

(1987) 05 DEL CK 0030

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No's. 1654, 1891 and 1970 of 1986

Jagdip and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 15-05-1987

Acts Referred:

Citation : (1987) 2 Crimes 472 : (1987) 32 DLT 146

Hon'ble Judges : M.K. Chawla, J

Bench : Single Bench

Advocate : P.P. Grover, for the Appellant;

Judgement

M.K. Chawla, J.

(1) On the basis of Report of the S.H.O. Police Station Adarsh Nagar, Sh. S. B. S. Tyagi, Spl. Executive Magistrate, vide its order dated 29-10-1986 issued notices u/s. 107/151 Cr. P. C. to the petitioners Jagdip and Mohinder Kumar to show cause by 7-11-1986 as to why they be not ordered to execute a personal bond in the sum of Rs. 5000.00 with one/two sureties in the like amount for keeping peace for a period of one year. The petitioners by way of filing the Cr. M(M) 1654/86 have prayed for the quashing of the said notices. While admitting the petition, on 6th November, 1986, further proceedings in the court below, were stayed.

(2) Subsequently, on another report of the S. H. O. of the said Police Station, the petitioners were again required to show cause by 26th December, 1986 as to why they be not ordered to execute a personal bond in the sum of Rs. 5000.00 with three sureties by the order of Shri Tyagi, Special Executive Magistrate dated 16th December, 1986. The petitioners challenged this notice by moving Cr. M(M) 1981/86. This Court, however, directed the petitioners to execute one surety in place of three in the sum of Rs. 5000.00 .

(3) Feeling frustrated in their attempt to bind down the petitioners, the Police

authorities thought it fit to initiate proceedings under the Delhi Police Act for their externment from the Union Territory of Delhi. Notice u/s. 50 of the Delhi Police Act was issued by the D. C. P. (North). Along with the notice non-bailable warrants for the arrest of the accused were also issued. This order is the subject-matter of Cr. M(M) 1970/76. The execution of the warrants were stayed at the time of admission of the petitions.

(4) All the three petitions are being disposed of by this order as they arise out of series of alleged prejudicial activities of the petitioners. Both the petitioners are working as chowkidars of block "C" and "A" of Subzi Mandi, Azadpur, Delhi for the last 10 years. Their duties are to keep a watch on the store of vegetables/fruits etc. which is brought to the market for auction. In return, they are given commission ranging between Rs. 10.00 to Rs. 100.00 per mensem, according to the size of business of the respective trader. In case of any loss of goods, on account of theft/pilferage, the petitioners are required to compensate the trader.

(5) It is their case that S/Shri Rajinder Kumar, Sin Lal alias Kashmiri Lal and his brother Harish are known bad characters of the area. They wanted to break the system of chowkidars. They are alleged to have shot dead one Rajinder @ Lala on 10-12-1985. In that case, both the petitioners are the eyewitnesses of the incident. In fact, Mohinder Kumar had lodged the Fir on the basis of which a case under Sections 302\\34 Ipc against Rajinder Kumar, Siri Lal and Harish was registered. After being released on bail, Harish and Siri Lal are stated to be absconding. As per the allegations, the local police in connivance with the accused persons started pressurizing the petitioners to resile from their statements and not to support the prosecution case so that the accused could earn acquittal. On their refusal to oblige the local police, they became inimical towards the petitioners.

(6) On the basis of the report of one Ram Singh, A.S.I. of Police Station Adarsh Nagar, a case u/s. 107/151 Cr. P. C. was got registered. Both the petitioners were arrested on 28-10-86. Shri S. B. S. Tyagi, the Special Executive Magistrate refused to accept the surety but on the persistent demonstration of the traders, their surety bonds were accepted. The learned Special Executive Magistrate directed the petitioners to appear before the D.C.P. (North) on the next day.

(7) As observed earlier, these proceedings were stayed by this Court. On the next day, the D.C.P. (North) threatened the petitioners that they should stop working as chowkidars in the Subzi Mandi area, otherwise they would face the serious consequences. In order to enforce this order, she posted a posse of police constables on the entry gates of Azadpur Subzi Mandi, Delhi, to prevent their entry. The petitioners, however in order to enforce their fundamental right of trade without fear and favor filed-a Civil Writ Petition No. 2421186 wherein they complained of highhandedness of Mrs. Kiran Bedi, D.C.P. (North) in refusing them entry into New Subzi Mandi, Azadpur, Delhi. The respondents filed a counter-affidavit wherein she denied that the entry of the petitioners has either been banned or restricted. In view of the counter, the writ petition was dismissed

as withdrawn.

(8) However, from the counter the petitioners discovered that the local police have already issued a notice u/s. 50 of the Delhi Police Act requiring them to furnish sureties to keep peace and be of good behavior. The petitioners, however, are avoiding service of the said notice for which non-bailable warrants have been issued. After coming to know of the initiation of proceedings u/s. 50 of the Delhi Police Act, the petitioners engaged the services of Mr. Rajesh Harnal Advocate, and deputed him to inspect the file to know the nature of the proceedings. Shri Harnal was not allowed to inspect the file by Mrs. Kiran Bedi for two days on one pretext or the other. She insisted the presence of the petitioners at the time of the inspection of the file. As per the averments, this act of the D.C.P. (North) is against the provisions of Section 50(4) of the Delhi Police Act which entitles the petitioner to be represented by a counsel of his choice. Similar application for inspection of the other accused met the same fate.

(9) It is the case of the petitioners that the issuance of nonbailable warrants by the D.C.P. (North) without first attempting the service of notice by the ordinary process, her refusal to allow inspection of the case files and/or her insistence that the petitioners be produced before her clearly indication of the mind of the D.C.P. that she is out to put the petitioners under arrest. The execution of the warrants was stayed by this Court on 12-12-1986 in Cr. M(M) 1870/86.

(10) The petitioners thereafter joined the duties as chowkidars in Azadpur Market on 15-12-1986. At about 7.15 P.M. as per the averments, in Cr. M(M) 1891/86, the Police raiding party came there and forcibly removed Mohinder Kumar to the Adarsh Nagar Police Station and then involved him in another case cls 107/151 Cr. P.C. on the allegations that some unknown persons had come and attacked the petitioners with lathis. When the Police raiding party reached the spot, those persons ran away leaving the petitioner in an injured condition. The petitioner alleged that he was mercilessly beaten by Shri Sam Singh S. I. Along with the S.H.O. of the Police Station, under the direct orders of Smt. Kiran Bedi and Shri S.B.S. Tyagi. On the next day, when the petitioner Mohinder Kumar was produced before the Special Executive Magistrate he asked for his medical examination. The learned Special Executive Magistrate instead ordered the petitioners to furnish three sureties of Rs. 5000.00 each for keeping peace during the pendency of enquiry. Only one surety was accepted while the other two were rejected on flimsy grounds as a result of which the petitioner was sent to judicial lock-up. On 19-12-1986 this Court ordered the release of the petitioner after the number of sureties were reduced from three to one.

(11) With this background, the contention of the learned counsel for the petitioner is that in view of the long standing rivalry between the petitioners and the local police, the learned Special Executive Magistrate and the D.C.P. (North) have adopted a revengeful attitude and they are bent upon keeping the petitioners behind the bars. It is also alleged that in both the reports which resulted in the registration of cases under Sections 107/151 Cr. P.C., no

independent witnesses have been cited or joined. The petitioners have been arrested on trumped-up charges. Ld. counsel also submits that the service of the notice u/s. 111 Cr. P.C. is illegal inasmuch as it does not give the substance of the information on the basis of which the proceedings u/s. 107/151 Cr. P.C. were initiated. Otherwise too, the notice is on a cyclostyled proforma, a practice which has been condemned by this Court. The Id. Special Executive Magistrate has not applied his mind when he called upon the petitioners to furnish "one/two" sureties. Even otherwise, the order passed u/s. 116 Cr. P.C. whereby the petitioners have been called upon to furnish three sureties for keeping peace during the pendency of the proceedings is harsh, excessive and beyond any proportions. On these grounds, the submission is that both the notices under Sections 107/151 Cr. P.C. are liable to be quashed, and the petitioners be allowed to furnish their bail bonds before the C.M.M. Delhi in the proceedings u/s. 50 of the Delhi Police Act.

(12) The respondents have not filed any counter to any of these petitions. In view of serious allegations against Mrs. Kiran Bedi, D.C.P. (North) learned counsel sought time to file counter. In spite of the repeated adjournments, and for reasons best known to the respondent they have not cared to come forward even to deny the correctness of the allegations leveled against them. Even the learned counsel for the State has expressed his helplessness in resisting the petitions in the absence of any instructions from the State/Police authorities.

(13) In the face of this indifference on the part of the respondents, this Court is left with no other option but to presume the correctness of the facts and the allegations made in these petitions. I have carefully perused the notices under Sections 107/151 Cr. P.C. subject matter of both the petitions. Admittedly, they are on the cyclostyled form in which even the number of sureties which the accused is required to furnish have not been specified. The substance of the information received from the Police report have not been incorporated. Section 111 of the Cr. P. C. requires that 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 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. This mandatory provision has not been complied with by the Special Executive Magistrate. The notices lack in all material particulars. This practice has been deprecated time over again. In similar circumstances, in case reported as S. Gurbachan Singh Mehta and others Vs. State, 1974 Ch. L. R. 571 Pritam Singh Safeer, J. (1) held as under :- "Held that it is shocking to find on the record that Shri A. S. Avasthi, Sub-Divisional Magistrate, Lajpat Nagar, New Delhi, signed an order contained in a cyclostyled form which bears the heading "Notice u/s 107/112 Criminal Procedure Code". No grounds which may have persuaded the court to initiate the proceedings u/s 107 of the Code are stated in the order. The blanks are filled in the cyclostyled form. No substance of any information on the basis of which the Court purported to act is stated anywhere.

The Courts of law are under an obligation to attend to the provision under which they are acting. They would not be discharging their duties if they do not find time even to read the provisions. Without reading the provision the Court will not become acquainted with its requirements. The proceedings initiated against the petitioners are vitiated by gross illegality. In view of the postulations in Section 107 and Section 112 of the Code, it is the right of the person or persons proceeded against to know the substance of the information on the basis of which the Magistrate may have acted. Orders passed under those provisions are open to scrutiny at the hands of the Courts of superior jurisdiction." This judgment is on all fours to the facts of the present case. On this score alone, the notices are liable to be quashed.

(14) The perusal of the two reports of the Police Officers which resulted in the registration of a case u/s 107/ 151 Cr. P.C. also indicate that the petitioners were raising hue and cry and were threatening the public at large that they would take revenge against the person who will support Harish Pandit. In spite of the interference of the Police Officers, the petitioners continued extending such like threats. In this report, the Police Officers have not named any person who happened to be present at that place. They did not record the statement of any witness in support of these averments. This flimsy story cannot be believed. It just cannot happen in this manner. In the normal course, the threats can be extended to a particular person who is known to be the close friend or relation or a sympathiser of their adversaries. One cannot expect from a person with some sense to create a sensation at any place without any rhyme or reason. In fact, if the petitioners meant business, they would have dealt their adversaries in a befitting manner and not by extending threats in the air and to no one in particular. Prima fade, these reports are false, frivolous and vexatious and appear to have been motivated with a view to coerce, the petitioners to resile from their statements in the murder case.

(15) Even otherwise, it is beyond one's comprehension that in such like cases, the Id. Special Executive Magistrate would require the delinquent to furnish three sureties of Rs. 5,000.00 each. The purpose of demanding the sureties is to ensure the presence of the accused during the proceedings and to keep peace and be of good behavior in the meanwhile. Normally the order of furnishing of one surety is considered as a sufficient deterrent effect. The object of requiring the delinquent to furnish more than one surety prima fade, appears to be with the intention to keep the accused in judicial custody for a longer period than ordinarily desired. From this, it is manifest that the learned Special Executive Magistrate has not applied his mind to the facts and has passed orders in a mechanical way as desired by the Police.

(16) In view of these circumstances, I have no hesitation to bold that the proceedings initiated under Sections 107/151 Cr. P. C. are altogether illegal and the same are hereby quashed. However, at this stage, I am not inclined to interfere in the proceedings which have been initiated against the petitioners u/s.

50 of the Delhi Police Act inasmuch as they have yet to file the reply and wait for the final adjudication. Keeping in view the fact that non-bailable warrants have already been issued against the petitioners, and the Id. D.C.P. is not likely to accept the bail in view of the petitioner past conduct, the ends of justice would be fully met if the petitioners are required to furnish their bail bond before the C.M.M. Delhi. With this modification, the petitioners shall participate in the proceedings initiated under the Delhi Police Act. Ordered accordingly.