
(2003) 03 BOM CK 0027

In the Bombay High Court

Case No : Criminal Application No. 1490 of 1997

Suresh Hariram Sadarangani

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 27-03-2003

Acts Referred:

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

Citation : (2003) 03 BOM CK 0027

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : None, for the Appellant; K.V. Saste, APP., for the Respondent

Final Decision : Dismissed

Judgement

J.G. Chitre, J.—The petitioner assails the correctness, property and legality of the notice issued by Special Executive Magistrate and Assistant Commissioner of Police, Tardeo Division, Mumbai in Chapter Case No. 1/1997 issued in view of provisions of Section 111 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Code for convenience). The said learned Magistrate issued the notice to the present petitioner asking him to appear before him to show cause as to why he should not be asked to furnish a bond of good behaviour for maintaining peace to the extent of Rs. 5000/-. In the said notice the learned Magistrate has pointed out that on 15.1.1997 at about 1.15 p.m. when Suresh Hariram Sadarangani, brother of petitioner has come to meet his mother in the flat of the petitioner, the petitioner is alleged to have abused him in filthy language and assaulted him with a soda water bottle on the head on account of which the said Suresh Hariram Sadarangani was injured and fell down. The learned Magistrate pointed out that though he collapsed on the ground, he continued abusing him and at that time the wife of said Suresh Hariram Sadarangani telephoned police and thereafter the petitioner ran away. The Executive Magistrate pointed out that in view of these things, he was satisfied that there was likelihood of breach of public peace in case the petitioner was not

asked to execute a bond for keeping good behaviour and maintaining public peace.

2. While dealing with such notices, which have been issued in view of provisions of Section 107 of the Code, the higher court has to see whether there was sufficient material for the said Magistrate to satisfy himself about the necessity of proceeding against the said person in view of provisions of Chapter VIII of the Code. A Court has to see whether such notice has been issued consistent with the provisions of Section 111 of the Code. The said notice should show as to what information has been received by the Magistrate so as to give the idea to higher court about the reasonableness of the action taken by such Magistrate. The said notice should show by itself that there is reasonable likelihood of breach of peace or likelihood of disturbance in public tranquility. The said notice should also show the reasonable apprehension of any wrongful act likely to take place on the part of such person against whom such notice has been issued. It should show whether there is any reasonable possibility of probable occasion of breach of peace or disturbance of the public tranquility.

3. Furthermore, the record should show that the notice is giving sufficient time to such person to whom such notice has been issued to show cause as to why the Magistrate should not proceed against him as indicated by the relevant provisions of Chapter VIII.

4. In the present case, all necessary things are indicated by the notice which has been put to challenge and, therefore, this court does not find any substance in this petition. The petition stands dismissed. The petitioner to attend that Court on 6.5.2003 and in event of his failure to do so, the said Magistrate should issue a notice to him for completing the said proceeding. Keeping in view the long time gap, the Magistrate should consider whether it is expedient to drop the said proceedings.