

(2009) 06 AHC CK 0005

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 12143 of 2009

Maresh Prasad Kannaujiya

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 02-06-2009

Acts Referred:

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

Citation : (2009) 3 ACR 2472

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Akash Deep Srivastava, for the Appellant; A.G.A., for the Respondent

Judgement

Sunil Ambwani, J.—Heard learned Counsel for the applicant. Learned A.G.A. appears for the State.

2. The applicant has prayed for setting aside the order dated 28.4.2009 and impugned notice dated 27.3.2009, passed by Dy. Magistrate, Gola, Gorakhpur in State v. Mahesh Prasad Kannaujiya.

3. It is contended by learned Counsel for the Petitioner relying upon the judgment in Lola alias Manish Dhar Dubey alias Babloo v. State of U.P. 2009 (2) ADJ 525; 2009 (1) ACR 859 and Har Charan v. State of U.P. and Anr. 2008 (2) JIC 418 (All): 2008 (2) ACR 1673, that a notice u/s 110/111, Cr. P.C. can be given by the Executive Magistrate only after recording the substance of general nature of material allegations brought to his notice. The notice u/s 110, Cr. P.C. should not be given on printed proformas by filling in names of the persons to whom notices are given in the blank columns followed by allegations, which are general in nature.

4. The notice was given to the applicant on a cyclo-style proforma in which the Sub-Divisional Magistrate has simply filled in the name and particulars of the applicant. It does not give substance of the allegations received against the Petitioner so that the Petitioner may give an effective reply to the notice.

5. Section 110 of the Code of Criminal Procedure provides for security for good behaviour to be taken from habitual offenders. On an information received by the Executive Magistrate that there is within his local jurisdiction a person who is by habit a robber, house-breaker, thief or forger, or falls in any other categories for habitually committing crimes in Clauses (b) to (g) of Section 110, a Magistrate may in a manner provided in Sections 111 to 124 require such person to show cause, to execute a bond with such sureties for such good behaviour for a period not exceeding three years, as the Magistrate may think fit.

6. A Magistrate is empowered to give notice u/s 110 of the Code of Criminal Procedure only after he has received the information with regard to the criminal activity of a habitual offender. The notice must give substance of the particulars of the habitual offences committed by the person, so that persons may be able to reply the same. The principles of natural justice require a person to be informed with the allegations against him, before any adverse order is made. He should get a fair and reasonable opportunity to reply to the Magistrate and to explain if the information against him is not correct. In *Gopalanachari Vs. State of Kerala*, the Supreme Court observed in para 6:

In cases u/s 110 of the Code, the exercise is often an idle ritual deprived of reality although a man's liberty is at stake. We direct the trial Magistrates to discharge their duties, when trying cases u/s 110, with great responsibility and whenever the counter-Petitioner is a prisoner give him the facility of being defended by counsel now that Article 21 has been reinforced by Article 39A. Otherwise the order to bind over will be bad and void. We have not the slightest doubt that expressions like "by habit", "habitual", "desperate", "dangerous", "hazardous" cannot be flung in the face of a man which laxity of semantics. The Court must insist on specificity of facts and be satisfied that one swallow does not make a summer and a consistent course of conduct convincing enough to draw the rigorous inference that by confirmed habit, which is second nature, the counter-Petitioner is sure to commit the offences mentioned if he is not kept captive. Preventive sections privative of freedom, if incautiously proved by indolent judicial processes, may do deeper injury.

7. A person is not required to give reply to the general and vague allegations, which are printed on a cyclo-style sheet. The object of initiating proceedings can be met only if notice is given with the substance of the information received by the Magistrate and which may give him authority in law to make an order for giving security for good behaviour.

8. The criminal misc. application is allowed. The orders dated 28.4.2009 and 27.3.2009 are set aside, with liberty to the Executive Magistrate to initiate proceedings afresh in accordance with law.