

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

% Decided on: 7th March, 2017

+ **CRL.M.C. 926/2017**

RAJESH KUMAR & ORS. Petitioner
Represented by: **Mr. Rajat Bali, Adv.**

versus

STATE & ANR. Respondent
Represented by: **Mr. Ravi Nayak, APP with SI
Vishal Tiwari, PS Ambedkar
Nagar.**

**CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA**

MUKTA GUPTA, J. (ORAL)

Crl.M.A. 3880/2017

Exemption allowed, subject to all just exceptions.

Crl.M.C. 926/2017 & Crl.M.A. 3879/2017

1. By the present petition, the petitioners seek quashing of show cause notice and summon dated 22nd April, 2016 issued by the Special Executive Magistrate (SEM), South East District under Sections 107/111 Cr.P.C. and the proceedings pursuant thereto.

2. The relevant portion of the show cause notice dated 22nd April, 2016 reads as under:-

“Whereas from the report of S.H.O./Amb. Nagar, it appears, that you Rajesh Kumar S/o Lt. Sh. Hari Ram R/o B-465, Ground & III Floor, Dakshin Puri, New Delhi along with Smt. Shalu and others had tension with Smt. Mohini Devi and others. It is also

anticipated by Police Authority that you may fight with them in future.

Police authority has made apprehension that, you may quarrel with each other and in future and disturb the peace and tranquillity of area.

That you are likely to do wrongful act, which may result to breach of peace within the local limit of my jurisdiction and since I am satisfied from the police report as well as statement of I.O. and came to the conclusion that there are sufficient grounds of proceed against you, I R.S. Adhikari, SEM/SED therefore, do hereby require you to show cause as to why you should not be ordered to execute personal bond in the amount as per the satisfaction of court in the like amount for keeping peace for a period of one year.

You are also required to attend the proceedings at SEM COURT, AMAR COLONY, NEW DELHI on 24.05.2016 at 2.00 PM sharp.”

3. Learned counsel for the petitioners does not dispute that the petitioners have filed reply and around 6 months period is going to elapse shortly. The primary ground on which the petitioner seeks quashing of show cause notice is that the object of Section 107 Cr.P.C. is to maintain public peace and tranquility and not meant to handle private disputes between individuals.

4. Learned counsel for the petitioners states that plot bearing No. B-465 Ground Floor was allotted to late father of petitioner No.1 and husband of petitioner No.2 whereafter four floors have been built on the said property. The petitioners are residing on the ground and third floor of the property. Late father of petitioner No.1 permitted his brother Trilok Singh to reside at first and second floor as he was facing financial crisis. However, Trilok Singh and his wife did not vacate the premises. To avoid vacating the property, they started quarrelling with petitioner No.2 and when she insisted for vacation of the premises, they got enraged and abused, misbehaved and

threatened her. It is contended that respondent No.2 has no right or title in the property and on a false and baseless complaint of respondent No.2 dated 2nd November, 2015, FIR No.1090/2015 under Sections 323/354/452/506/34 IPC had already been registered. It is stated that no incident allegedly took place on 28th October, 2014 or thereafter. Petitioner No.1 was arrested and only after paying ₹30,000/- to respondent No.2, a settlement was arrived at and petitioner No.1 was released on bail.

5. The issue before this Court is not whether FIR registered against petitioner No.1 is a false or fabricated one or liable to be quashed but whether on the report of SHO, PS Ambedkar Nagar action under Section 107/111 Cr.P.C. could be initiated.

6. The report of SHO, PS Ambedkar Nagar is that on receipt of DD Nos. 12A and 15A on 23rd March, 2016 SI Suresh Kumar reached the spot where he found both the sides i.e. the petitioners on the one side and Mohini Devi, her husband Trilok Singh and son Jagdish on the other side quarrelling. There is constant quarrel between the parties for use of the staircase. Both the sides claim ownership of the staircase and have been giving regular complaints against each other. Since the parties were quarrelling and likely to quarrel at any point of time, which could cause an apprehension of commission of a cognizable offence, a kalandara was prepared and sent to SEM.

7. Registration of FIR on commission of cognizable offence is one thing which as noted above was registered on the alleged incident dated 28th October, 2015 whereas kalandara as noted above was prepared pursuant to DD Nos. 12A and 15A dated 23rd March, 2016 and complaints received from both the parties.

8. As noted above, action under Section 107/150 Cr.P.C. is preventive in nature and on the facts as noted above which were available before SEM it cannot be held that there was no material before the SEM to issue the show cause notice. Reply to the show cause notice has already been filed by the petitioners and the pleas taken herein can be taken before SEM.

9. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 07, 2017
‘v mittal’

