

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

Judgment delivered on : October 17, 2016

+ CRL.M.C. 699/2016 & CrI.M.A. No.3063/2016
VIMAL KUMAR WADHWA & ANR. Petitioners
Through: Ms.Kirti Parmar, Advocate

versus

STATE & ORS. Respondents
Through: Mr.G.M. Farooqui, Additional Public
Prosecutor for the State.
Mr.K.S. Singh with Ms.Tripta,
Advocates for Respondent No.3 & 4.

+ CRL.M.C. 2181/2016 & CrI.M.A. No.9202/2016
RAJ KUMAR WADHWA & ANR. Petitioners
Through: Mr.K.S. Singh with Ms.Tripta,
Advocates.

versus

STATE (NCT OF DELHI) & ORS. Respondents
Through: Mr.G.M. Farooqui, Additional Public
Prosecutor for the State.
Ms.Kirti Parmar, Advocate for
Respondent Nos.4 & 5.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. By these petitions filed under Section 482 of Cr.P.C., petitioners
are aggrieved by the order dated 06.01.2016 passed by Special

Executive Magistrate, South East District, thereby the petitioners have been issued notices to show cause as to why they should not be ordered to execute personal bond in the sum of Rs.10,000/- with one surety in the like amount for keeping peace for a period of one year.

2. Since both the aforesaid petitions relate to a common property bearing No.B-100, Kalkaji New Delhi, which is jointly owned by the petitioners Raj Kumar Wadhwa and Vimal Kumar Wadha and both have registered complaints against each other and vide impugned notice dated 06.10.2016, both of them have been issued show cause notice for keeping peace for a period of one year, therefore both the petitions are being heard and disposed of together by this common order.

3. The gist of facts of the present case are that the property No. B-100, Kalkaji, New Delhi was owned by Shri Ram Narain Wadhwa, who died on 20.06.1986. Thereafter, all the six daughters of Shri Ram Narain Wadhwa relinquished their shares in the property in favour of their brothers - Raj Kumar Wadhwa, Vimal Kumar Wadha and their mother Smt. Lajwanti Wadhwa. Accordingly a conveyance deed was executed by L&DO in respect of the aforesaid property in their favour. Smt. Lajwanti Wadhwa, during her old age, was residing with petitioner – Vimal Kumar Wadhwa and it is alleged by petitioner – Raj Kumar Wadhwa that he obtained her signatures on certain blank papers to grab the assets of Smt. Lajwanti Wadhwa. On the basis of those papers, the petitioner – Vimal Kumar Wadhwa mutated the

newly constructed and renovated portions of the property in his own name without any notice, consent or information to the petitioner – Raj Kumar Wadhwa. However, the property could not be sub-divided as vide letter dated 22.09.2015 issued by the SDMC it is stated that the mutation is only for the payment of property tax and does not bestow any legal right on the individual.

4. On behalf of the petitioner – Vimal Kumar Wadhwa it is alleged that on 31.12.2015 at about 2.30 PM, the son of petitioner – Raj Kumar Wadhwa came in front of the shop being run by the wife of petitioner – Vimal Kumar Wadhwa and removed the sign board of the shop and started abusing, pushing and beating the petitioner – Vimal Kumar Wadhwa. It is submitted that due to fear of son of petitioner – Raj Kumar Wadhwa nobody will come ahead to give statement. It is further contended that the complaint in this regard was not registered by the SHO and that he did not take any action. Another complaint dated 31.12.2015 was lodged by petitioner – Raj Kumar Wadhwa, who alleged that Vimal Kumar Wadhwa alongwith his wife and son came to his shop and started hurling abuses and even throw a brick at him.

5. In fact, there are cross complaints on behalf of both the sides and ultimately a notice dated 06.01.2016 under Sections 107/111 Cr. P.C. was issued to both of them which directed them to appear before the Special Executive Magistrate, South East District, New Delhi and to show cause as to why they should not be ordered to execute the

personal bond for a sum of Rs.10,000/- with one surety for keeping peace for a period of one year. Aggrieved by the said order/letter, both the parties have preferred the instant petitions.

6. On 02.06.2016, when these petitions came up for hearing before this court, notice was directed to be issued to respondents in both the petitions for 23rd August 2016 and in the meanwhile, the Special Executive Magistrate was directed not to compel the petitioners to furnish personal bond in the matter, while continuing the inquiry.

7. After going through the contents of the petitions and the respective complaints filed by the petitioners against each other and the common notice issued by Special Executive Magistrate vide order dated 06.01.2016, this court observes that the matter in dispute relates to the property bearing No.B-100, Kalkaji, New Delhi, which is jointly owned by the petitioners themselves and is purely of civil nature. This court further observed that the petitioner – Raj Kumar Wadhwa and petitioner – Vimal Kumar Wadhwa are real brothers and both are senior citizen. Moreover, this court also observes that during inquiries in their respective complaints, it came to notice that due to property dispute between the parties, both the petitioners have rivalry and both the parties are extending threats to each other and it is only after considering all the facts and circumstances the matter was brought to the knowledge of SHO. The SHO, with apprehension of breach of peace in area and the fact that the parties may quarrel with each other in future to disturb the peace and tranquility of area and the parties

may do wrongful act, which may result in breach of peace within the local limit of jurisdiction of the police station, issued a kalandra under Section 107/150 Cr.P.C. against all the persons.

8. In pursuance of the aforesaid kalandra, the Special Executive Magistrate, South East Distt, New Delhi, while satisfying with the police report as well as the statement of Investigating Officer, issued notice under Sections 107/111 Cr.P.C. to the petitioners in both the petitions directing them to show cause as to why they should not be ordered to execute personal bond in the sum of Rs.10,000/- with one surety in the like amount for keeping peace for a period of one year. Aggrieved by the said order of issuance of notice, both the petitioners have preferred the instant petition.

9. For examining the issue, it would be appropriate to reproduce Sections 107/111 of Cr.P.C., which reads as under:

107. Security for keeping the peace in other cases.-(1)
When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond [with or without sureties] for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

111. Order to be made.-*When a Magistrate acting under Section 107, Section 108, Section 109 or Section 110,*

deems it necessary to require any person to show cause under such section he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

10. From the aforesaid description of the statutory provision, it is amply clear that when any information regarding any person, who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act which might occasion breach of peace or disturb the public tranquility, in such a situation, in case the Executive Magistrate, after considering the facts and report of the investigating officer, is of the opinion that there is sufficient ground for proceeding against that person, then he has the power to issue notice to such person to show cause as to why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period he thinks is proper not exceeding one year.

11. So far as Section 107 of the Code is concerned, it envisages that the Special Executive Magistrate (SEM) should base his action of issuing a show cause notice to a person to show as to why he/she should not be ordered to execute a bond with or without a surety, based on the information which he had received that such person is likely to commit breach of peace, disturb public tranquility. On receipt of such information he has to form an opinion that there is sufficient ground for proceeding. Therefore, this section needs two steps to be followed; firstly the Magistrate must receive information on which he

forms an opinion and secondly the opinion on the basis of which he is required to issue a notice.

12. Section 111 of the Code comes into play or can be invoked only if after receipt of the notice issued under Section 107 of Code, the person concerned responds or fails to respond. An order can be made by the Magistrate asking such person to furnish a bond. However, the precautions to be observed by the SEM while exercising powers under Section 107 of the Code are mandatory in nature.

13. Adverting back to the facts of the present case, no doubt, the power under Section 107 read with Section 111 of the Code are to be exercised by the Executive Magistrate with great care and caution as at every stage SEM would be required to give the reasons for taking such action. In *Asha Pant v. State and Ors. 2008 (2) JCC 984*, this Court summed up the procedure to be followed by the Magistrate while proceeding under Section 107 and 111 of the Code in the following manner:

“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 a 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 the SEM to justify the formation of an opinion. Of course this cannot be straitjacketed since

there may be cases where the 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.”

14. The petitioners have sought to invoke the power of this court under Section 482 of Cr.P.C. to quash the impugned notice issued by the Special Executive Magistrate. This court is conscious of the basic principles of exercising the power under Section 482 of Cr.P.C., in ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.***, 1992 SCC Supl. (1) 335, which have been reiterated in a recent judgment of the Supreme Court in Criminal Appeal No. 773 of 2003, titled as ***Sundar Babu & Ors. vs. State of Tamil Nadu*** decided on 19.02.2009, the extracts of which are reproduced hereunder:

“The parameters for exercise of power under Sec.482 have been laid down by this Court in several cases. The Section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances, under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice.

15. In view of the aforesaid facts and circumstances and the settled principles regarding exercising of powers under Section 482 of Cr.P.C., this court observes that the learned Special Executive Magistrate has satisfied himself before issuing notice dated 06.01.2016 with the facts that the police authorities have made

apprehension that the petitioners may quarrel with each other in future and disturb the peace and tranquility of the area and they may also do wrongful acts, which may result in breach of peace within the local limit of his jurisdiction and only after considering the police report as well as the statement of the Investigating Officer, the impugned notice was directed to be issued to the petitioners. Accordingly, in considered opinion of this court, the conclusion arrived at in the impugned order is not found to be either arbitrary, perverse or illogical for this Court to exercise its extraordinary powers under Section 482 of the Code of Criminal Procedure for setting aside the same.

16. In the light of the provisions of Sections 107, 111 of Cr.P.C. under which the Special Executive Magistrate has issued the impugned notice dated 06.01.2016 and the aforesaid principles relating to exercise of powers vested with this court under Section 482 of Cr.P.C., this court does not find any illegality or infirmity in the aforesaid notice issued by the learned Special Executed Magistrate, therefore, finding no merit in the present petitions the same are hereby dismissed.

(P.S.TEJI)
JUDGE

OCTOBER 17, 2016
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