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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Judgment delivered on: 14<sup>th</sup> October, 2015*

+ **CRL.M.C. 3902/2015**

ASHU & ORS

..... Petitioners

Represented by: Mr. Rohit Agarwal,  
Advocate.

Versus

STATE OF NCT OF DELHI & ORS

..... Respondents

Represented by: Mr. Ravi Nayak, Additional  
Public Prosecutor for the  
State with SI Amit Kumar,  
P.S. Bindapur.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J. (Oral)**

**Crl. M.A.No. 13857/2015 (for exemption)**

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

**CRL.M.C. 3902/2015**

1. Vide the present petition, the petitioners seek directions thereby quashing the *Kalandara* dated 07.08.2015 having DD No.42-A issued by SEM (South West), Delhi, alongwith subsequent proceedings therein.
2. The aforesaid *Kalandara* was recorded on the complaint of Smt. Pinki and accordingly, vide order dated 07.08.2015, alleged show-cause notice was issued against the petitioners. However, learned counsel for

the petitioners disputes the same and submits that the petitioners were taken directly in custody and sent to judicial custody without having admitted on bail. Thus, the learned SEM failed to comply with the directions passed by this Court in case bearing CrI. M.C. No.2077/2006 titled as ‘Asha Pant Vs. State & Ors.’ and CrI. M.C. No. 2416/2006 titled as ‘Kanwal Chaudhri & Anr. Vs. State’, decided on 17.03.2008, whereby held as under:-

*“13. Section 107 (1) CrPC gives the power to the SEM to issue a show cause notice to a person as to why “he should not be ordered to execute a bond with or without surety for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.” The Section envisages that the SEM should base the above action on the information that he has received that such person is likely to commit breach of peace, disturb public tranquility and on receipt of such information he should form “opinion that there is sufficient ground for proceeding ....” The very wording of the above Section indicates that it is a two step process. First, the Magistrate receives information on which he forms an opinion. On the basis of such opinion, he issues a notice. This is the second step. It was only after the person to whom such notice is issued response or fails to respond, as the case may be, the provisions of Section 111 will come into play and an order can be made asking such person to furnish a bond.*

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*16. It is abundantly clear from the above observations of the Supreme Court that the powers under Section 107 and the Section that follow are to be exercised by Executive Magistrate with great care and caution. At every stage an SEM would be*

*required to state reasons for taking such action.*

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*18. The sum total of the above discussion is that in every case, it would be incumbent upon the SEM to follow the steps envisaged in Section 107 strictly in accordance with the procedure outlined in the provisions of the CrPC set out thereafter. Such steps should be preceded by the formation of an opinion in writing by an Magistrate which should be discernable when the decision is challenged in the Court. Such formation of the opinion should, normally, be based on some preliminary enquiry that should be made by an SEM to justify the formation of an opinion. Of course this cannot be straitjacketed since there may be cases where an SEM may to form an opinion right away to prevent the breach of peace or public tranquility. However, that should be the exception and not the rule. For instance, as in the present case, where the dispute is essentially between the neighbors in a property, or between a landlord and tenant residing in the same premises, the notice under Section 107 CrPC should not be issued only upon a perusal of the Kalandara prepared by the police. Such a mechanical exercise without the SEM forming an independent opinion on the basis of some sort of a preliminary enquiry would render the exercise of the power vulnerable to being invalidated.*

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*20. There is nothing in the impugned notices issued by the SEM to indicate that the SEM had formed an opinion as required under Section 107 prior to issuing such notices. The minimal enquiry that was required on the facts and circumstances of the present case was not undertaken. On the face of it,*

*therefore, neither of the notices and summons can be sustained in law. In any event the question of issuing a summons under Section 113 did not arise at all, since that was a subsequent step and not to be exercised simultaneously with the issuance of a notice under Section 107 CrPC.*

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*22. A copy of this order be sent to the Government of National Capital Territory, Delhi for issuing appropriate instructions to the SEMs exercising their powers under Section 107 CrPC. Copies of the judgment of this Court in Tavinder Kumar v. State 40 (1990) DLT 210 will also be circulated by the GNCTD to the SEMs for their future guidance.”*

3. The learned Additional Public Prosecutor appearing on behalf of the State has fairly admitted that the learned SEM has not followed the procedure laid down by this Court in the aforesaid case.
4. In view of the directions dated 17.03.2008 of this Court and statement of the learned Additional Public Prosecutor for the State, I hereby quash the order dated 07.08.2015 with liberty to the concerned SEM to take steps, if required, after following the procedure laid down by this Court in the forenoted case.
5. In view of the above, the present petition stands allowed.

**SURESH KAIT  
(JUDGE)**

**OCTOBER 14, 2015**

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