
(2019) 09 BOM CK 0013

In the Bombay High Court

Case No : Criminal Writ Petition No. 2985 Of 2013, 1218, 1219 Of 2014

Farhan Nasir Khan And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 03-09-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 107, 108, 109, 110, 111

Citation : (2019) 09 BOM CK 0013

Hon'ble Judges : Pradeep Nandrajog, CJ; Revati Mohite Dere, J; Bharati H. Dangre, J

Bench : Full Bench

Advocate : A.S. Pai

Judgement

1. By an Order dated 23rd December, 2014, three questions of law have been settled and referred to be answered by a Full Bench.

2. The questions settled read as under:

"(1) Whether, before issuing the show cause notice under Section 111 of the Criminal Procedure Code for initiating chapter proceedings under Sections 107 to 110, is it mandatory for the Magistrate to pass a separate order in writing?

(2) Whether the separate order has to be accompanied with the show cause notice under Section 111?

(3) If the show cause notice which is in writing and which sets forth (i) the substance of the information received, (ii) amount of the bond (iii) term for which it is to be in force, (iv) number character and class sureties, if any, is required, (v) grounds for apprehending breach of peace or disturbance of public tranquility at his hand, then it is not necessary for the Magistrate to pass a separate order in writing and if such a course is adopted, it is sufficient compliance of the procedure which is required to be followed and on that ground show cause notice cannot be set aside."

3. The factual backdrop leading to the reference is that show cause notices were issued to the petitioners and no separate order recording the opinion was passed by the Executive Magistrate. It related to proceedings initiated by the Executive Magistrate under Section 107 read with Section 111 of the Code of Criminal Procedure, 1973.

4. The two Sections i.e. 107 and 111 are part of Chapter VIII under the heading 'Security for keeping the peace and for good behaviour'. As per Section 107, when an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of the opinion that there is sufficient ground for proceeding, he require such person to show cause why he should not be ordered to execute a bond for keeping the peace for such period, not exceeding one year, as the Magistrate may think fit.

5. Section 111 mandates that when a Magistrate proceeding under Section 107 deems it necessary to require any person to show cause, 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 the instant case, no such separate order envisaged under Section 111 of the Cr.P.C. recording the opinion being passed, the Division Bench of this Court in paragraph 3 noted as many as 8 judgments passed by learned Single Judges or Division Bench of this Court holding that before proceeding to issue a show cause notice envisaged under Section 107 of the Cr.P.C., the opinion contemplated by Section 111 had to be separately authored.

7. The Division Bench noted the contra view taken by the Calcutta High Court in the decision reported as 1977 Cr.L.J. 1344 Bishnupada Jana v. The State of West Bengal as also a contra view taken by the Division Bench of this Court in the decision reported as III Ind. Cases 774 Suleman Adam v. Emperor.

8. We have perused the decisions noted in the order of reference which require an order to be passed recording the opinion as contemplated by Section 111 of the Cr.P.C. and based thereon show cause notice issued as contemplated by Section 107. We have also perused the decision statedly taking a contra view in Suleman Adam's case (supra). The said decision deals with a similar provision in the erstwhile Code of Criminal Procedure, 1872. The decision shows that the Magistrate had penned an order recording the opinion in English and based thereon had proceeded to issue a show cause notice to the noticee and had not annexed with the same the order recording the opinion. However, the substance of the opinion had been transposed in the show cause notice, with the justification given by the Magistrate that since the noticee did not understand English language and his opinion was in English language, while issuing the notice the opinion had been conveyed in a language which the noticee would

understand. In that context, the Division Bench held that the peculiar facts warranted it to be held that there was no impropriety committed by the Magistrate.

9. To put it simply, the requirement of law is that the Magistrate has to form an opinion in writing contemplated by Section 111 of the Cr.P.C. and thereafter proceed to issue a show cause notice as contemplated by Section 107 and along with the show cause notice annex the opinion. But, in a given case, it may happen that the language in which the order/opinion contemplated under Section 111 is not comprehensible to the noticee, then the notice may integrate the order/opinion and convey to the noticee in the language which the noticee comprehends.

10. The purpose of the law is that the noticee is to be made known the factual matrix comprising either the complaint or the information received by the Magistrate and the reasons for the opinion formed by the Magistrate.

10. Since we find no contra opinion in Suleman Adam's case (supra) vis-a-vis the opinion taken by the learned Single Judges or by the Division Bench of this Court in the 8 decisions referred to in paragraph 3 of the order dated 23rd December, 2014, we return the reference unanswered for the reason the law is well settled and captured in the eight decisions noted in paragraph 3 of the order of reference dated 23rd December, 2014.