

Court No. - 86

Case :- APPLICATION U/S 482 No. - 42577 of 2023

Applicant :- Ramesh Chand Soni And 2 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Kamlesh Kumar Dwivedi, Gaurav Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta, J.

1. Heard learned counsel for applicants, learned A.G.A. for State and perused the record.

2. This application under section 482 Cr.P.C. has been filed challenging notice dated 03.10.2023, issued by Assistant Commissioner of Police/Executive Magistrate, Agra, under section 111 Cr.P.C in Case No. 1819 of 2023 (State Vs. Ramesh Chand Soni), under sections 107/116 Cr.P.C. P.S. Jagdishpura, District- Agra.

3. Record shows that Police of Police Station-Jagdishpura, District- Agra, submitted a challani report dated 03.10.2023 against the applicants, whereby they have been challaned under sections 107 and 116 Cr.P.C. It is alleged in the aforesaid report that there is a dispute between the parties over possession of plot bearing Plot No.323 and there is apprehension of breach of peace and commission of cognizable offence. In order to prevent the same, the applicants have been challaned under Sections 107 and 116 Cr.P.C. In the interest of Justice, requisite amount of personal bond and surety bond be obtained from the applicants.

4. After aforesaid report was forwarded by Station Incharge, P.S. Jagdishpura, District- Agra, Assistant Commissioner of Police/Executive Magistrate, Agra issued notice dated 03.10.2023 under Section 111 Cr.P.C asking applicants to furnish personal bond of Rs. 1,00,000/- and two sureties of an amount of Rs.50,000/-.

5. Feeling aggrieved by the aforesaid notice dated 03.10.2023, applicants have now approached this Court by

means of present application under section 482 Cr.P.C.

6. Learned counsel for applicants contends that the notice dated 03.10.2023, issued by Assistant Commissioner of Police/Executive Magistrate, Agra 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 requirements 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.**, reported in **2008 (63) ACC 374**, wherein a learned Single Judge of this Court 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."

7. Thus, the Court finds that impugned notice contains a bare recital that there is apprehension of breach of peace leading to tension between the parties. Impugned notice does not contain full substance of information given by concerned Police Officer. Consequently, concerned Authority has not acted judiciously while issuing the impugned notice dated 03.10.2023.

8. In view of above, the impugned notice dated 03.10.2023, issued by Assistant Commissioner of Police/Executive Magistrate, Agra, cannot be sustained. The same is liable to be quashed.

9. Consequently, present application succeeds and is liable to be allowed. It is accordingly allowed. Impugned notice dated 03.10.2023 is quashed. The competent authority may pass fresh necessary orders, if required, under the appropriate provision of law.

Order Date :- 13.12.2023
Subham