
(2009) 04 PAT CK 0117
In the Patna High Court

Yatindra Prasad Singh @ Jitendra Singh APPELLANT
Vs
The State of Bihar and Dilip Kumar Officer Incharge RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

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

Citation : (2009) 3 PLJR 823

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—This application by the sole member of the second party in a proceeding u/s 107 Cr.P.C. is for the quashing of the notice dated 03.05.2007 purportedly issued under the seal and signature of the learned Sub-Divisional Magistrate, Nawadah Sadar, calling upon him to show cause as to why he be not made to execute a bond for keeping peace for a period of one year.

2. Learned Counsel for the petitioner has submitted that the Magistrate's order is bad inasmuch it has failed to comply with the mandatory provision of Section 111 Cr.P.C. According to the learned Counsel the Magistrate was bound to set forth the substance of the information received.

3. The issue of the notice is a judicial act, the object being to enable the person noticed to prepare his defence. This is so because a notice u/s 111 Cr.P.C. is in the nature of a charge and that being the position, the person noticed is entitled to have some definite information of the allegations against him which he is required to meet and also defend himself and it is in this context that the substance or the purport of the information against him is required to be disclosed not only in the order drawing up the proceeding but also in the notice issued to the delinquent. It is in this view of the matter that the provisions of Section 111 Cr.P.C. is deemed to be mandatory and not discretionary. The law is well settled by a catena of decisions of the Courts in India and leaves no room

for taking a contrary view.

4. Now applying the law in force to the instant case a perusal of the notice sent to the petitioner, appended as Annexure 6 to the application, is necessary.

5. What immediately strikes the eye on perusal of Annexure 6 is that the case No. of the proceeding has not been disclosed. Moreover, the recital in the notice is one calling upon the petitioner to show cause as to why he should not be made to execute a bond for keeping peace. Nothing else is stated. Since the substance of accusation has not been furnished to the petitioner he is unable to file an effective show cause in the proceeding. Then again the notice also does not indicate that a copy of the order initiating the proceeding has been annexed with the notice.

6. Since the Magistrate's order was the foundation of his jurisdiction to move in the matter, the failure to incorporate the substance of his information in the notice, the same would result in fatal consequence.

7. For the reasons stated above this application is allowed and the impugned notice being in contravention of the mandatory provisions of Section 111 Cr.P.C. is hereby quashed.