

Neutral Citation No. - 2024:AHC-LKO:30590

Reserved on 28.03.2024

Delivered on 19.04.2024

Court No. - 27

Case :- APPLICATION U/S 482 No. - 2899 of 2024

Applicant :- Anoop Kumar Yadav Alias Anoop Yadav

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Lko.
And 2 Others

Counsel for Applicant :- Prabhat Kumar Mishra, Ramkripal
Yadav, Sudhir Kumar Verma

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed, J.

1. Heard Sri Prabhat Kumar Mishra, learned counsel for the applicant and Sri Ashok Kumar Singh, learned A.G.A.-1 for the State.
2. This application under Section 482 Cr.P.C. has been filed to quash the impugned order dated 02.03.2024 passed by the Opposite party No.2 i.e. Court of Additoinal Police Commissioner/Executive Magistrate Aliganj, Commissionerate Lucknow, District Lucknow in Case No. 273/2024, under Sections 107/116 Cr.P.C., Police Station- Jankipuram, District Lucknow (State Vs. Sumer Lodhi and others) pending in the Court of Additional Police Commissioner/Executive Magistrate Aliganj, Commissionerate Lucknow, District Lucknow and its consequential proceedings.
3. Learned counsel for the applicant submits that the Police of Police Station Jankipuram submitted a challan report dated 11.02.2024 against applicant-Anoop Kumar Yadav, whereby he has been challaned under sections 107/116 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 107/116

Cr.P.C. In the interest of Justice, requisite amount of personal bond and surety bond be obtained from above named persons.

4. Learned counsel for the applicant further submits that on the report forwarded by S.H.O. P.S. Jankipuram, Assistant Commissioner of Police/Executive Magistrate, Aliganj, Commissionerate, Lucknow passed the order dated 02.03.2024 under Section 111 Cr.P.C., asking applicant to furnish personal bond of Rs. 50,000/- and two sureties of the same amount.

5. Learned counsel for the applicant further submits that in the impugned order dated 02.03.2024, it has been mentioned that the applicant is a person of criminal in nature and is so desperate and dangerous as to render is being at large without security hazardous to the community. It is further submitted that it has not been mentioned in notice that what criminal charges are pending against applicant.

6. Feeling aggrieved by aforesaid order dated 02.03.2024, applicant has now approached this Court by means of present application under section 482 Cr.P.C.

7. Learned counsel for applicant contends that order dated 02.03.2024 passed by the Assistant Commissioner of Police/Executive Magistrate Aliganj, Commissionerate, Lucknow 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."

8. 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.

9. Learned counsel for the applicant further submits that the notice issued by the Assistant Commissioner of Police/Executive Magistrate Aliganj, Commissionerate, Lucknow is a glaring example of non application of mind and therefore, there was no material available before the Magistrate, which might have persuaded him to issue the process against the applicant and therefore, all the proceedings of the case pending before the Magistrate concerned are nothing but the abuse of process of law.

10. Learned A.G.A. on the other hand submits that on the basis of the report submitted by the concerned police station, the Assistant Commissioner of Police/Executive Magistrate Aliganj, Commissionerate, Lucknow has issued a notice and simply a direction has been given to the applicant to appear before the Magistrate for the purpose of filing sureties and personal bond, therefore, the applicant could not be deemed to have adversely affected by the same as it is a matter of law, order and peace.

11. After hearing learned counsel for the parties and after perusal of the record this Court comes to the conclusion that merely any piece of information submitted to the police cannot be a ground for initiating proceedings under Section 111 Cr.P.C..

12. A Division Bench of this Court in the case of **Shia Nand Tyagi v. State of U.P. reported in 1993 Vol.30 ACC page 146**, has held as under:-

"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"

13. In the case of **Mohan Lal Vs. 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."

14. In the case of **Madhu Limaye v. S. D. M. Mongyr, 1971 AIR 2486**, 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."

15. 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."

16. As, analyze herein above in the facts and circumstances of the present case, the material necessary in invocation of jurisdiction under Section 111 Cr. P.C. is clearly missing and this Court finds that the impugned order dated 02.03.2024 passed by the Assistant Commissioner of Police/Executive Magistrate Aliganj, Commissionerate, Lucknow under sections 111 Cr.P.C. contains a bare

recital that there is apprehension of commission of cognizable offence. Impugned order does not contain full substance of information given by concerned Police Officer. Consequently, concerned Magistrate has not acted judiciously while issuing the impugned order dated 02.03.2024. The order under Section 111 Cr.P.C. has been passed in a routine manner.

17. In view of above, the impugned order dated 02.03.2024 passed by the Assistant Commissioner of Police/Executive Magistrate Aliganj, Commissionerate, Lucknow cannot be sustained. Accordingly, the same is liable to be quashed.

18. Consequently, present application succeeds and is liable to be allowed. It is accordingly **allowed**. Impugned order dated 02.03.2024 passed by the Assistant Commissioner of Police/Executive Magistrate Aliganj, Commissionerate, Lucknow is quashed. However, Learned Magistrate is at liberty to pass a fresh order 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 :- 19.04.2024

Arvind

(Shamim Ahmed,J.)