

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.496 OF 2017

Irfan Ikramuddin Khan & Ors. .. Applicants.

Vs.

State (Through the Public

Prosecutor) & Anr.

.. Respondents.

Mr.M.J. Bandgar for the Applicants.

Ms.P.N. Dabholkar APP for the Respondents.

CORAM : A. K. MENON, J.

DATED : 20TH JULY, 2017

P.C. :

1. This revision application impugns the common order dated 22nd March, 2017 passed by the Sessions Court in five revision applications bearing Nos.52/2017 to 56/2017 both inclusive, calling into question show cause notices dated 12th February, 2017 purporting to be issued under Section 111 of the Code of Criminal Procedure in Chapter proceedings and calling upon the Applicants to show cause notice as to why they should not be called upon to execute bonds with or without surety for keeping peace for a period extending upto one year.

2. The revision applicants had questioned the issuance of show cause notices interalia on the ground that they had not been supplied with any material as placed before the Executive Magistrate prior to issue of notices. Moreover, the order(s) passed under Section 111 of the Code of Criminal Procedure was not supplied to the revision applicants. Learned counsel therefore prayed that the

show cause notices be set aside.

3. The Sessions Court observed that under scheme of the Code Section 107 empowers the Special Executive Magistrate to direct the persons responsible for the breach of public peace to execute a bond for a period of one year and further empowers the Magistrate, if no untoward incident takes place for six months, to drop chapter proceedings, if any, initiated in this respect. The issuance of show cause notices was further challenged on the ground that issuance of show cause notice was also barred under Section 397(2) of the Code of Criminal Procedure. After hearing the matter for sometime and considering the narrow scope of this application it was found appropriate that the matter be disposed of finally. Accordingly, the counsel for the applicant as well as learned APP submitted that the matter could be disposed of finally.

4. This Court in case of Riyasat Shaukat Ali Shaikh vs. State of Maharashtra and Special Executive Magistrate and Assistant Commissioner of Police 2005 All MR (Cri) 2951, considered the scope of chapter proceedings and issuance of show cause notice under Section 107 of the Code of Criminal Procedure and held that before notice could be issued two conditions had to be met. Firstly, there must be an order in writing under Section 111 which records that the Magistrate was satisfied and that there was sufficient ground for proceeding against the accused. In case of Riyasat Shaukat Ali (supra) the respondent had omitted the pre-requisite to issue show cause notice and had proceeded to straight way issue notice under Section 107 of the Code. The Court set aside the show cause notice for the reason that neither of two essential requirements under Section 107 were met and that there was total non

application of mind.

5. In the present case as well the impugned order upholds issuance of show cause notice. A perusal of the show cause notice reveals that the Special Executive Magistrate had issued five identical show cause notices under Section 107 read with Section 111, a copy of which is part of Exhibit-B. When this matter was argued on an earlier occasion, a query was put to learned APP whether the mandatory requirement under Section 111 was complied with. Time was sought and today the learned APP states that the show cause notice dated 12th February, 2017 itself constitutes the order under Section 111. She relied upon contents of the said show cause notice, in particular last paragraph thereof. It is contention of the prosecution that the reasons given in the show cause notice itself construed an order and therefore the same is valid and requires compliance. She therefore submits that the order of the Sessions Court rejecting five revision applications did not call for any interference.

6. I am unable to agree with the submission on behalf of the prosecution, firstly, for the reason that a binding judgment of this Court clearly interprets the powers under Section 107. It requires compliance under Section 111 and recording of satisfaction in an order in writing to be passed by the Magistrate. Section 107 in turn provides for issuance of show cause notice in the manner provided in the said section. This aspect of the matter, namely, the requirement of following the process set out in Section 111 is not optional. If the Magistrate under Section 107 and allied sections deems it necessary to require any person to show cause or in other words deems it necessary to issue show cause notice, he is required to make an order in writing, and setting forth the substance in writing the

amount of bond and the terms which are to be enforced.

7. In the present case, I am unable to agree with the prosecution that the show cause notice is itself an order that is contemplated under Section 111. No doubt the show cause notice proceeds to enlist number of reasons for issuance of notice, however, it falls foul of the requirement of an order to be made as per Section 111 of the Code. If an order ought to have been passed then the issuance of show cause notice could not precede the order. Learned APP submits that apart from the show cause notice there are no other orders passed prior to the show cause notice. In the circumstances the above application must succeed. I, therefore, pass the following order :

(a) Application is allowed.

(b) The order dated 22nd March, 2012 passed by the Sessions Court in Revision Applications Nos.52/2017, 53/2017, 54/2017 55/2017 and 56/2017 are hereby set aside.

(c) The show cause notices issued to the five applicants in Court Case No.28/2017, Chapter Case No.6/2017, Court Case No.27/2017, Chapter Case No.5/2017, Court Case No.29/2017, Chapter Case No.7/2017, Court Case No.30/2017, Chapter Case No.8/2017 and Court Case No.31/2017, Chapter Case No.9/2017 under Section 107 of the Code of Criminal Procedure are hereby quashed and set aside.

(d) No order as to the costs.

The application is disposed of in above terms.

(A.K. MENON, J.)