

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1407 of 2019

Mahuya Chakraborty nee Mukherjee & Anr.

Vs.

The State of West Bengal & Anr.

For the Petitioners : Mr. Soumyajit Das Mahapatra,
Ms. Madhurai Sinha.

For the State : Mr. Sudip Ghosh,
Mr. Bitasok Banerjee.

For the Opposite Party : Mr. Mir Anowar.
No. 2

Hearing concluded on : 13.09.2023

Judgment on : 06.10.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings being M.P. No. 30/2016 under Section 107 of the Code of Criminal Procedure pending before the Learned Executive Magistrate Court, Bidhannagar and all orders passed therein including

the order **dated 07.05.2019** passed by the Learned Executive Magistrate, Bidhannagar.

- 2.** The petitioners' case is that:- The opposite party no. 2 filed a written complaint with the Learned Executive Magistrate, Bidhannagar, North 24 Parganas on 21.07.2016 to the effect that:-

One Miss. Supriya Basu who was the original lessee/landlord in respect of the Flat No. G6, Cluster-IX, Purbachal Housing Estate, Salt Lake City, Sector-III, Kolkata-700 097, inducted the petitioner no. 1 as tenant and thereafter filed a suit for eviction against the petitioner no. 1 herein being Title Suit No. 17 of 2009, before the Court of the Learned Civil Judge (Sr. Division) 2nd Court, Barasat. The said suit was contested by the petitioner no. 1 and the same was ultimately dismissed. Thereafter, by a deed of Deed of Transfer dated 12.10.2010, Miss. Supriya Basu transferred the said property in favour of Ms. Samhita Roy, the opposite party no. 2 herein and the same was also informed to the petitioner no. 1 by Miss. Supriya Basu, through a letter of attornment dated 12.01.2011. Miss. Supriya Basu further requested the petitioner no. 1 to direct the monthly rent towards the said property to the opposite party no. 2 from thereon and also pay all the arrear rents defaulted. It is alleged that the petitioner no. 1 had become a defaulter in respect of payment of rent in the year 2007 and that she received the letter of attornment. Thereafter the opposite party no. 2 issued notice to quit dated 10.12.2012 to the petitioner no. 1 and afterwards instituted a suit being Title Suit No. 27 of 2013 against the petitioner no. 1. It is alleged that the said suit was dismissed for non prosecution because the petitioners and some other neighbouring people, at that material time had convinced the opposite party no. 2 that the dispute would be sorted out and settled if the suit was withdrawn. As soon as the said suit was withdrawn by the opposite party no. 2, in the month of December 2015, the petitioner no. 2 allegedly offered the opposite party no. 2 an amount of Rs.5,00,000/- only for buying the said

property. The said offer was turned down by the opposite party no. 2, and it is alleged that the petitioners became furious and started threatening the opposite party no. 2 and her parents. Thereafter it has been alleged that the petitioners started creating nuisance and annoyance towards the opposite party no. 2 and her parents in various ways also causing damage to the property. The situation became so grave that the opposite party no. 2 was compelled to lodge a GDE vide No. 1462/16 dated 20.07.2016, before the Bidhannagar (South) Police Station. It is further alleged that the petitioners never rectified themselves and that on regular basis they are creating nuisance and annoyance towards the opposite party no. 2 and also threatened her with dire consequences, lastly on 20.07.2016, and that the opposite party no. 2 has become shaky, having no power to resist the petitioners and their henchmen. Lastly, the opposite party no. 2 alleged that there is serious apprehension of breach of peace and public tranquility and unless the petitioners are restrained and prayed before the Learned Court of the Executive Magistrate for drawing up a proceeding under Section 107 of the Code of Criminal Procedure, 1973 (as amended upto date) against the petitioners herein and their men and agents.

3. On the same day, the Learned Executive Magistrate, Bidhannagar upon perusing the petition and hearing the learned Advocate for the opposite party no. 2 herein was pleased to direct the concerned Inspector-in-Charge, Bidhannagar Police Station to cause an enquiry and to submit a report by the next date of hearing. A further direction was also made so that no breach of peace and tranquility in the locality happens.
4. On the next date of hearing i.e. 29.11.2016, the petitioners herein preferred a non maintainability application before the Learned

Executive Magistrate's Court as the opposite party no. 2 herein suppressed several material information.

5. On 09.12.2016, the Learned Magistrate was pleased to pass a lengthy order and the relevant portion thereof is as follows:-

“.....after assessing the prevailing situation as reflected in the police report and upon hearing the submissions of both parties, I am satisfied that there are sufficient grounds for proceeding against the OP members who are very likely to commit breach of peace or disturb public tranquility or to do any wrongful act that may probably occasion a breach of peace in the locality and hence I draw up a proceeding u/s 107 Cr.P.C. against the OP members thereby directing them to show cause as to why they should not be ordered to execute a bond of Rs.1000/- (Rupees One Thousand) only each without surety for keeping peace for a period of one year.....”

6. It is stated that there is not a single line in the whole order whereby it can be seen that the Learned Magistrate considered the non maintainability petition.
7. The petitioners state that it is trite law that if any application has been filed, especially when the same speaks of non maintainability of the whole proceeding, that should be heard out first and then only a case may proceed on merit, which was not followed in the instant case.
8. Vide order **dated 07.05.2019** (under revision) after hearing the learned Advocates appearing on behalf of both the parties, the Learned Executive Magistrate was pleased to finally pass an order. The relevant portion of which is as follows:-

“....Hence, on consideration of all the aspects, I do hereby order that;

Smt Mahuya Chakraborty nee Mukherjee W/o Sri Koushik Mukherjee and Sri Koushik Mukherjee S/o Dipen Mukherjee, O.P. members in this case, both residing at Flat no. G-6, cluster-IX, (Nabami Co-operative Housing Society Ltd.) Salt Lake City, Sector -III, Purbachal Housing Estate P.S. Bidhannagar South Kolkata-97 are directed to comply the order passed by this Ld. Court on 02.05.2017 and thereby furnish bonds @ Rs. 1000/- each for keeping peace at the locality for a period of one year by the next date, failing which, arrest warrant will be issued against you.

Sd/-
Executive Magistrate
Bidhannagar, North 24 Parganas”

- 9. The learned counsel for the petitioners has relied upon the judgment of this High Court passed in CRR 3465 of 2019, (*Rajesh Prasad Tanti vs The State of West Bengal*), dated 01.08.2022. Wherein the Court laid down certain guidelines to be followed by an Executive Magistrate while exercising their jurisdiction under Section 111 of Cr.P.C. The Court held:-**

“.....The learned Executive Magistrate henceforth will adhere to the following guidelines in case such persons who are in custody are directed to be produced before the learned Executive Magistrate while exercising their jurisdiction under Section 111 of the Code of Criminal Procedure:

(a) The production warrant should accompany a copy of the order passed by the learned Executive Magistrate.

(b) The bond which is expressed in the show cause notice should not be excessive or impossible to be executed and must be in the nature of a bond granted by a Court allowing prayer for bail in cases under Section 302 of the Indian Penal Code by the Sessions Judge of the concerned district.

(c) On the first day of production if the accused or the petitioner is unrepresented he must be provided with an option of legal representation from the District Legal Aid Services Authority.

(d) If the accused or the petitioner is unable to understand the meaning of the terms “show cause” then the Court would explain the allegations against him and as provided in Section 251 of the Code of Criminal Procedure read out such allegation and ask him whether he pleads guilty or not (in view of the fact that Subsection 2 of Section 116 of Cr.P.C. refers to summons cases).

(e) The Magistrate would within a month of such production make efforts for commencement of recording of evidence of the witnesses intended to be produced by the applicants or the prosecution.

(f) If under Section 116(3) of Cr.P.C. the accused or the persons are unable to furnish the bond then in that case they would be deemed to be in custody from the date of their first production before the learned Executive Magistrate and if their enquiry as referred to in Sub-Section 6 of Section 116 of Cr.P.C. are not concluded within a period of six months the Court would close the proceedings and release the accused or the persons against whom proceedings were initiated.

(g) Under no circumstances a detained person would be asked to face an enquiry extending beyond the period of six months by assigning any special reasons.....”

10. It is seen that the order under revision dated 07.05.2019 passed by the Executive Magistrate is a reasonable order and the amount of bond is also not excessive nor impossible to be executed. Thus the same is keeping with the above guidelines **(Rajesh Prasad Tanti vs The State of West Bengal, (Supra))**.

11. Mr. Soumyajit Das Mahapatra, learned counsel for the petitioners has submitted that the Learned Executive Magistrate,

Bidhannagar firstly committed grave error by directing the initiation of the impugned proceeding against the petitioners under Section 107 of the Code of Criminal Procedure mechanically, merely on the basis of a complaint filed by the opposite party no. 2, wherein, in the petition of complaint, no allegation and or any specific incident has been cited which creates or is eligible to create breach of peace as envisaged under Section 107 of the Code of Criminal Procedure and therefore in view of such gross illegality and impropriety, the instant proceeding is liable to be quashed.

12. **Mr. Sudip Ghosh, learned counsel for the State** was present.
13. **Mr. Mir Anowar, learned counsel for the opposite party no. 2/complainant** has submitted that there is a relationship of landlord and tenant between the parties and the police report before the learned Magistrate has supported the contents in the written complaint filed by the opposite party no. 2 and as such the order under revision being in accordance with law needs no interference.
14. In ***Istkar vs. The State of Uttar Pradesh & Anr., in Criminal Appeal No. 2034 of 2022 arising out of SLP (Cri.) No. 8586 of 2021.*** Para 11 reads as follows:-

“11. As noticed, the scope and nature of Section 107 CrPC is preventive and not punitive. It aims at ensuring that there be no breach of peace and that the public tranquility be not disturbed by any wrongful or illegal act. The action being preventive in nature is not based on any overt act but is intended to forestall the potential danger to serve the interests of public at large. In other words, this

provision is in aid of orderly society and seeks to avert any conduct subversive of the peace and public tranquility. The provision authorizes the Magistrate to initiate proceedings against a person if upon information, he is satisfied that such person is either likely to commit breach of peace or disturb public tranquility or is likely to commit any wrongful act that might probably produce the same result. Simply stated, the provisions of Chapter VIII of the Code are merely preventive in nature and are not to be used as a vehicle for punishment.”

15. From the materials on record it appears that admittedly:-

- i) There is a relationship of landlord and tenant between the parties.
- ii) Civil/Title Suits are pending between them.
- iii) Considering the dispute between the parties relating to the flat where the petitioners reside the learned Magistrate passed the order under revision on the basis of the police report.
- iv) **The learned Magistrate has passed a detailed, well reasoned order in accordance with law and also considered the point of maintainability.**

16. Thus, the order under revision dated 07.05.2019 passed in M.P. No. 30 of 2016, by the Executive Magistrate under Section 107 Cr.P.C. being in accordance with law requires no interference by this Court.

17. The revisional application being CRR 1407 of 2019 is accordingly dismissed.

- 18.** Petitioners are directed to furnish bond as directed by the learned Executive Magistrate, Bidhannagar in his order dated 07.05.2019 in M.P. No. 30 of 2016 under Section 107 of Cr.P.C., within one month from the date of this order i.d. the learned Magistrate shall proceed in accordance with law.
- 19.** All connected applications, if any, stands disposed of.
- 20.** Interim order, if any, stands vacated.
- 21.** Copy of this judgment be sent to the Court of the learned Executive Magistrate for necessary compliance.
- 22.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)