

(2015) 07 AHC CK 0180

In the Allahabad High Court

Case No : Criminal Misc. Application No. 18931 of 2015

Dhaneeram and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 104, 107, 108, 109, 110

Citation : (2015) 3 ACR 3452 : (2015) 8 ADJ 75 : (2016) 1 ALJ 132 : (2015) 90 ALLCC 780 : (2016) 1 CCR 381

Hon'ble Judges : Vijay Lakshmi, J

Bench : Single Bench

Advocate : Arun Kumar, for the Appellant

Final Decision : Allowed

Judgement

Vijay Lakshmi, J—Heard learned Counsel for the applicants and learned A.G.A. for the State. A Chalani Report dated 5.6.2015 was received by S.D.M., Karhal, Mainpuri who on the basis of such report issued a notice under section 111 Cr.P.C. to the applicants asking them to show cause why they may not be required to furnish personal bonds of Rs. 50,000/- and two sureties in the like amount for maintaining peace and good conduct for a period of six months.

2. By means of this application under section 482 Cr.P.C. the applicants have approached this Court praying to quash this notice under section 107/116 Cr.P.C. on the ground that it is on a cyclostyled proforma with certain blanks which have been filled in with pen and ink by someone and the Magistrate has simply put his initial signatures on it.

3. Learned Counsel for the applicants has contended that the notice is ambiguous and it suffers from various vagueness, therefore, proceeding on the basis of such notice is a nullity. Learned Counsel for the applicants has vehemently argued that the provisions of section 107/116 Cr.P.C. have not been complied with by the learned Magistrate while issuing the notice hence in wake of the guidelines laid

down by the Apex Court in *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*, AIR 1971 SC 2486 : (1971) CriLJ 1720 : (1970) 3 SCC 746 : (1970) 3 SCC 739 : (1971) 2 SCR 711 , case the notice and the entire criminal proceedings be quashed.

4. Learned A.G.A. has opposed the application, but he has fairly conceded that the impugned notice suffers from vagueness and it is on a printed proforma wherein only by filling in the gaps the reason for issuing notice has been communicated to the applicants.

5. The impugned notice which has been issued to the applicants, by filling the gaps on printed proforma signed by the S.D.M., Karhal, Mainpuri shows that the applicants were called upon to show cause in the Court as to why they should not be ordered to execute a personal bond of Rs. 50,000/- and to furnish two sureties, each in the like amount, to keep peace. A perusal of impugned notice shows that no ground is mentioned in this notice to apprehend the breach of peace which is a mandatory requirement of section 111 Cr.P.C.

Section 111 Cr.P.C. provides:--

"When a Magistrate acting under section 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."

6. In *Shiv Kant Tripathi Vs. State of U.P. and The Station Officer, Police Station Chakeri* , this Court by allowing the application under section 482 Cr.P.C. has quashed the notice served on printed proforma and has held such notice as null and void and the proceedings initiated on its basis as not maintainable.

7. In the case of *Madhu Limaye's case (supra)*, the Apex Court, in para 36 of its judgment has observed as under:--

"We have seen the provisions of sec. 107. That section says that action is to be taken in the manner here-in-after provided and this clearly indicates that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is very salutary because the liberty of the person is involved and the law is rightly solicitous that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned. It behoves us, therefore, to emphasize the safeguards built into the procedure because from there will arise the consideration of the reasonableness of the restrictions in the interest of public order or in the interest of general public."

In this very case the Apex Court went on to observe in Para 37 as under:--

"Since the person to be proceeded against has to show cause, it is but natural that he must know the grounds for apprehending a breach of the peace or

disturbance of the public tranquility at his hands. Although the section speaks of the "substance" of the information it does not mean the order should not be full. It may not repeat the information bodily but it must give proper notice of what has moved the Magistrate to take the action. This order is the foundation of the jurisdiction and the word "substance" means the essence of the most important parts of the information."

8. In the present case, the learned Sub-Divisional Magistrate while issuing the impugned notice dated 15.6.2015 has thrown the mandatory provisions of section 111 of the Code to the winds and has prepared a printed proforma. The learned Magistrate has also not recorded his opinion that there existed sufficient ground to take action under the provisions of section 107 of the Code.

9. In the impugned notice, the pith and substance of the information received is not given which could have formed the basis for apprehending breach of peace. Therefore, the impugned notice issued by the learned S.D.M. Karhal, Mainpuri may be said to be a vague notice which does not fulfill the requirements of section 111 of Cr.P.C.

10. This type of notice has been held to be illegal by this Court in the case of State v. Baleshwar and others decided on 8.8.2008 and reported in (63) ACC page 374 wherein the Hon"ble Allahabad High Court has held as under:--

"making an order under section 111 of the Code is not an idle formality. It should be clear on the face of the order under section 111 Cr.P.C. that the order has been passed after application of judicial mind. If no substance of information is given in the order under section 111, the person against whom the order has been made will remain in confusion. Section 114 of the Code provides that the summons or warrants shall be accompanied by a copy of the order made under section 111. This salutary provision has been enshrined in the Code to give notice of the facts and the allegations which are to be met by the person against whom the proceedings under section 104 Cr.P.C. are drawn. It should be borne in mind that the proceedings under section 107/116 of the Code sometimes cause irreparable loss and unnecessary harassment to the public, who run to the Court at the costs of their own vacations of life. Unless it is absolutely necessary proceedings under section 107/116 Cr.P.C. should not be resorted to. Experience tells that proceedings like the one under section 107/116 of the Code are conducted in a most lethargic and lackadaisical manner by the learned Executive Magistrate causing harassment to public beyond measures."

11. This Court in the case of Mohan Lal v. State of U.P. 1977 (14) ACC 333, has expressed its feeling of dissatisfaction as under:--

"there are series of decisions in which the same principles have been repeated again and again. It is distressing to note that the repeated pronouncement of this Court and also the perception made by the Supreme Court have fallen on the deaf ears of our Executive Magistrates, who still treat the making of order under section 111 an idle formality."

12. In view of the observations made in the cases mentioned hereinabove the impugned notice which has been issued to applicants by filling in the gaps in printed proforma without following the proper procedure, being wholly illegal and void, is liable to be quashed. Accordingly, the application under section 482 Cr.P.C. deserves to be allowed. The application under section 482 Cr.P.C. is hereby allowed and the impugned notice is quashed.