

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

% Decided on: 10th February, 2017

+ **CRL.M.C. 567/2017**

VINOD SHARMA & ANR

..... Petitioner

Represented by: Mr. Sanjeev Sahay with Mr.
Aayush Chandra, Advs.

versus

STATE & ORS

..... Respondent

Represented by: Mr. Hirein Sharma, APP with
SI Suresh, PS Malviya Nagar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. 2484/2017

Exemption allowed, subject to all just exceptions.

Crl.M.C. 567/2017 & Crl.M.A. 2430/2017

1. By the present petition, the petitioners seek quashing of proceedings under Sections 107/111 Cr.P.C. and notice dated 26th October, 2016 issued by the Special Execution Magistrate (SEM) against the petitioners on the basis of kalandara dated 22nd October, 2016.

2. In the kalandara presented before the SEM pursuant to recording of DD No.65B on 22nd October, 2016 the facts stated are that various complaints are being received at PS Malviya Nagar from Mrs. Seema Sharma W/o Vinod Sharma and Shri Vinod Sharma S/o Late Laksmi Chand Sharma r/o B-27, 1st & 2nd Floor, Sarvodaya Enclave, New Delhi (First

Party) and Mrs. Rajita Sharma w/o Neelmani Sharma and Neelmani Sharma S/o Late Shri Lakshmi Chand Sharma r/o B-27, Ground Floor, Sarvodaya Enclave, New Delhi (Second Party). Enquiry about these complaints was conducted and it was revealed that both the parties are real brothers and are living with their spouses at different floors in the same house. There is dispute among them regarding their share in the house. The property in question was originally owned by Shri Lakshmi Chand Sharma, who had made a gift deed in respect of the said property in favour of his two sons namely Vinod Sharma and Neelmani Sharma in equal portion. First Party and her family are living at first floor and second floor of the house and their water and electricity meters are installed at ground floor. The first party has alleged that the second party is harassing them by cutting supply of water and electricity. Whereas second party alleges that her family is living at the ground floor of the house and allege that the first party had denied them the accesses to the terrace to check their water tank and TV antenna and put a lock on the terrace door in the staircase at Ground Floor. The dispute between both the parties is purely civil in nature. Both the parties are making allegations against each other and indulge in quarrels. Both the parties are adamant about their respective claims and reluctant to settle their disputes amicably. Both sides have expressed apprehensions as to their safety from the other side. The above acts of both the parties are creating tension and apprehension of breach of peace and disturbance of public tranquillity in the locality. Therefore, Kalandara under Sections 107/150 has been prepared and submitted with the request that both the parties mentioned above may be bound down with heavy amount for maintaining good

behavior in the area and for the sake of prevention of any cognizable offence being committed by them.

3. On the kalandara under Sections 107/150 Cr.P.C., the SEM issued notice against the petitioners on 26th October, 2016 and directed them to report on 8th December, 2016. Since process report was not received back, fresh notice was issued for 28th December, 2016. On 28th December, 2016, the petitioners were not present however were represented by counsel, who filed an application for exemption from personal appearance which was allowed and the matter was listed for 18th January, 2017. On 18th January, 2017, the petitioners appeared, copy of the kalandara was handed over and the matter was fixed for 13th February, 2017 for written reply with surety.

4. Learned counsel challenging the proceedings contends that since the dispute between the parties relates to property, no action under Section 107/111 Cr.P.C. could be taken, hence the notice is illegal and liable to be struck down. Reliance is placed on the decisions of this Court reported as (1996) 62 DLT 628 Ram Prakash & Another Vs. State and 2008(102) DRJ 216 Asha Pant Vs. State & Ors.

5. In Ram Prakash (supra) this Court held that the scope of provision under Section 107 Cr.P.C. is preservation of public peace and tranquillity which question did not arise on facts of the said case and the section does not confer any power on the Special Executive Magistrate to adjudicate or decide disputes of civil nature or to decide the question of titles to property or entitlement to rights. On scrutiny of the police file, this Court found no material to substantiate the allegations in the complaint, hence quashed the impugned notice.

6. In *Asha Pant* (supra) this Court observed that it was incumbent on the Special Executive Magistrate to follow the steps envisaged in Section 107 Cr.P.C. strictly in accordance with the procedure outlined and such steps should be preceded by the formation of an opinion in writing by the Magistrate which should be discernable when the decision is challenged in the Court.

7. In the present case, after perusal of the kalandara, the SEM issued the following notice under Section 107/111 Cr.P.C.-

“IN THE COURT OF SPECIAL EXECUTIVE MAGISTRATE,
SOUTH DISTRICT, NEW DELHI.

*U/s 107/150 Cr.PC
PS Malviya Nagar*

S/Vs.

- 1. Mrs. Seema Sharma*
- 2. Sh. Vinod Sharma*

ORDER

S.H.O. Malviya Nagar has sent up a Kalandra U/s 107/150 Cr.P.C. against the above respondent(s). I have carefully gone through the police report as well as statement of I.O. and come to the conclusion that there are sufficient grounds to proceed against him/them. Therefore the Kalandra is admitted and issued notice U/s 107/111 Cr.P.C. against above respondent(s) and the respondent(s) directed to report in the court on 08.12.2016 positively.

*Sd/-
S.E.M. SD
26.10.2016”*

8. Though in the typed copy, the date has been overwritten as 28th December, 2016 however perusal of the record reveals that the first notice

issued on 26th October, 2016 was for 8th December, 2016 and not 28th December, 2016.

9. It is apparent that in the kalandara forwarded it is clarified that dispute in respect of the property between the parties was purely civil in nature. Thus, the proceedings before the SEM were not instituted to settle the property dispute but in view of the breach of peace which is reflected in the notice dated 26th October, 2016.

10. Section 107 Cr.P.C. 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 tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity 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.

(2) Proceeding under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.”

11. A perusal of Section 107 Cr.P.C. reveals that if the Executive Magistrate on receipt of an information that a person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground to proceed, he may issue show cause to the said person as to why he should not be ordered

to execute a bond for keeping the peace. The notice under Section 107/111 Cr.P.C. as directed by the SEM on 26th October, 2016 is as per the requirement of Section 107 Cr.P.C.

12. The petitioners have already entered appearance and they have been awarded time to file reply bringing out complete facts including the fact stated by learned counsel for the petitioner that the petitioners are no more residing at the place which would cause breach of peace.

13. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 10, 2017
‘v mittal’