

(2024) 02 CAL CK 0085
In the Calcutta High Court
Case No : Criminal Revision No. 1761 Of 2019

Mousumi Roy

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 27-02-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 107, 111, 116(2), 116(3), 116(6), 251, 373(i)
Indian Penal Code, 1860 — Section 302

Citation : (2024) 02 CAL CK 0085

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Sabyasachi Mukherjee, Mukesh Khanna, Poulam Dey, Syed Neaz Ahmed, Mrinmay Nandy, Arundhuti Barai, Sreyashee Biswas

Final Decision : Dismissed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred against an order dated 05.04.2019 passed by the Learned Additional Session Judge, Fast Track (3rd Court) at Barrackpore, in connection with Criminal Revision Case No. 214 of 2017, arising out of order dated 03.05.17, passed by the Court of Learned Special Executive Magistrate, Barrackpore Police Commissionerate, in connection with N.G.R. Case No. 1554 of 2016 initiated under Section 107 of the Code of Criminal Procedure, 1973.

2. The petitioner's case is that on 13.01.16, one Bimala Dey i.e. opposite Party no. 2 lodged a General Diary at Dum Dum Police Station, being General Diary Entry No. 1237 dated 13.01.2016, stating that the petitioner, her husband namely Ajay Roy along with their daughter namely Madhumita Roy, threatened her and used slang language over the issue of previous grudge. After making entry of the general diary being General Diary Entry No. 1237, on 14.01.16 the A.S.I. namely B. Prasad along with force and lady constable left for enquiry and

upon enquiry the police personals were of the conclusion that the petitioner, her husband and her daughter tried to assault the complainant i.e. opposite party no. 2 herein and used filthy language and that there was every chance of serious breach of peace in future over the above noted issue and thus the same was reported before the Special Executive Magistrate, Barrackpore Police Commissionerate, after lodging a suo moto Enquiry General Diary Entry No. 1346 dated 14.01.16.

3. On the basis of the police report a proceeding being N.G.R. Case no. 1554 of 2016 under Section 107 of the Code of Criminal Procedure, 1973 was initiated before the Court of the Learned Special Executive Magistrate, Barrackpore Police Commissionerate and by an order dated 04.05.16, the petitioner and two others were directed to show cause as to why they shall not be directed to execute bond of Rs. 1000/- each with one surety of like amount for maintaining peace for a period of six months.

4. The petitioner and two others appeared and submitted show cause on 25.05.16. On perusal of the records, i.e. complaint letter, police report, show cause petition, evidence and the arguments advanced by the Learned advocates of both the parties, Learned Special Executive Magistrate directed the petitioners to furnish a bond of Rs. 1000/- each with one surety of like amount for maintaining peace for a period of six months and discharged two others namely Ajay Ray and Madhumita Ray by an order dated 03.05.2017.

5. Being aggrieved by the order dated 03.05.2017, passed by the Learned Special Executive Magistrate, Barrackpore Police Commissionerate, an appeal in the form of Criminal Revision No. 214 of 2017, was filed under Section 373(i) of the Code of Criminal Procedure, 1973, before the Court of Learned Additional Session Judge, Fast Track (3rd Court) at Barrackpore.

6. The Learned Additional Session Judge, Fast Track (3rd Court) at Barrackpore, while passing the order dated 05.04.19 held:-

"that there lies a dispute in between the petitioner and the opposite party no. 2 and entering the dispute there and as such is likelihood of committing breach of peace by the petitioner and as such order passed by the Magistrate, is legal and justified and does not warrant any interference".

7. And thus vide order dated 05.04.19 affirmed the order dated 03.05.17 passed in proceeding NGR case no. 1554 of 2016 under Section 107 of the Code of Criminal Procedure, 1973, passed by the Learned Executive Magistrate, Barrackpore directing the appellant to furnish bond for keeping peace for a period of six months and thereby dismissed the Criminal Revision No. 214 of 2017.

8. The proceedings in this case is under Section 107 Cr.P.C.

9. Section 107 of Cr.P.C., lays down:-

“107. Security for keeping the peace in other cases.-

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, [with or without sureties] for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.”

10. The learned counsel for the petitioner has relied upon the judgment of this High Court passed in CRR 3465 of 2019, (Rajesh Prasad Tanti vs The State of West Bengal), dated 01.08.2022. Wherein the Court laid down certain guidelines to be followed by an Executive Magistrates while exercising their jurisdiction under Section 111 of Cr.P.C. The Court held:-

“.....The learned Executive Magistrate henceforth will adhere to the following guidelines in case such persons who are in custody are directed to be produced before the learned Executive Magistrate while exercising their jurisdiction under Section 111 of the Code of Criminal Procedure:

(a) The production warrant should accompany a copy of the order passed by the learned Executive Magistrate.

(b) The bond which is expressed in the show cause notice should not be excessive or impossible to be executed and must be in the nature of a bond granted by a Court allowing prayer for bail in cases under Section 302 of the Indian Penal Code by the Sessions Judge of the concerned district.

(c) On the first day of production if the accused or the petitioner is unrepresented he must be provided with an option of legal representation from the District Legal Aid Services Authority.

(d) If the accused or the petitioner is unable to understand the meaning of the terms “show cause’ then the Court would explain the allegations against him and as provided in Section 251 of the Code of Criminal Procedure read out such allegation and ask him whether he pleads guilty or not (in view of the fact that Subsection 2 of Section 116 of Cr.P.C. refers to summons cases).

(e) The Magistrate would within a month of such production make efforts for commencement of recording of evidence of the witnesses intended to be produced by the applicants or the prosecution.

(f) If under Section 116(3) of Cr.P.C. the accused or the persons are unable to furnish the bond then in that case they would be deemed to be in custody from the date of their first production before the learned Executive Magistrate and if their enquiry as referred to in Sub-Section 6 of Section 116 of Cr.P.C. are not concluded within a period of six months the Court would close the proceedings and release the accused or the persons against whom proceedings were initiated.

(g) Under no circumstances a detained person would be asked to face an enquiry extending beyond the period of six months by assigning any special reasons.....”

11. In *Istkar vs. The State of Uttar Pradesh & Anr.*, in Criminal Appeal No. 2034 of 2022 arising out of SLP (Cri.) No. 8586 of 2021, the Supreme Court held:-

“11. As noticed, the scope and nature of Section 107 CrPC is preventive and not punitive. It aims at ensuring that there be no breach of peace and that the public tranquility be not disturbed by any wrongful or illegal act. The action being preventive in nature is not based on any overt act but is intended to forestall the potential danger to serve the interests of public at large. In other words, this provision is in aid of orderly society and seeks to avert any conduct subversive of the peace and public tranquility. The provision authorizes the Magistrate to initiate proceedings against a person if upon information, he is satisfied that such person is either likely to commit breach of peace or disturb public tranquility or is likely to commit any wrongful act that might probably produce the same result. Simply stated, the provisions of Chapter VIII of the Code are merely preventive in nature and are not to be used as a vehicle for punishment.”

12. From the materials on record it appears that admittedly:-

i) There is a relationship of landlord and tenant between the parties.

ii) Civil/Title Suits are pending between them.

iii) Considering the dispute between the parties relating to the flat where the petitioner reside the learned Magistrate passed the order under revision on the basis of the police report.

iv) The learned Magistrate has passed a detailed, well reasoned order in accordance with law and also considered the point of maintainability.

13. Thus, the order dated 05.04.2019 passed by the Learned Additional Session Judge, Fast Track (3rd Court) at Barrackpore, in connection with Criminal Revision Case No. 214 of 2017, affirming the order dated 03.05.17, passed by the Court of Learned Special Executive Magistrate, Barrackpore Police Commissionerate, in connection with N.G.R. Case No. 1554 of 2016 initiated under Section 107 of the Code of Criminal Procedure, 1973, being in accordance with law requires no interference by this Court.

14. The revisional application being CRR 1761 of 2019 is accordingly dismissed.

15. Petitioner is directed to furnish bond as directed by the Learned Special Executive Magistrate, Barrackpore Police Commissionerate in his order dated 03.05.2017 in connection with N.G.R. Case No. 1554 of 2016 under Section 107 of Cr.P.C., within one month from the date of this order i.d. the learned Magistrate shall proceed in accordance with law.

16. All connected applications, if any, stands disposed of.

17. Interim order, if any, stands vacated.

18. Copy of this judgment be sent to the Court of the learned Additional Session Judge, Fast Track (3rd Court) at Barrackpore and to the Court of the Learned Special Executive Magistrate, Barrackpore Police Commissionerate, for necessary compliance.

19. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.