

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. M.C. No. 3605/2010

% Judgment decided on: 23rd May, 2011

MANISH CHHABRA

....PETITIONER

Through: Mr. Rajat Wadhwa and Mr.
Davinder Kumar, Advs.

Versus

STATE & ANOTHER

.....RESPONDENTS

Through: Mr. Arvind Gupta, APP for the
State-R-1.
Mr. H.S. Arora, Adv. for R-2.

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be
reported in the Digest? | No |

A.K. PATHAK, J. (Oral)

1. By this petition under Section 482 of Code of Criminal Procedure, 1973 (for short hereinafter referred to as 'Cr.P.C.'), petitioners seek quashing of proceedings under Sections 107/111 Cr.P.C. pending before the Special Executive Magistrate, Sarai Rohilla arising out of DD No. 17 dated 14th August, 2010 under Sections 107/150 Cr.P.C. registered at Police Station Roop Nagar.

2. Factual matrix of the case as emerges from the record is that the petitioner is son of landlady of respondent no.2. Disputes are there between the landlady and respondent No. 2 in

respect of tenanted premises. Landlady has filed a suit for possession before the Additional District Judge, Delhi which is since pending. Prior thereto, respondent no. 2 had filed a suit for permanent injunction against the landlady praying therein that she be restrained from forcibly dispossessing him. In the said suit, landlady had made a statement that she will not dispossess the respondent no. 2 without due process of law. Consequently, said suit had been decreed in terms of the statement of landlady. It appears that petitioner as well as respondent no. 2 had been filing complaints against each other before the Station House Officer of Police Station Roop Nagar levelling allegations of threats and harassment. As per the petitioner, respondent no. 2 had been threatening him with dire consequences. As against this, grouse of respondent no. 2 was that petitioner, along with some anti-social elements, had been threatening him in order to compel him to vacate the tenanted premises. These complaints had resulted in filing of kalandra under Sections 107/150 Cr.P.C. by SI Veer Singh before the Special Executive Magistrate, Sarai Rohilla. It was alleged in the kalandra that on account of quarrels between petitioner and respondent no. 2 there was apprehension of disturbance of peace and tranquility in the area.

3. Special Executive Magistrate has taken cognizance of kalandra and has issued notice dated 23rd August, 2010 to the petitioner under Sections 107/111 Cr.P.C. calling upon him as to why he be not directed to furnish a bond in the sum of ₹5,000/- along with one surety in the like amount for keeping peace in the

area for a period of one year. Perusal of the notice shows that it is in a printed format wherein blanks have been filled in by hand to the effect that petitioner had been abusing and threatening respondent no. 2 on account of non-payment of rent, as also to get the tenanted premises vacated, as a consequence whereof, there was apprehension of breach of peace in the area. Notice has been issued by the Special Executive Magistrate without holding an enquiry to form prima facie view that there was apprehension of breach of peace on account of conduct of petitioner nor any such order has been passed assigning the reasons as to in what manner the conduct of the petitioner could have resulted in breach of peace in the area. Magistrate has merely incorporated the language of the section without giving the express opinion indicating as to what was the sufficient ground for initiating the proceedings. It may be noted that the Investigating Officer, before drawing up the kalandra, did not enquire into the factual aspect to satisfy himself that there was apprehension of breach of peace in the area. Merely because cross complaints were being filed by the petitioner and respondent no.2, kalandra appears to have been registered.

4. In ***Sushma Arora vs. State & Ors. Crl. M.C. No. 3581/2006***, proceedings under Section 107/150 Cr.P.C. were initiated on the kalandra that was drawn up as a consequence of disputes between landlord and tenant. It was held by a Single Judge of this Court that being a landlord tenant dispute, there was no justification for invoking the power under Section 107

Cr.P.C. On perusal of the kalandra as a whole, the court was unable to find anything which would justify the SEM forming an opinion that there was an imminent danger of breach of peace, thus, kalandra was quashed. In ***Ram Prakash & Anr. vs, State 628 (1996) Delhi Law Times 528***, where a dispute between landlord and tenant had resulted in filing of Kalandra under Section 107 Cr.P.C., a Single Judge of this Court held that the disputes between landlord and tenant has nothing to do with public tranquility or breach of peace. Repeated complaints/counter complaints against each other would not constitute an offence to invoke Section 107 Cr.P.C. Section 107 Cr.P.C. requires that there has to be sufficient ground for proceeding against the person. No instance had been brought on record to show that by lodging of complaint against the tenant and the landlord disturbed the public tranquility or was going to disturb the public peace. The purpose of Section 107 Cr.P.C. is preservation of public peace and tranquility which question in the facts of the case did not arise. This Section does not confer any power on the Special Executive Magistrate to adjudicate or decide disputes of civil nature or to decide the question of titles to property or entitlement to rights. The power cannot be exercised in a manner that would give material advantage to one party to the dispute over the other. The allegations in the kalandra did not constitute a threat of breach of peace or public tranquility.

5. The power under Section 107 would apply where the Magistrate affirms his opinion on the basis of the information

that unless prevented from so acting the person would act to the detriment of public peace and public tranquility. However, the facts of the present case clearly indicate that the disputes are between the landlady and tenant, be it regarding non-payment of rent or for getting the premises vacated. The landlady has already initiated civil action in this regard, inasmuch as, landlady had given a specific statement before the Civil Court that she would not get the tenanted premises vacated without following the due process of law. Her this statement and the pendency of civil suit at the time of drawing up kalandra also makes the allegations contained in the kalandra suspicious.

6. Be that as it may, from the facts of this case, prima facie, it does not even appear that conduct of petitioner may cause apprehension of breach of peace and tranquility in the area as alleged in the kalandra.

7. For the foregoing reasons, kalandra and consequent proceedings emanating therefrom are quashed. Petition is disposed of in the above terms.

A.K. PATHAK, J.

May 23, 2011/ga