

(2013) 09 BOM CK 0118

In the Bombay High Court

Case No : Criminal Writ Petition No. 3039 of 2013

Riyasat Shaukat Ali Shaikh

APPELLANT

Vs

State of Maharashtra and Special Executive Magistrate and
Assistant Commissioner of Police

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 107, 110, 111, 112, 113

Penal Code, 1860 (IPC) — Section 323, 324, 34, 504

Citation : (2014) 1 BomCR(Cri) 93

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Patel, J

Bench : Division Bench

Advocate : Priyanka Ghosh, instructed by Mr. Moin Khan, for the Appellant; K.V. Saste, APP, for the Respondent

Final Decision : Allowed

Judgement

G.S. Patel, J.—This is a Petition under Article 226 of the Constitution of India and an application u/s 482 of the Code of Criminal Procedure, 1973 ("the Code"). The Petitioner impugns a show cause notice dated 20th June 2013 and a summons of the same date issued by the 2nd Respondent u/s 111 of the Code. On 1st April 2013, for his involvement in an altercation at Dongri, a First Information Report No. 49 of 2013 was registered against the Petitioner under Sections 324, 323, 504 and 34 of the Indian Penal Code, 1860. The Petitioner was arrested on the day of the incident and later that day was released on bail. Nearly three months later, on 20th June 2013, the 2nd Respondent issued the impugned show cause notice. It was served on the Petitioner on 24th June 2013. The show cause notice proceeds on the footing that the Petitioner is likely to breach the peace and disturb public tranquility; and that there is a likelihood of him committing cognizable offences and illegalities in future. In issuing the show cause notice, the 2nd Respondent supposedly relied on witness statements. On the basis of materials he is said to have considered, the 2nd Respondent initiated

proceedings u/s 107 of the Code and ultimately, with the object of preventing the Petitioner from committing future illegalities, committing cognizable offences, and breaching public peace and tranquility, the 2nd Respondent called on the Petitioner to show cause why a bond of Rs. 5000/- with one like surety should not be taken from him. The Petitioner was summoned to appear before the 2nd Respondent on 27th June 2013. On that day, the Petitioner applied to the 2nd Respondent for copies of all the material relied on in initiating these proceedings. On being allowed to inspect the records, he found no order u/s 111 of the Code passed by the Special Executive Magistrate. His request for copies of documents (the roznama, evidence, materials, witness statements and so on) was, however, denied; and his inspection, too, did not reveal the existence of any evidence or witness statements.

2. Ms. Ghosh, Learned Advocate for the Petitioners, framed her challenge on these grounds, viz.,--

(a) That the Petitioner had not been supplied with the supporting material said in the show cause notice to have been relied on by the 2nd Respondent, thus violating fundamental principles of natural justice; and

(b) That there was no written order by the Special Executive Magistrate u/s 111 of the Code though this is the mandate of the Code;

(c) That the entire proceedings are founded on a single FIR and nothing else, and that, therefore, the provisions of Section 107 of the Code are not attracted in the first place.

3. These are proceedings under Chapter VIII of the Code (entitled "Security for Keeping the Peace and for Good Behaviour"). Section 107 of the Code is permissive and enabling. When an Executive Magistrate receives information that any person is likely to commit a breach of peace, disturb the public tranquility or do any wrongful act that may probably occasion a breach of peace or disturbance of public tranquility, he must first form an opinion that there are sufficient grounds for proceeding under that section. Once so satisfied, he may, in his discretion, and "in the manner hereinafter provided", require such a person to show cause why he should not be required to execute a bond with or without sureties for keeping the peace for a period not exceeding not one year. That the Magistrate has discretionary powers under this section is plain. But the section also requires the Magistrate to follow a procedure. It says that the Magistrate may, "in the manner hereinafter provided" require such person to show cause. The phrase "in the manner hereinafter provided" is a reference to the procedure that must be followed, and one that is set out in the subsequent sections. The Magistrate enjoys no discretion at all in this regard; the procedure, must be followed. Section 111, says that when a Magistrate who acts under Sections 107 through 110 deems it necessary to require a person to show cause under any of those sections, he must make an order in writing. That order must contain the substance of the information received, the amount of the bond executed, the

proposed term for which it is to be in effect, and the number, character and class of sureties, if any, required.

4. In other words, before the show cause notice u/s 107 is issued, two conditions must be met: first, the Magistrate must form an opinion that there is sufficient ground for proceeding; and second, there must be an order in writing u/s 111. These are both conditions precedent to the issuance of any show cause notice. The first of these necessarily means that there must be some material on the basis of which the Magistrate can form an opinion, for the mandate of the statute is plainly that the Magistrate must arrive at an informed decision, not one plucked from the air or one that is imaginary or catches his fancy.

5. Further conditions must also be met. u/s 112, if the person is present in court, the order u/s 111 is to be read over to him, or its substance explained if the person so desires. If the person is not present, a summons or warrant may be issued u/s 113; and if a summons or warrant is in fact issued, a copy of the order u/s 111 must accompany that summons or warrant. The written order u/s 111 is, therefore, the foundation on which the entire edifice of Chapter VIII rests. *Dattaram Krishna Pedamkar Vs. State of Maharashtra and Another* ; *Vasantkumar Jivrambhai Majithia Vs. State of Maharashtra* (At the instance of Special Executive Magistrate, Mulund Division) and *Laxman Narsaiyya, Ravi Cable Network, ;*

6. What happened in the present case? The 2nd Respondent seems to have leapfrogged over Section 111 and gone straightaway to Section 107. There is, of course, the primary matter of whether an altercation between two private individuals over a solitary incident can ever be the foundation for proceedings under Chapter VIII; our Court has previously held they cannot. *Smt. Christalin Costa and others Vs. State of Goa and others, ; Vasantkumar Jivrambhai Majithia, supra* These are not proceedings to be deployed in satisfying private vendettas or personal disputes. *Jayant D. Shah & Ors. v. State of Maharashtra, (1986) 1 Crimes 305 Madhu Deoraj Shetty Vs. State of Maharashtra ; Chandrabhan Dhengle Vs. Indarbai Dhengle and others, ;* The Petitioner was denied copies of the material and witness statements on which the show cause notice is supposed to have been based. His inspection of the record did not show the existence of any order u/s 111 nor any witness statements. In itself, that is fatal. But the entire proceedings seem also to have been based on a solitary FIR registered in connection with a single incident between two private individuals, and one that took place some months earlier. There is nothing to show that the Petitioner has, since then, been involved in any further such incident or incidents. There is, in short, no material at all for forming the opinion required by Section 107. Neither of the two essential requirements of Section 107 have been met and there is, in our view, a total non-application of mind on the part of the 2nd Respondent sufficient to warrant the quashing of the show cause notice and summons dated 20th June 2013. In the result, the Petition succeeds. Rule is made absolute in terms of prayer clause (c). There will be no order as to costs.