

Court No. - 4

Case :- APPLICATION U/S 482 No. - 39132 of 2023

Applicant :- Trilok Singh And 2 Others

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Krishna Kant Dubey, Santosh Kumar Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Prakash Padia, J.

1. Heard learned counsel for the applicants, learned AGA for the State and perused the records.

2. The present application under Section 482 Cr.P.C. has been filed with the prayer to quash the Notice under Section 111 Cr.P.C. dated 18.07.2023 in Case No.111 of 2023 (State Vs. Trilok Singh and others), under Section 107/116 Cr.P.C. Police Station Sahibabad, District - Commissionerate Ghaziabad, issued by Executive Magistrate, Indrapuram District - Commissionerate Ghaziabad and proceedings arising therefrom.

3. It is argued by learned counsel for the applicants that the controversy involved in the present case is squarely covered by the order passed by this Court dated 25.01.2023 in APPLICATION U/S 482 No. - 724 of 2023 (Chandra Pal Vs. State of U.P. And Another. The order dated 25.01.2023 is reproduced hereinbelow:-

"Heard Sri K.K.Verma, learned counsel for applicant as well as Sri Diwaker Singh, learned A.G.A. for State and perused the record.

This application under section 482 Cr.P.C. has been filed to quash the Notice under Section 111 Cr.P.C. dated 03.12.2022, Police Station Jagatpur, Raibareli, issued by Sub Divisional Magistrate, Salon Raibareli and proceedings arising therefrom.

Record shows that Police of Police Station Jagatpur submitted a challan report dated 22.10.2022 against applicant Chandra Pal, whereby he has been challaned under sections 111 Cr.P.C. It is alleged in aforesaid report that there is possibility of breach of peace. In order to prevent same, aforesaid person has been callaned under Section 111 Cr.P.C. In the interest of Justice, requisite amount of personal bond and surety bond be obtained from above named persons.

After aforesaid report was forwarded by S.H.O. P.S. Jagatpur, Sub Divisional Magistrate, Salon, Raibareli issued notice dated 03.12.2022 under Sections 111 Cr.P.C. asking applicant to furnish personal bond of Rs. 50,000/- and two sureties of the same amount.

Feeling aggrieved by aforesaid notice dated 03.12.2022, applicant namely Chandra Pal has now approached this Court by means of present application under section 482 Cr.P.C.

Learned counsel for applicant contends that notice dated 03.12.2022, issued by Sub Divisional Magistrate, Salon, Raibareli is patently illegal. Same does not contain full particulars nor the full substance of Police Report, on the basis of which aforesaid notice has been issued. It is thus urged that impugned notice does not fulfill the requirement of Section 111 Cr.P.C. In support of above, reliance is placed upon Baleshwar S/o Ram Saran and Others Vs. State of U.P., 2008 (63) ACC 374, wherein a learned Single Judge has observed as follows in paragraphs 6, 7 and 8:

"6. Having given my thoughtful consideration to the rival submissions made by parties Counsel and after going the impugned notice, I find force in the aforesaid contention of the learned Counsel for the applicants that the impugned notice is wholly illegal and void. Annexure 1 is the copy of the impugned notice, which was issued by SDM Mawana (Meerut) to the applicants, whereby they were called upon to appear on 10.12.2004 and show cause as to why they be not ordered to execute a personal bond for Rs. 30,000/- and furnish two sureties each in the like amount to keep peace for a period of one year. In this notice it is only mentioned by the SDM concerned that he is satisfied with the report of S.O. of P.S. Mawana that due to old litigation, there is enmity between the parties, due to which there is likelihood of the breach of peace. It is not mentioned in this notice that what type of litigation is going on between the parties and in which Court the said litigation is pending. Number of the case and other details of the said litigation have also not been mentioned in the impugned notice. As such the impugned notice issued by the learned SDM Mawana is vague and it does not fulfil the requirements of Section 111, Cr.P.C. This type of notice has been held to be illegal by this Court in the case of Ranjeet Kumar v. State of U.P. (supra).

7. Making an order under Section 111 of the Code is not an idle formality. It should be clear on the face of the order under Section 111, Cr.P.C. that the order has been passed after application of judicial mind. If no substance of information is given in the order under Section 111, the person against whom the order has been made will

remain in confusion. Section 114 of the Code provides that the summons or warrants shall be accompanied by a copy of the order made under Section 111. This salutary provision has been enshrined in the Code to give notice of the facts and the allegations which are to be met by the person against whom the proceedings under Section 107, Cr.P.C. are drawn.

8. It should be borne in mind that the proceedings under Section 107/116 of the Code some times cause irreparable loss and unnecessary harassment to the public, who run to the Court at the costs of their own vocations of life. Unless it is absolutely necessary, proceedings under Section 107/116, Cr.P.C. should not be resorted to. Experience tells that proceedings like the one under Section 107/116 of the Code are conducted in a most lethargic and lackadaisical manner by the learned Executive Magistrate causing harassment to public beyond measure."

Learned counsel for the applicant has placed further reliance upon judgments of this Court reported in 2004 (5) ACC 734 Aurangzeb and others Vs. State of U.P. and another, 2002 (45) ACC 627 Ranjeet Kumar and others Vs. State of U.P. and others and 2008 (61) ACC 540 Har Charan Vs. State of U.P. and another in support of his contention.

In view of aforesaid, this Court has examined the impugned notice dated 03.12.2022, issued by Sub Divisional Salon, Mahrajanj, Raibareli under Sections 111 Cr.P.C.. The Court finds that impugned notice contains a bare recital that there is apprehension of commission of cognizable offence. Impugned notice does not contain full substance of information given by concerned Police Officer. Consequently, concerned Magistrate has not acted judiciously while issuing the impugned notice dated 03.12.2022. The notice under Section 111 Cr.P.C. has been issued only on the basis of one case the impugned notice does not contain the substance of allegation which has been made against the applicant and has been issued in a routine manner on a printed format.

In view of above, the impugned notice dated 03.12.2022, issued by Sub Divisional Magistrate, Salon, Raibareli, cannot be sustained. Accordingly, the same is liable to be quashed.

Consequently, present application succeeds and is liable to be allowed. It is accordingly allowed. Impugned notice dated 03.12.2022 is quashed. Sub Divisional Magistrate, Salon, Raibareli, shall issue a fresh notice after undertaking requisite exercise in the light of observations made herein above and in accordance with law, if deem fit under the circumstances of the case."

4. It is argued that since the controversy involved in the present case is absolutely identical, the applicant is also entitled for the same relief.
5. Heard learned counsel for the parties and perused the record.
6. In view of aforesaid, this Court has examined the impugned notice dated 18.07.2023, issued by by Executive Magistrate, Indrapuram District - Commissionerate Ghaziabad under Sections 111 Cr.P.C.. The Court finds that impugned notice contains a bare recital that there is apprehension of commission of cognizable offence. Impugned notice does not contain full substance of information given by concerned Police Officer. Consequently, concerned Magistrate has not acted judiciously while issuing the impugned notice dated 18.07.2023.
7. Since the notice under Section 111 Cr.P.C. has been issued only on the basis of one case the impugned notice does not contain the substance of allegation which has been made against the applicant and has been issued in a routine manner on a printed format and in view of the order dated 25.01.2023 passed by this Court in the case of Chandra Pal (Supra), the impugned notice dated 18.07.2023, issued by Executive Magistrate, Indrapuram District - Commissionerate Ghaziabad is liable to be quashed and the same is hereby quashed.
8. Consequently, present application succeeds and is accordingly allowed. Impugned notice dated 18.07.2023 is quashed. The Executive Magistrate, Indrapuram District – Commissionerate Ghaziabad shall issue a fresh notice after undertaking requisite exercise in the light of observations made herein above and in accordance with law, if deem fit under the circumstances of the case.

Order Date :- 1.11.2023
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