
(1982) 11 AHC CK 0011

In the Allahabad High Court

Case No : Criminal Misc. Application No. 7373 of 1982

Sartaj and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 08-11-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 111, 117, 482

Citation : (1983) 7 ACR 1

Hon'ble Judges : P.N. Bakshi, J

Bench : Single Bench

Advocate : S.A. Shah, for the Appellant;

Judgement

P.N. Bakshi, J.—This application u/s 482 Code of Criminal Procedure rises out of an order, passed u/s 111 Code of Criminal Procedure by the Sub-Divisional Magistrate, Ghaziabad on 4-8-82. Aggrieved by that order revision was filed before the Sessions Judge Ghaziabad which has been dismissed as not maintainable. Hence this revision.

2. I have heard learned Counsel for the applicants and have also perused the impugned order. His main submissions are two fold (1) that the revision was entertainable and the Sessions Judge has acted illegally in holding otherwise (2) that the substance of the information as required u/s 111 Code of Criminal Procedure has not been given.

3. I am inclined to agree with both the submissions. Since the application has been filed u/s 482 Code of Criminal Procedure, I do not intend to delay or prolong the proceeding u/s 107/117 Code of Criminal Procedure by merely admitting the same and granting an interim stay. The cause of justice, in such cases, require speedy action, I have, therefore proceeded to pass a final order forthwith .The Sessions Judge was incorrect in its view that the revision was not maintainable. When an order is passed in criminal a proceeding which is either without jurisdiction or a wholly illegal order not warranted by the terms of the

statute, it normally requires interference by a revisional court. In the instant case the learned Counsel has correctly submitted that a substance of information has not been given in the impugned order. The Magistrate has merely said that he is satisfied with the report of the Tehsildar Ghaziabad that the two parties, mentioned, therein are on inimical terms. What are the various facts which impelled the SDM to come to that conclusion have not been disclosed. As such it would not be possible for the Opposite Party to file an adequate reply to the allegations on which he is sought to be bound down. Further u/s 111 Code of Criminal Procedure when an order is made, the amount of bond to be executed, the period for which it should remain in force, the number, the character and the class of the surety should also be mentioned. This has not been done which is again an illegality in the exercise of jurisdiction.

4. Having regard to the above circumstances I consider it necessary in the interest of justice to quash the order passed by the SDM dated 4-8-82.

5. This application is, therefore, allowed. The impugned order passed u/s 111 Code of Criminal Procedure is quashed. If in the opinion of the SDM Ghaziabad the apprehension of breach of peace still exists he will proceed in accordance with law in the light of the observations made by me above.

6. A copy of the order shall be given to the learned Counsel for the applicants, tomorrow if possible.