

Court No. - 11

Case :- APPLICATION U/S 482 No. - 12646 of 2023

Applicant :- Kailash Nath Tripathi And 4 Others

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And Another

Counsel for Applicant :- Anoop Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

Heard.

The present application under Section 482 Cr.P.C. has been filed for the following main relief:-

"Wherefore, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to quash the notice dated 16.11.2023 issued by the learned Sub Divisional Magistrate (Sadar) District-Sitapur under section-107/116 Cr.P.C. Police Station-Khairabad, District-Sitapur in State Versus Kailash nath Tripathi and others bearing suit no. 4536."

By means of the present application a notice dated 16.11.2023 issued under Section 111 Cr.P.C. issued by Sub Divisional Magistrate, Sadar, Sitapur.

It is stated that on account of some dispute related to boundaries of Gata No. 462, 528, 461 some altercation took place between the parties on 26.10.2023 and based upon the same, a report dated 26.10.2023 was submitted by the Sub Inspector, Police Station- Khairabad, District-Sitapur in the light of provisions indicated under Section 107/116 Cr.P.C.

He further submitted that after the aforesaid i.e. on 28.10.2023 demarcation proceedings carried out in terms of provisions of U.P. Revenue Code 2006, as would appear from Annexure No. 4, which is a copy of report and authority concerned has not taken note of the fact that demarcation and at the relevant time the Police personnel and Revenue Team were present and now there is no dispute between the parties has already been done on 28.10.2023.

Learned counsel for the applicant submitted that the impugned notice dated 16.11.2023 is liable to be set aside because the same has been issued without application of mind as the concerned Magistrate has not recorded his opinion to the effect that there exists sufficient ground to take action under the provisions of Section 111 Cr.P.C. and further that the same is a printed proforma.

He further submitted that a printed format cannot be a satisfaction which is required under Section 111 of Cr.P.C. while issuing notice under Section 107/116 of Cr.P.C.

He has placed reliance upon the judgement of this Court in the Case of ***Siya Nand Tyagi v. State of U.P. reported in 1994 Cri. LJ 1298*** and also the judgement of the Delhi High Court in the case of ***Tavindar Kumar and another v. State reported in 1990 Cri LJ 40.***

Perused the impugned notice issued under Section 111 of the Cr.P.C. and also considered the judgements placed before this Court.

The notice/ order is appears to be on printed proforma and on a pointed query being made to the learned Additional Government Advocate, he could also not justify the notice.

In the considered opinion of the Court, when the law requires the Magistrate to apply his mind, then there has to be a due application of mind. The manner in which the notice has been issued, it clearly transpires that it has been prepared by some person of the office of the Sub Divisional Magistrate, (Sadar), Sitapur and thereafter he put his signatures and the notice has got issued. This practice is reprimanded. It is expected that the Sub Divisional Magistrate, (Sadar), Sitapur, shall apply his mind as required in law before issuing notice under Section 111 for taking appropriate action under Section 107/116 of Cr.P.C.

This Court in ***Siya Nand Tyagi v. State of U.P. (supra)*** has clearly held thus:-

"3. It is unfortunate that the requirement of Section 107 of the Code that the Executive Magistrate receiving information should be of the opinion that there are sufficient grounds for proceedings under the said section have become a dead letter and are always followed in its breach. 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.

4. 107 is aimed at a person who causes reasonable apprehension of conduct likely to lead to apprehension of breach of peace or a disturbance of public tranquillity. It is a preventive measure. Proceedings under Section 107/116 should not be transformed into persecution of innocent persons at the sweet will of the police or other persons acting mala fide.

*5. In the case of **Mohan Lal v. State of U.P., 1977 All Cri C 333** this Court observed:-*

"There are a series of decisions in which it has been held that the provisions contained in Section 111 of the Code are mandatory and that the non-compliance thereof vitiated the entire proceedings."

6. In the case of Madhu Limaye v. S. D. M. Mongyr, , the Apex Court, in para 36 of its judgment observed:

We have seen the provisions of Section 107. That section says that action is to be taken in the manner here-in-after provided and this clearly indicate that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is very salutary because the liberty of the person is involved and the law is rightly solicitous that this liberty should only be curtaided according to its own procedure and not according to the whim of the Magistrate concerned. It behoves us,

therefore, to emphasise the safeguards built into the procedure because from there will arise the consideration of the reasonableness of the restrictions in the interest of public order or in the interest of the general public."

In this very case the Apex Court went on to observe in para 37 "Since the person to be proceeded against has to show cause, it is but natural that he must know the grounds for apprehending a breach of the peace or disturbance of the public tranquillity at his hands. Although the section speaks of the 'substance of the information' it does not mean the order should not be full. It may not repeat the information bodily but it must give proper notice of what has moved the Magistrate to take the action. This order is the foundation of the jurisdiction and the word 'substance' means the essence of the most important parts of the information."

7. In the present case the learned Sub-Divisional Magistrate has thrown the mandatory provisions of Section 111 of the Code to the winds and has prepared a printed pro forma. The learned Magistrate has also not recorded his opinion that there existed sufficient grounds to take action under the provisions of Section 107 of the Code."

Having considered the above including the observations made in the judgments referred above as also that notice appears to be a printed proforma and that after demarcation there is no dispute between the parties the notice/order dated 16.11.2023 issued/passed by the Sub Divisional Magistrate, (Sadar), Sitapur is hereby quashed.

Accordingly, the application under Section 482 is **allowed**.

Order Date :- 22.12.2023

Jyoti/-