

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 214 OF 2018

MS. ANU TRIPATHI

Daughter of Mr. Chhail Bihari Tripathi,
28 years of age,
Resident of Flat No. 006, Umiya Sundance,
Next to Aqua Bay,
Zuarinagar, Sancoale, Goa.

... Petitioner
Orig. Opponent No.1.

Versus

1. State of Goa
Through the Public Prosecutor,
High Court of Bombay at Panaji,
Panaji, Goa.
2. The Sub-Divisional Magistrate,
Mormugao, Vasco da Gama,
with office at Collectorate Building,
Vasco-da- Gama, Goa.
3. The Verna Police Station, represented by
Mr. Jhony Silveira,
Head Constable, Batch No. 4310,
(Verna Police Station),
Verna, Goa.
4. Mr. Debashish Chakraborty Alia Ganguly
Major of Age,
Resident of A-007, Umiya Sundance,
Next to Aqua Bay,
Zuarinagar, Sancoale, Goa. ... Respondents.

Shri Sudesh Usgaonkar, Advocate for the petitioner.

Shri Pravin Faldessai, Additional Government Advocate for
the respondent No.1.

Shri P. S. Rao, Advocate for the respondent No.4.

Coram:- NUTAN D. SARDESSAI, J.

Reserved On :- 4th February,2019

Pronounced On :- 8th February,2019

ORDER:

1. In the Writ Petition invoking the jurisdiction of this Court under Section 482 Cr.P.C. and Article 227 of the Constitution of India challenging the notice issued under Sections 111 and 107 Cr.P.C., the respondent No.4 has raised preliminary objection to its very maintainability which is dealt with by the present order.

2. It was the contention of Shri P. S. Rao, learned Advocate for the respondent No.4 on a reading of Sections 107 and 111 Cr.P.C. qua the order under challenge being the notice under Section 111 Cr.P.C., that a remedy was very much available to the petitioner to go before the Executive Magistrate and show cause to the notice and thereupon the Executive Magistrate could proceed under the provisions of Sections 116 and 118 Cr.P.C. in case

there was no substance in the complaint against the petitioner. The Executive Magistrate was well within his jurisdiction to issue notice to the petitioner and therefore the petition was not maintainable. The remedy by invoking the jurisdiction of this Court was available to the petitioner if the order was without the jurisdiction of the Court, in violation of the principles of natural justice or in violation of the fundamental rights so as to invoke the writ jurisdiction of this Court. He place reliance in a Division Bench Judgment of this Court in **Reggie Fernandes v/s. The Police Inspector, Mapusa Police Station, Mapusa and others** [2016 SCC online Bom 10821] and pressed for the dismissal of the petition.

3. Shri S. Usgaonkar, learned Advocate the petitioner otherwise invited attention to the scheme of the Code as contemplated under Chapter VIII dealing with the security for keeping the peace and for good behaviour and submitted that the remedy was primarily preventive in nature. He too read through the provisions of Sections

107 and 111 Cr.P.C. and submitted that the Executive Magistrate was duty bound to record his subjective satisfaction and only then issue the notice. The order under challenge was made without such record and moreover the predicates of Section 107 Cr.P.C. were missing in the notice under challenge. On his part he placed reliance in **Jayant D. Shah and others v/s. The State of Maharashtra** [Volume II 1986(I) Crimes Page 405] and of the Division Bench in **Kanchan Adhar Maiti v/s. The Special Executive Magistrate and others** [Criminal Writ Petition No.468 of 2017 to 473 of 2017] rendered by the Division Bench sitting at the principal seat, Mumbai.

4. Shri P. Faldessai, learned Additional Public Prosecution on behalf of the respondents No.1 to 3 supported the contention of Shri P. S. Rao, learned Advocate that the petition was not maintainable. There was ample opportunity to the petitioner to show cause against the notice issued to her. He too read through the

provisions of Section 107 and tried to canvass that it was nowhere the requirement of law that breach of peace had to be read as public peace on a proper reading and construction of the said provision. The Executive Magistrate was well within his powers and jurisdiction to issue the notice under Section 111 Cr.P.C. He also invited attention to the information submitted to the office of the concerned police station and submitted that there was no reason for the Executive Magistrate to disbelieve the information and to desist from acting on it. The petition had therefore to be dismissed as not maintainable.

5. i would consider their submissions, the relevant provisions of Cr.P.C. and the judgments relied upon by Shri P. S. Rao and Shri S. Usgaongkar, learned Advocates and decide on the maintainability of the petition.

6. Section 107 reads thus : 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) Proceedings 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.

7. In other words from a bare reading of Section 107 CrPC it is apparent that the Executive Magistrate has on receipt of the information that any person is likely to commit the breach of the peace or disturb the public

tranquillity or do any wrongful act that may occasion a breach of the peace or disturb the public tranquillity and he is of the opinion that there is sufficient ground for proceeding, he may 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 as the Magistrate thinks fit.

8. The respondent No.4 had lodged the complaint with the Deputy Collector SDM to the effect that the petitioner was harassing him, forcing him to cut two trees else she would make false and fabricated complaint against him to different Authorities so as to make his residence at that place impossible, that she had given false complaints against him to the Deputy Collector for hill cutting and filling and false complaint to the Panchayat and accordingly to take necessary actions against her on account of harassment meted out to him. It is on the basis of this complaint that the respondent No.3 had taken cognizance of his grievance, recorded that there was every

possibility that the petitioner may commit cognizable offences including breach of peace and tranquillity in the locality and submitted that a chapter case under Section 107 Cr.P.C. be processed against the petitioner to maintain peace in the locality. It is pursuant thereto that taking note of the grievance made in the request of the respondent No.3 that the Executive Magistrate had issued a notice under Section 111 Cr.P.C. to the petitioner and the respondent No.4 and calling upon both of them to attend before him and to show cause on a defined date appropriately. This order was made by the Executive Magistrate in terms of Section 111 Cr.P.C. based on the substance of the information received by him and therefore it cannot at all be heard on behalf of the petitioner that the order so made by the Executive Magistrate was without satisfying himself of the ingredients of Section 107 Cr.P.C.

9. Shri Usgaonkar, learned Counsel for the petitioner proceeded on technicalities to contend that the predicates of Section 107 Cr.P.C. too were missing in the

notice on the basis of which the show cause notice was issued to the petitioner. The notice may not have been happily worded if the contention of Shri Usgaonkar is taken as it were but it cannot at all be heard at his instance that the learned Executive Magistrate had not applied his mind while acting under Section 107 Cr.P.C. to make the order as deemed necessary under Section 111 Cr.P.C. There was no reason shown for the Executive Magistrate not to have acted on the basis of the information submitted by the respondent No.3 or to disbelieve such information while taking appropriate recourse to an order under Section 111 Cr.P.C. while acting under Section 107 Cr.P.C.

10. **Jayant Shah** (supra), assailed the issue of summons to show cause under Section 111 of Criminal Procedure Code, 1973 by the learned Executive Magistrate and prayed that the show cause be quashed in exercise of its jurisdiction under Section 482 of Cr.P.C. The learned Single Judge considered the facts of the case which indeed revealed that there were a series of quarrels and bickering

between the petitioner and a couple Mathuradas Thakkar and his wife and which had resulted in the issuance of notices against them in respect of various incidents which had taken place pertaining to each of them. In that context the learned Judge found that every incident complained of in the five notices related to the quarrel with the said Mathuradas Thakkar or his wife. Secondly, that the facts complained were of a trivial nature and it was evident from the facts that in most of the incidents complained of in respect of which the said Mathuradas Thakkar had lodged a complaint, the complaint was treated as a non-cognizable complaint and noted down in the N.C. Register of the V.P. Road Police Station. Besides, the said Mathuradas Thakkar was "referred to Court" which meant that he was advised to file a private complaint.

11. In **Jayant Shah** (supra), in those set of circumstances the learned Single Judge on a consideration of Section 107 amongst others till Section 110 Cr.P.C. proceeded to hold that the power vested in an Executive

Magistrate under these Sections had to be exercised only in cases of a serious nature and not in cases involving trivial quarrels and certainly not, as in the present case, to be used as a vehicle for private vendetta and in that view of the matter quashed the notices. This judgment in no manner substantiates the contention of Shri Usgaonkar, learned Advocate for the petitioner that the jurisdiction of this Court could be invoked only because a notice under Section 111 Cr.P.C. was issued to the petitioner acting on the complaint lodged by the respondent No.4 and based on the report of the respondent No.3 to the Executive Magistrate.

12. In **Kanchan Maiti** (supra), a Division Bench of this Court considered the petitions challenging the show cause notices issued under Section 111 Cr.P.C. arising out of the court proceedings under Section 107 of the Cr.P.C. The Division Bench of this Court considered the FIR which revealed that one of the petitioners was the owner and others were the staff members of hotel Ganga Vihar and

that the complainant – first informant after meals had gone to the counter to make the payment and in the course of which there was an altercation between the owner of the hotel and the customers since he refused to accept the notes of the denomination of ₹500/-in view of the demonetization of the said notes from 9th November,2017 in which altercation resulted in assault between the parties. The Division Bench of this Court found that the proceedings initiated under Section 107 Cr.P.C. on the basis of the sole incident was basically a quarrel between two groups, that Section 107 Cr.P.C. was only preventive measure for preserving public peace and tranquillity, and could not have been invoked on the basis of the sole incident of a trivial nature and in that view held that the impugned notices could not be sustained. This judgment too is clearly distinguishable.

13. In **Reggie Fernandes** (supra), a Memorandum of Understanding came to be executed between the petitioner and Diago De Souza wherein a consideration of

₹80,00,000/- was fixed and it was agreed that the possession of the subject property would be transferred on payment of the total consideration. Subsequently, a Sale Deed was executed on 19/02/2009 between the petitioner and the said Diago De Souza and thereafter, on 26/02/2009, another Memorandum of Understanding was entered into between the petitioner and the said Diago De Souza deciding the manner in which the consideration would be paid. It was also agreed that the purchasing party shall not take or claim possession of the said property till the consideration of ₹80,00,000/- was effected and till such time, Diago De Souza would not sell, transfer, mortgage or create any third party rights in respect of the said immovable property. However on 23/3/2011, the said Diago De Souza and his wife entered into a Sale Deed with the respondent No.3 in order to sell the said property, pursuant to which, the petitioner filed a suit for the cancellation of the Sale Deed and for a permanent injunction.

14. In **Reggie Fernandes** (supra), subsequently, the petitioner filed an FIR against the said Diago De Souza for offences punishable under Sections 467, 468, 469, 471 and 420 I.P.C.. The respondent No.3 filed an FIR against the petitioner for the offences punishable under Sections 447, 427, 506 and 34 I.P.C. On 17/6/2015, a notice came to be issued by the Office of the Deputy Collector and S.D.M. for initiating proceedings against the petitioner. It was further pointed out that a Report under Section 145 of Cr.P.C. was filed with the Magistrate pursuant to another FIR lodged against the petitioner and in view of such FIR, the petitioner also sought an interim bail. It was further pointed out that pursuant to the receipt of such notice from the Deputy Collector and S.D.M., preliminary objections were raised by the petitioner that the matter in respect of the said proceedings were already pending and hence, the same ought to be dismissed. Being aggrieved by the receipt of the said notice, the petitioner challenged the same in the petition.

15. In **Reggie Fernandes** (supra), it was contended on his behalf that the respondent No.2 Deputy Collector and S.D.M. had not at all applied his mind whilst issuing the notice. It was further pointed out that no preliminary inquiry was conducted, nor any reasons recorded whilst issuing the notice to the petitioner. Besides there was a total non-application of mind to ascertain whether the ingredients of Section 145 Cr.P.C. were satisfied to issue such notice. The respondent No.2 had not even held any inquiry, nor examined the report sent by the police to justify the issuance of notice to initiate such proceedings against the petitioner. Moreover there was a civil dispute already pending before the Civil Court and as a counter blast, the respondent No.3 filed a false complaint against the petitioner. It was further contended that there was a jurisdictional error committed by the respondent No.2 whilst issuing such notice which would call for interference of this Court in the present writ petition and there was no breach of peace. On the contrary, it was contended on behalf of the respondent No.3 that there

was no jurisdictional error committed by the respondent No.2 in issuing the notice to the petitioner.

16. In **Reggie Fernandes** (supra), there was a dispute with regard to possession of the subject property and, as such, exercise of jurisdiction by the respondent No.2 was justified. In any event even in a dispute between two persons, in case there is likelihood that it would lead to a breach of peace, the respondent No.2 could exercise powers under Section 145 Cr.P.C.. The notice issued by the respondent No.2 was pursuant to a police report and as such the learned Magistrate was justified to rely upon such report to issue notice to the petitioner after being satisfied that a case was made out to issue such notice. It was further contended that the respondent No.3 who was a Senior Citizen was forcibly sought to be evicted from the subject house by unruly elements which forced the respondent No.3 to lodge the FIR before the concerned Police. It was contended on behalf of the respondents No.1 and 4 by the learned Advocate General that even in cases of dispute of possession of the property which could lead to

breach of peace, the respondent No.2 could exercise powers under Section 145 Cr.P.C.

17. In **Reggie Fernandes** (supra), the Division Bench of this Court considered the submissions, noted the object of Section 145 Cr.P.C. being to prevent breach of peace and for that in the fact situation observed that in the case at large that there was a dispute in respect of the possession of the subject property. The question whether on the material before him he should initiate the proceedings or not, was therefore in his discretion which no doubt had to be exercised in accordance with the well recognized rules of law. Such satisfaction can be arrived at both from the police report or from other information which has included an application by a party dispossessed. In the case at large, the Magistrate-respondent No.2 had noted that based on the police report, he had arrived at such satisfaction. The question remained was as to whether the preliminary order passed by the learned Magistrate was in breach of Section 145(1) Cr.P.C. It was

further found that the learned Magistrate had expressed his satisfaction on the basis of the police report which he found to be credible. This meant that the learned Magistrate found that the facts stated in the police report, prima facie, was sufficient to lead to his satisfaction. Once the preliminary order was passed based on the police report which the learned Magistrate found to be a credible information, the interference of this Court, in exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India would not at all be justified.

18. Coming back to the facts of this case, it has been shown from the material on record apart from a reading of Sections 107 and 111 Cr.PC. that the learned Magistrate did have jurisdiction to issue a notice and in view thereof the petition was not maintainable. The petitioner failed to show from the material on record that the order was without jurisdiction and/ or in violation of the principles of natural justice as to invoke the writ jurisdiction of this Court. In view thereof, the preliminary

objection to the maintainability of the writ petition is upheld and thereby it is held that the petition filed is not maintainable.

NUTAN D. SARDESSAI, J.

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