to be followed before requiring a person to show cause has been incorporated in Section 111 onwards of the said Chapter VIII. Section 111 reads thus:

111. When a Magistrate acting u/s 107, Section 108, Section 109 or Section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting 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.

Therefore, the condition precedent before an Executive Magistrate requires any person to show cause u/s 110 is that he is required to make an order in writing setting forth the substance of the information received, the amount of bond to be executed and it's term. Therefore, on plain reading of Sections 110 and 111 of the said Code, it is obvious that before an Executive Magistrate calls upon a person to show cause as to why he should not be ordered to execute a bond, as a condition precedent, the Magistrate is required to pass an order u/s 111 of the said Code. Section 112 states that if the person in respect of whom such an order u/s 111 is made is present, the Magistrate shall read over the said order to him and if he so desires the substance thereof shall be explained to him. If such person is not present, the Magistrate is required to issue a summons or a warrant as provided u/s 113 of the said Code. If summons or warrant is issued, Section 114 mandates that a copy of the order passed u/s 111 shall be accompanied with the summons or warrant.

6. In the present case, the proposal was submitted by the Senior Inspector of Police on 31st December 2008 and a cryptic order on the said proposal has been

passed on the same day. The proceedings were initiated on the same day i.e. on 31st December 2008. The Roznama of the proceedings shows that on that day the petitioner was not present before the learned Magistrate. Therefore, the learned Magistrate was under an obligation to issue a summons as required by Section 113 enclosing therewith an order passed u/s 111 of the said Code. The order passed by the learned Magistrate below the proposal submitted by the Senior Inspector of Police does not set forth the substance of the information received. The said order which is a cryptic order running only in six lines by no stretch of imagination can be read as an order validly made u/s 111 of the said Code. Thus, this is a case where an order purportedly passed u/s 111 of the said Code is illegal and therefore, the very initiation of the proceedings is illegal. Moreover, a summons enclosing the said order was not issued to the petitioner.

7. This aspect that the initiation of the proceedings was itself illegal was noticed by this Court yesterday when the file of the proceedings was perused by this Court. This aspect was brought to the notice of the learned APP by this Court with a hope that the show cause notice will be withdrawn by the concerned officer. However, the show cause notice has not been withdrawn.

8. The illegality committed by respondent No. 2 does not rest here. The Roznama of the proceedings shows that the returnable date of the show cause notice was 5th January 2009. The Roznama records that on that day an advocate filed Vakalatnama on behalf of the petitioner. The Roznama records that the show cause notice was read over to the petitioner. The Roznama further records that the petitioner was called upon to fill in a questionnaire. The Roznama further records that the petitioner was directed to furnish an interim bond. It is stated that at that stage the advocate for the petitioner pointed out to the learned Magistrate that such an order cannot be passed in view of the decisions of higher Courts. Therefore, time was granted to produce the decisions. Thereafter, the matter was adjourned from time to time as this petition was pending before this Court. Nevertheless, the Roznama dated 5th January 2009 records a direction was issued by the Executive Magistrate to the petitioner to furnish an interim bond. Under sub Section 3 of section 116 of the Code, the Magistrate is empowered to direct a person to furnish an interim bond. However, sub Section 3 of Section 116 provides that the said power of directing a person to furnish interim bond can be exercised if the learned Magistrate considers that immediate measures are necessary for prevention of breach of peace or disturbance of public tranquillity or commission of any offence. Sub Section 3 of Section 116 specifically requires that the learned Magistrate is required to record reasons in writing for directing a party to furnish an interim bond. A perusal of the Roznama shows that no reasons were assigned by the learned Magistrate and it is merely stated in the Roznama that the petitioner was called upon to furnish an interim bond.

9. The perusal of the file shows that the express statutory provisions are completely ignored by the learned Magistrate and the entire proceedings have

been conducted contrary to the provisions of the said Code. Therefore, the only option left for this Court is to quash and set aside the impugned notice and all further proceedings initiated on the basis of said show cause notice.

10. Hence, I pass following order:

(a) Rule is made absolute in terms of prayer Clause (b);

(b) All further proceedings on the basis of impugned notice are quashed and set aside.