

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

Judgment delivered on: April 05, 2011

+ **CRIMINAL M.C.No.3157/2009 & CRL.M.A.10606/2009**

GANESH KUMAR SHARMA **....PETITIONER**

Through: Mr. K.K. Sharma, Sr. Advocate with
Ms. Bhanita, Advocate & Ms. Neeru,
Advocate.

Versus

STATE & ANOTHER **.....RESPONDENTS**

Through: Ms. Fizani Husain, APP for the
State/respondent No.1 along with SI Rohit
Srivastava, P.S. Krishna Nagar.
Mr. L. Roshmani, Advocate with Mr. Israr
Ahmed, Advocate for respondent No.2.

CORAM:
HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.(ORAL)

1. Being aggrieved by the impugned show cause notice dated 11.07.2009 issued by the Special Executive Magistrate, East District, Delhi, the petitioner Ganesh Kumar Sharma has filed the instant petition under Section 482 Cr.P.C. seeking quashing of the proceedings under Section 107/150 Cr.P.C. initiated against him and pending in the court of Special Executive Magistrate, East District as case No.117/2009. The

petitioner has also prayed for direction to the SHO P.S. Krishna Nagar to register an FIR against respondent No.2 and his son on the basis of his complaint dated 26.03.2009.

2. The petitioner and respondent No.2 are at dispute in respect of a shop forming part of House No.2, Satnam Park, Chander Nagar, Krishna Nagar let out by the petitioner to respondent No.2. An eviction petition in respect of the said shop was filed by the petitioner which was allowed on the ground of bona fide requirement and revision petition against the said eviction order has also been dismissed by the High Court. Learned counsel for respondent No.2 submits that respondent No.2 is planning to challenge the order passed by the High Court in revision petition.

3. That on 26.03.2009 on the receipt of information from lady Constable Mamta of police control room, DD No.24A was registered at P.S. Krishna Nagar at 2:55 pm, wherein it was recorded that the tenant of House No.2, Satnam Park, Chander Nagar was threatening to kill the landlord.

4. That despite of call made by the complainant to PCR, the police control room van did not arrive at the spot. However, Head Constable Kailash of P.S. Krishna Nagar along with one Constable reached at the spot and asked the complainant, respondent No.2 and his son to reach Police Station. On reaching Police Station, the complainant got recorded his statement. He also lodged his complaint by e-mail to Commission and DCP concerned on 26.03.2009. On the next day, when the complainant visited the Police Station to enquire about the fate of his complaint, the

Investigating Officer Head Constable Kailash submitted that the case was being registered. Despite the assurance, the police failed to register the case. This led to petitioner writing a letter on 13.04.2009 to the SHO, P.S. Krishna Nagar requesting him to register a case against respondent No.2 and his son on the basis of his complaint. The police instead of registering the complaint against respondent No.2 and his son, submitted a Kalandara under Section 107/150 Cr.P.C. against the petitioner and the Executive Magistrate on consideration of said Kalandara, served impugned notice under Section 111 Cr.P.C. on the petitioner.

5. In the instant case, the foundation of impugned notice is the following statement made by respondent No.2 Mohd. Shabir before Head Constable Kailash:

“I am running a barber shop in House No.2, Satnam Park for the last 40 years. Today on 26.03.2009 at about 2:00 pm, son of the landlord Ganesh Kumar Sharma, Advocate came and parked his car in front of his shop and went inside the house. When I came out and requested him to remove the car from there, Ganesh Kumar Sharma refused to remove the car from there and said that if you are feeling any difficulty, you may vacate the shop. On this, I replied that the court case is already pending and what is your problem, this resulted in exchange of hot words and abuses. The allegation regarding threat given on the point of razor is wrong.”

6. It may be noted that Ganesh Kumar Sharma, Advocate was also examined by Head Constable Kailash who stated that in the afternoon of 26.03.2009, he went inside the house after parking his car. When he came out, respondent No.2 asked him to remove the car and he responded that he would remove the car. Respondent No.2, however,

threatened that if the car is not removed, he would break it and started abusing him. In the meanwhile Shakir son of respondent No.2 came out of the shop and threatened him that he would slash his neck with the “*ustra*” (razor). On aforesaid allegations, the complainant requested for appropriate action against respondent No.2 and his son.

7. Learned Sr. Counsel for the petitioner has submitted that aforesaid statement made by the petitioner discloses commission of cognizable offence. The police instead of registering FIR on the basis of said complaint forwarded the kalandara under Section 107/151 Cr.P.C. against the complainant and the Special Executive Magistrate, without conducting any inquiry or applying his mind to the facts and circumstances of the case, arbitrarily served the petitioner with show cause notice under Section 111 Cr.P.C., which is untenable in law. Thus, learned Sr. Counsel for the petitioner has strongly urged for quashing of the kalandara as well as show cause notice under Section 111 Cr.P.C.

8. Before adverting to the factual matrix of the case, it would be appropriate to have a look on the law relating to the scope and object of Section 107 of the Code of Criminal Procedure. In **Madhu Limaye and another v. Sub-Divisional Magistrate and others, AIR 1971 S.C. 2486**, the Supreme Court while considering the scope of Section 107 of the Code of Criminal Procedure held that Section 107 of the Code of Criminal Procedure is aimed at persons, who cause a reasonable apprehension of conduct likely to lead to a breach of the peace or disturbance of the public tranquility. This provision is in aid of orderly

society and seeks to nip in the bud conduct subversive of the peace and public tranquility.

9. From the statements of the parties recorded by Head Constable Kailash, it is clear that there is a landlord tenant dispute between the parties regarding which proceedings were pending at the relevant time. That being so, it is difficult to infer in absence of any cogent evidence that the members of public were affected by the alleged exchange of hot words between the petitioner and respondent No.2 or there was any possibility of the breach of peace or disturbance of public tranquility, particularly when the petitioner himself has informed the PCR by giving a telephone call. The sole object of initiating proceedings under Section 107 of the Code of Criminal Procedure is preventive with a view to ensure maintenance of public peace and tranquility and it cannot be used as a handle to settle private dispute between the parties. Further, non-application of mind to the facts and circumstances of the case by the Special Executive Magistrate is apparent from the fact that in the notice under Section 111 Cr.P.C., learned Special Executive Magistrate has tried to project as if that the petitioner had been fighting with and abusing the landlord time and again on the issue of parking of car, whereas in the statement of respondent No.2 there is a reference to only one incident which took place on 26.03.2009. Even otherwise from the aforesaid statement of respondent no.2, it cannot be inferred that the act of the petitioner had potential to breach public peace and tranquility. Consequently, in my considered view, the proceedings under Section 107 of the Code of Criminal Procedure against the petitioner and the

consequent notice under Section 111 Cr.P.C. are without any justification and liable to be quashed.

10. Otherwise also, as per Section 107 Cr.P.C., the Special Executive Magistrate can seek bond for maintaining peace for a period not exceeding one year. In the instant case, show cause notice under Section 111 Cr.P.C. was issued on 11.07.2009 i.e. slightly less than two years back. Respondent No.2 when asked whether after 26.03.2009 any quarrel or fight has taken place between him and the petitioner replied in the negative. This imply that since the issue of show cause notice under Section 111 Cr.P.C., the petitioner has not indulged in any activity, which could have caused breach of peace and public tranquility. As such, even it is assumed for the sake of arguments that notice under Section 111 Cr.P.C. was issued rightly, now after almost two years from the date of issue of notice, there is no reason to continue with the preventive proceedings under Section 107/150 Cr.P.C.

11. In view of the above, the petition is allowed. Proceedings under Section 107/150 Cr.P.C. as well as show cause notice under Section 111 Cr.P.C. are hereby quashed.

(AJIT BHARIHOKE)
JUDGE

APRIL 05, 2011
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