

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

CRIMINAL WRIT PETITION NO.3180 OF 2022

Dawood Samad Kunda ...Applicant

Versus

Sameer Shaikh and Ors. ...Respondents

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Mr. Misbah Solkar with Ms. Neha Thakkar, Advocate for the Petitioner.

Mr. S. R. Agarkar, APP for Respondent/State.

Mr. Sahara Shaikh, API Pydhonie Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 27th SEPTEMBER 2022

PC :

1. The Petitioner challenges show cause notice dated 4th May 2022 issued by Respondent No.1 in Chapter Case No.42 of 2022/ Court Case Proceedings No. 65 of 2022 issued by Respondent No.1.

2. The impugned show cause notice is initiated under Section 107 of Criminal Procedure Code. The notice refers to C.R. No.515 of 2022 registered with Pydhonie Police Station, Mumbai for offences punishable under Sections 304-A, 323, 504 read with 34 of the Indian Penal Code. It is alleged that, the complainant is residing at Jumma Masjid Building, Room No.15, Second Floor, Dongri, Mumbai

alongwith his brother. Complainant's uncle Mansur Ali Abdul Kadar Merchant is residing at Baniyawala Building, First Floor, Room No.4, Dongri, Mumbai. The Petitioner and his uncle Faisal Kunda are residing in the same area. Both are known to complainant since last several years. The uncle of Petitioner has rented out shop and the space in front of shop. The vendors are installing their juice cart in the front space of shop resulting in spread of garbage. Residents had made complaint in that regard to Corporation. The Petitioner and his uncle had abused uncle of complainant and other residents. The Petitioner and his uncle were abusing complainant's uncle Mansur Ali Merchant. The petitioner had threatened that he has connection with underworld people and threatened complainant. On 02nd May 2022, Petitioner picked up quarrel with the complainant. Uncle of the Petitioner was called at the spot. The uncle of the complainant Mansur Merchant and his cousin Khalid Merchant tried to intervene in the quarrel. The Petitioner and his uncle abused Mansur Merchant and manhandled him. During the scuffle, the uncle of complainant fell down and became unconscious and than died. The Petitioner and his uncle were responsible for his death. FIR was registered vide C.R. No.515 of 2022 under Section 304-A, 323, 504 read with 34 of the Indian Penal Code. The Petitioner was arrested on 2nd May 2022 and he was released on bail. The Petitioner is

habitual offender and to control his activity and maintain law and order situation, it is proposed to initiate action against him under Section 107 of the Cr.P.C.

3. Learned Advocate for the Petitioner submitted that, the petitioner is the student. He owns the shop No. 8 situated at E. M. Road, Mumbai which is sub-let to clothing merchant on leave and license basis. On 28th January 2021 Petitioner's father, Mr. Abdul Samad Sattar Kunda had addressed the complaint to respondent No.2 seeking action against unauthorized hawkers sitting in front of their shop. No action was taken by Pydhonie Police Station. Complaints were addressed to various authorities on 6th February 2021, 17th February 2021 and 22nd February 2021 seeking action against the authorized hawkers stationed in front of their shop. In retaliation to continuous complaints made by Petitioner's father and uncle to the various authorities, on 15th April 2021 Mohsin and another person assaulted Petitioner's uncle Faisal Kunda and abused him for complaining against Mohsin. He rushed to Pydhonie Police Station and lodged the complaint. Police recorded N.C. complaint for offences punishable under Sections 323 and 504 of the IPC. On 1st July 2021, Mr. Mohsin and Rizwan abused and threatened the Petitioner when he tried to object them from gathering outside their shop creating hindrances for carrying out the business activities. The

Petitioner approached the Police Station and registered the complaint on 2nd July 2021 which was treated as N.C. Complaint under Sections 504 and 506 of IPC. The Petitioner's uncle addressed the complaint to Respondent No.2 on 11th April 2022 against Mohsin, and further informed the police about his modus operandi of employing unauthorized hawkers outside the shop of Petitioner. Despite addressing the several complaint and registering two NC complaints, Mohsin and his family members continued to threaten the Petitioner's uncle Faisal and creates nuisance outside his shop. The petitioner's uncle Faisal then addressed the complaint to Home Minister dated 27th April 2022 seeking intervention to take action against Mohsin and his family members. On 2nd May 2022 at about 7:30 pm, Hussain Muzaffarali and his brother Mohsin came outside the petitioner's shop and assaulted him. The petitioner called his uncle Faisal and informed him about the incident. He was advised to call the police control room. Petitioner dialed 100 from his mobile phone to report the assault upon him to the police. The Petitioner's uncle Faisal rushed to the spot. Hussain Muzaffarali, Mohsin, Khalid and their uncle Mansoor Ali Abdul Qadir Merchant came to the spot. They abused and assaulted the petitioner and his uncle. The police arrived at the spot. The police intervened in the quarrel. Mansoor Ali Abdul Qadir threatened the petitioner and his uncle. Mr. Mansoor

Ali Abdul Qadir Merchant collapsed at the spot. He was unconscious and subsequently died. FIR was registered vide C.R. No. 515 of 2022. The petitioner and his uncle were arrested on 3rd May 2022. They were produced before the Court. They were remanded to custody. Bail was granted vide order dated 4th May 2022.

4. Learned advocate for the petitioner further submitted that the show cause notice issued under Section 111 of Cr.P.C. is bad in law. Initiation of chapter proceedings against the petitioner is abuse of process of law. There is non application of mind by Respondent No.1 in initiating chapter case proceeding. There are no criminal antecedents against the Petitioner. Proceedings under Section 110 (e)(g) of Cr.P.C. were initiated against the petitioner's uncle. The petitioner and his uncle were forced to execute the bond. There was no material to initiate action under Section 107 of Cr.P.C. Offence under Section 304 -A of Cr.P.C. is not made out against the petitioner.

5. Learned APP submitted that, the FIR was registered vide C.R. No. 515 of 2022 against the Petitioner. There was sufficient material that the petitioner is indulging in commission of act amounting to breach of peace and tranquility. Statements of witnesses were recorded. There is sufficient material to initiate chapter case proceeding against the petitioner.

6. Apparently, C.R. No. 515 of 2022 was registered against the Petitioner and his uncle Faisal Kunda. Section 111 of Code of Criminal Procedure provides that, when a Magistrate acting under Section 107, 108, 109 or Section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, 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. Section 107 covered by chapter VIII deals with security for keeping the peace and for good behaviour. As per the said provision 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 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. It is pertinent to note that there was no material before the respondents to show that the petitioner is likely to commit, disturb the public tranquillity or commit any wrongful act amounting to breach of peace or disturb the public tranquillity. Notice/order is issued mechanically

and without application of mind. In the absence of any grounds for initiating action under Section 107 of Cr.P.C., it would be abuse of process of law to continue the proceedings or effect of the said proceedings or the effect of execution of bond. The notice issued against the petitioner and the act of execution of bond deserves to be quashed and set aside. Hence, I pass the following order.

ORDER

- (i) The Petition is allowed and disposed off.
- (ii) The impugned order dated 4th May 2022 bearing Chapter Case No. 65 of 2022 issued by respondent No.1 is quashed and set aside.

(PRAKASH D. NAIK, J.)