

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CrI. M.C. No. 1997/2008**

Date of Decision : 15.07.2009

Bhai Sarabjit Singh @ Dr. Sabi Sabharwal Petitioner
Through: Mr. Manish Kumar, Adv.

Versus

State & Anr. Respondents
Through: Mr. Pawan Bahl, Adv.

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

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| 1. | Whether Reporters of local papers can be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | YES |
| 3. | Whether the judgment should be reported in the Digest ? | YES |

V.K. SHALI, J. (Oral)

1. This is a petition for quashing of Kalandara proceedings initiated against the petitioner under Section 107/111 read with section 113 Cr.P.c. presently pending in the Court of Mr. J. K. Malik, learned Special Executive Magistrate, New Delhi and all the proceedings emanating therefrom including the order dated 14th May, 2008 and the show cause notice dated 14th May, 2008 and also the quashing of order dated 26th May, 2008 issuing bailable warrants against the petitioner.

2. That briefly stated the facts of case of the petitioner are that he is staying at property No. 9, Amrita Shergill Marg, New Delhi and that the said property belonged to his father Late Shri Bhai Trilochan Singh who expired on 14th August, 2007. After

the death of Bhai Trilochan Singh it transpired that he had made a WILL dated 23rd March, 2006 in respect of property No. 9, Amrita Shergill Marg, New Delhi as well as the property No. 71 Jor Bagh, New Delhi. So far as the property No. 9, Amrita Shergill Marg, New Delhi is concerned, it was alleged that the said property was bequeathed by Bhai Trilochan Singh in favour of the petitioner while as the respondent no. 2/Smt. Indu Sabharwal was granted a life estate property No. 71 Jor Bagh, New Delhi. It is alleged that after the death of Lt. Shri Bhai Trilochan Singh the sisters of petitioner named as Nisha and Tara filed a suit for partition claiming the right in the property left behind by Late Shri Bhai Trilochan Singh on the ground that he had died intestate. In the said suit the petitioner and the respondent no. 2 had filed a joint application admitting that Bhai Trilochan Singh had in fact not died intestate but left behind a WILL dated 23rd March, 2006. This joint application was signed by the respondent no. 2 on each and every page. It is alleged that the petitioner granted the permission to the respondent no. 2 to stay at property no. 9, Amrita Shergill Marg, New Delhi as long as the property which had fallen into the share of respondent no. 2 did not get ready for her to move in. It is alleged that respondent no. 2 despite having accepted the WILL without demur or protest started obstructing, threatening and harassing the servants and the staff of the petitioner from entering the property in his absence, with a view to claim a right in the said property while none existed. This led to filing of a suit

for Permanent and Mandatory injunction bearing No. 684/2008 by the petitioner against the respondent no. 2.

3. This suit is pending before the High Court and notice was issued to the respondent no. 2 wherein an order of status quo was also issued. The order of status quo is said to have been violated resulting in filing of contempt petition. It is also alleged that the Court was pleased to direct the SHO concerned to take steps to ensure that the petitioner is secured against any untoward incident in respect of property and no harm is caused to the petitioner. On 22nd April, 2008 the petitioner left for the South Africa in connection of business. The respondent no 2 with the help of some musclemen one of whom was named as Yadav duly armed with guns started threatening the petitioner's cook named as Kishen. It is alleged that this resulted in lodging of complaint by the servants of the petitioner which culminated into registration of a Kalandara under Section 107/150 Cr.P.C. against the petitioner as well as the respondent no.2.

4. It is alleged in the Kalandara registered against the petitioner that the language of the Kalandara sent to the learned Special Executive Magistrate indicated that there was a threat of breach of peace and public tranquility on account of the threats purported to have been given by the petitioner, and therefore, he was booked as to why he should not be asked to furnish bond for peace and good behavior. Accordingly, a notice was issued on

14th May, 2008 to the petitioner the language of which is as under:

“IN THE COURT OF SH. JAGDISH KR. MALIK, SEM NEW DELHI
DISTT. NEW DELHI

POLICE STATION PARLIAMENT STREET NEW DELHI DISTT.,
NEW DELHI

FORM NO. 14

SUMMON OF INFORMATION OF A PROBABLY BREACH OF
PEACE

SEE SECTION-113 Cr.P.C.

To,

Bhai Sarabjit Singh Sabarwal S/o Late Bhai Trilochan
Singh Sabharwal R/o 9, Amrita Shergil Marg, New Delhi.

Whereas, it was been made to appear to me by credible information that there is tension between you and Smt. Indu Sabharwal over the issue of property dispute. You used filthy language, created nuisances there and also threatened her to face dire consequences. And she apprehended danger to her life from you. And thus there is every likelihood of disturbance the peace and public tranquility within the jurisdiction of this Court.

And that you are likely to commit a breach of peace or to do a wrongful act which may probably occasion in a breach of peace or disturbance of public tranquility within the local limits and jurisdiction of this court. Therefore, you are hereby require to attend in person (or by a duly authorized agent) at the office of Special Executive Magistrate, Police Station-Parliament Street, New Delhi District, New Delhi on 26th May, 2008 at 2.00 PM to show cause as to why you may not be required to execute a personal Bond in the sum of Rs.10,000/- with one surety/sureties in the amount of Rs.10,000/- that you will keep peace for a period of one year.

SPECIAL EXECUTIVE MAGISTRATE

NEW DELHI DISTRICT, NEW DELHI

DATED 14.05.2008”

5. On the basis of this notice dated 14th May, 2008 for 26th May, 2008 the learned Special Executive Magistrate noted the submissions of the learned counsel for the petitioner and yet chose to issue bailable warrants against him for 16th June, 2008. The petitioner feeling aggrieved by the Kalandara and the consequent proceedings against him has filed the present petition for quashing not only the Kalandara but also the show cause notice dated 14th May, 2008 and the order dated 26th May, 2008 issuing bailable warrants against the petitioner.

6. I have heard the learned counsel for the petitioner and the learned counsel for the respondent.

7. The main contention of the learned counsel for the petitioner is twofold. The first contention urged by the learned counsel for the petitioner is to the effect that there is a civil dispute pending before the Civil Court wherein the petitioner has already prayed for the relief of permanent and mandatory injunction against the respondent no. 2 on the ground that the petitioner is the owner of the property on the basis of the WILL purported to have been made by Bhai Trilochan Singh his father which has been admitted by the respondent no. 2 in respect of property no. 9, Amrita Shergill Marg, New Delhi.

8. This WILL has also been admitted by the respondent no. 2 and yet the respondent no. 2 wants to wriggle out to the same by claiming the share in the said property for which the respondent no. 2 with a view to score a point over the petitioner has got this

false and frivolous complaint alleging use of filthy language, creating nuisance or threatening her to face dire consequences and also alleging before the learned Special Executive Magistrate that there is a likelihood of disturbance of peace and public tranquility within his jurisdiction.

9. It was urged by the learned counsel for the petitioner that the Delhi High Court in case titled **Ram Prakash & Anr. Vs. State** 62 (1996) DLT 628 has clearly observed that when the dispute between the parties is essentially of civil nature like one between the landlord and the tenant and where no instances have been given which would warrant the disturbance of peace and public tranquility and the matter is already sub judice before the Civil Court invocation of Section 107 Cr.P.C. is totally unwarranted.

10. Similarly, the learned counsel for the petitioner has also referred the judgment of this Court in **Smt. Aarti Singh Vs. State & Ors.** 2002 (2) JCC Delhi 347 wherein it has also been held that sole objective of the proceedings under Section 107 Cr.P.C. is to maintain peace and public tranquility and it cannot be used in case of a private dispute between the individuals where there is no material of disturbance of peace and public tranquility and there is no justification for invocation of Section 107 Cr.P.C.

11. Yet another authority in case titled **Prakash Chand Sachdeva Vs. State & Anr.** 1994 (1) SCC 471 has also been relied upon wherein it has been observed as under:

“A suit or remedy in civil court for possession and injunction based on title normally prevents a person from invoking jurisdiction of the criminal court. But this normal rule cannot apply where there is no dispute about title. When claim or title are not in dispute and the parties on their own showing are co-owners and there is no partition one cannot be permitted to act forcibly under unlawfully and ask the other to act in accordance with law. Where the dispute is not on the right to possession but on the question of possession the Magistrate is empowered to take cognizance under Section 145 Cr.P.C.”

12. The second submission of the learned counsel for the petitioner is that after the Kalandara is received by the learned Special Executive Magistrate he has to form an opinion that there is danger to the peace and public tranquility and only then the learned Magistrate can issue notice to the party concerned asking him to furnish the requisite bond for maintaining peace and good behavior.

13. The learned APP contested the arguments of the learned counsel for the petitioner and contended that the actual breach of peace and public tranquility is not a sine qua none for invocation of provisions under Sections 107/150 Cr.P.C. The provision of 107 Cr.P.C. is preventive in nature and since the learned Special Executive Magistrate was of the opinion that acts of omission and commission on the part of the petitioner were threatening to disturb the peace and public tranquility, therefore, the learned Magistrate was perfectly justified in issuing the

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notice along with the bailable warrants on account of non-appearance of the petitioner.

14. I have carefully considered the respective judgments cited by the learned counsel for the petitioner. The judgment of this Court in **Ram Prakash** and **Smt. Aarti Singh** cases (supra) clearly spell out the parameters for exercise of powers under Sections 107/150 Cr.P.C. The summa point of these authorities is that unless prevented a person against whom Section 107 Cr.P.C. is invoked, would act in detriment to the public peace and tranquility or otherwise, one should not resort to provisions of Section 107 Cr.P.C. In both these cases, there was essentially a private dispute between the individuals. In one of the case, there was a dispute between the complainant and the opposite party and the matter was pending before the Civil Court for adjudication of the rights of the parties and in the other case also there was a dispute with regard to property No. 110, Jor Bagh, New Delhi whereupon the police apprehended that the said dispute may lead to the breach of peace and public tranquility that it resorted to a circuitous move of booking both the persons under Section 107 Cr.P.C. In both these matters, the proceedings which were initiated against the petitioner were quashed. In the present case also the police had tried to book both the parties under Section 107/150 Cr.P.C. as the notice shows which has been issued to the petitioner. It has been observed that there is a tension between you and Smt. Indu Sabharwal over the issue of property dispute and it was alleged

that the petitioner had used filthy language creating nuisance threaten her to face dire consequences, and therefore, she apprehended the danger to her life from the petitioner and there was every likelihood of disturb the peace and public tranquility within its jurisdiction. No date, time and the person in whose presence the threats were given have been detailed either in the Kalandara or in the notice.

15. As a matter of fact a reading of Section 107 Cr.P.C. would show that it is in two parts one is the transmission of the information to the learned Special Executive Magistrate and the second is the formation of an opinion on the basis of the said information by the learned Special Executive Magistrate which should form a basis of the issuance of notice. There is nothing on record which would show that such an opinion has been formed with some cogent basis by the learned Special Executive Magistrate. This is evident from the fact that the notice is nothing but the reproduction of contents of Kalandara and further similar notice has been issued to the respondent no. 2 which also contends almost same allegations against her. This clearly shows that the police has tried to act in a most casual manner and so has the learned Special Executive Magistrate despite the fact that there was a civil suit between the parties for adjudication of their rights before a competent Court. The learned Magistrate has completely ignored the ratio of the two cases cited by the learned counsel for the petitioner on which reliance has been placed.

16. For the reasons mentioned above, I am satisfied that both the Kalandara and the show cause notice and the consequent issuance of bailable warrants against the petitioner is without any merit as the same has been done by the learned Magistrate without any application of mind and is gross abuse of processes of law. Not only Kalandara but also order dated 14th May, 2008 but also the show cause notice dated 14th May, 2008 are accordingly quashed.

17. No order as to costs.

V.K. SHALI, J.

July 15, 2009
KP