

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NOS. 42 AND 48 OF 2021
CRIMINAL WRIT PETITION NO. 42 OF 2021

Agnelo Fernandes & 2 Ors. ... Petitioners
Versus
State, Thr. Officer in Charge, Mapusa ... Respondents
Police Station, Mapusa & 2 Ors.

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CRIMINAL WRIT PETITION NO. 48 OF 2021

Vinayak Gadgil ... Petitioner
Versus
State, Thr. Officer in Charge, Anjuna Police ... Respondents
Station, Anjuna & 2 Ors.

Mr. C. A. Ferreira, Mr. D. D. Zaveri, and Mr. Nehal Govekar,
Advocates for the Petitioners.

Mr. Mahesh Amonkar, Additional Public Prosecutor for the
Respondents-State.

CORAM: MANISH PITALE, J
DATED: 17th November, 2021

ORAL ORDER

1. By these Writ Petitions, the Petitioners have challenged the impugned show cause notices issued under Section 107 of the Code of Criminal Procedure (Cr.P.C.).

2. Mr. C. A. Ferreira, the learned Counsel appearing for the Petitioners in both these Petitions, submits that the impugned notices have been issued in violation of the procedural safeguards provided under the Cr.P.C. in the context of proceedings undertaken under Section 107 thereof. It is submitted that due to violation of such

procedural safeguards, substantially, the impugned notices have been vitiated. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of *Madhu Limaye vs Sub-Divisional Magistrate, Monghyr & Ors.*¹, the Judgment of this Court in the case of *Jitendra R. Deshpabhu & Ors. vs. Executive Magistrate & anr.*², Judgment of this Court in the case of *Rajesh s/o. Suryabhan Nayak vs. State of Maharashtra & Ors.*³ and Judgment and order dated 15.02.2021, passed in *Criminal Writ Petition No.4 of 2021* in the case of *Tukaram Bharat Parab & Ors. vs. State and Ors.*

3. The principal contention raised on behalf of the Petitioners before this Court is that a perusal of Sections 107, 111, 112, 113 and 114 of the Cr.P.C. would show the entire scheme governing the proceedings undertaken by the Magistrate in order to ensure keeping of the peace by individuals.

4. It is brought to the notice of this Court that under Section 107 of Cr.P.C., it is specifically stated that procedure as provided under the Cr.P.C., is to be followed before undertaking proceedings under Section 107 thereof. In this regard, it is submitted that an order under Section 111 of the Cr.P.C. ought to be passed by the Magistrate 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 required. It is then pointed out that if the concerned person is not present before the Court, summons are required to be issued under Section 113 of the Cr.P.C. and such

1 1970(3) SCC 746

2 1992(1) Bom. C.R. 233

3 2006 (5) Mh.L.J. 243

summons must be accompanied with an order passed under Section 111 of Cr.P.C., as provided under Section 114 thereof. Attention of this Court is also invited to Form 14 in Schedule II of the Cr.P.C., providing the format in which summons are to be issued as per Section 113 of Cr.P.C. According to the learned Counsel appearing for the Petitioners, none of the said procedural requirements were followed while issuing the impugned show cause notices. On this basis, it is submitted that the Writ Petitions deserve to be allowed and the impugned notices deserve to be quashed.

5. Mr. Mahesh Amonkar, the learned Additional Public Prosecutor, has appeared on behalf of the Respondents. He could not deny the position of law highlighted on behalf of the Petitioners in the context of the aforesaid provisions of the Cr.P.C.

6. Section 107 pertains to security for keeping the peace in some cases, wherein the Executive Magistrate is empowered to take appropriate proceedings to ensure that there is no breach of peace or disturbance to public tranquility. It is specifically stated in the aforesaid provisions that when the Executive Magistrate finds sufficient grounds for proceeding, procedure as envisaged has to be followed. A reading of Section 111 of the Cr.P.C. along with the aforesaid provisions, would show that whenever the Magistrate purports to act under Section 107 of Cr.P.C., he is required to make an order in writing stating 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 required.

7. In the present case, admittedly, the Petitioners were not present before the Court and, therefore, summons were to be issued under Section 113 of the Cr.P.C. Form 14 specified in Schedule II to the Cr.P.C., gives the format in which summons are to be issued under Section 113 of the Cr.P.C. A perusal of the same shows that the impugned notices have not satisfied the requirements of the Form in which the summons are required to be issued. Apart from this, it is found that copy of the order under Section 111 of Cr.P.C. was not forwarded to the Petitioners along with the impugned notices. This is a requirement specified under Section 114 of Cr.P.C. In the present case, it is found from the material on record, that no order itself was passed under Section 111 of Cr.P.C. and, therefore, it appears that no such order was sent to the Petitioners along with the impugned notices.

8. Apart from this, a perusal of the impugned notices would show that the Petitioners were required to give a bond in the interregnum and during the pendency of proceedings under Section 107 of Cr.P.C. This also appears to be completely foreign to the scheme envisaged for proceedings under Section 107 of Cr.P.C. In the case of ***Rajesh s/o. Suryabhan Nayak vs. State of Maharashtra & Ors.*** (supra), this Court has deprecated such practice. In this context, the learned Counsel appearing for the Petitioners, is justified in relying upon the judgment of the Hon'ble Supreme Court in the case of ***Madhu Limaye vs Sub-Divisional Magistrate*** (supra). In paragraph 35 and 36, it is held thus :

“35. We have seen the provision of Section 107. That section says that action is to be taken 'in the-manner hereinafter--provided and this ,clearly

indicates that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is very salutary because the liberty of the person is involved and the law is rightly solicitous that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned. It behoves us, therefore, to emphasise the safeguards built into the procedure because from there will arise the consideration of the reasonableness of the restrictions in the interest of public order or in the interest of the ,general public.

36. The Procedure begins with Section 112. It requires that the Magistrate acting under Section 107 shall make an order in writing setting forth the substance of the information received, the amount of the bond, the term for which it is to, be in force and the number, character and class of sureties (if any) required. Since the person to be proceeded against has to show cause, it is but natural that he must know the grounds for apprehending a breach of the peace or disturbance of the public tranquillity at his hands. Although the section speaks of the 'substance of the information' it does not mean that the order should not be full. It may not repeat the information bodily but it must give proper notice of what has moved the Magistrate to take the

action. This order is the foundation of the jurisdiction and the word 'substance' means the essence of the most important parts of the information."

9. The learned Counsel appearing for the Petitioners is also justified in relying upon the Judgment of this Court in the case of ***Jitendra R. Deshprabhu & Ors. vs. Executive Magistrate & anr.*** (supra), wherein this Court has emphasized upon the importance of following the procedure laid down in Sections 111 to 114 of Cr.P.C., particularly the necessity of issuing summons, strictly in conformity with Form no.14 as specified in Schedule II of the Cr.P.C. The said position of law has been followed by this Court in the case of ***Tukaram Bharat Parab*** (supra), wherein proceedings under Section 107 of Cr.P.C., were quashed.

10. This Court is convinced with the manner in which the impugned notices were issued against the Petitioners purportedly under Section 107 of Cr.P.C., which are completely violated due to violation of the aforementioned requirements of law manifested under Sections 107 and 111 to 114 of Cr.P.C. Therefore, the impugned notices are found to be unsustainable.

11. In view of the above, the Writ Petitions are allowed and the impugned notices are quashed and set aside.

MANISH PITALE, J