

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2750 of 2019

Madhusudhan Bhowmik & Anr.

Vs

The State of West Bengal & Anr.

For the Petitioners

: Mr. Pawan Kr. Gupta,
Ms. Sofia Nesar,
Mr. Santanu Sett.

For the State

: Mr. Sreyashee Biswas.

For the Opposite Party No. 2

: Mr. Kaushik Gupta,
Mr. Debjyoti Das,
Mr. Arijit Bagchi.

Heard on

: 28.04.2023

Judgment on

: 19.05.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 08.08.2019 passed by the Special Executive Magistrate, Central Division, Kolkata in M/SEM Case No. 12 of 2017, dated 04.04.2017, under Section 107 of the Code of Criminal Procedure, 1973 thereby directing the Opposite Party/Petitioners herein to execute a bond for keeping peace and tranquility in the area for a period of one year starting from 08.08.2019.
2. The petitioners case is that since 1982, the Petitioner No. 1 herein is a tenant in respect of one shop room on the ground floor at Premises No. 8, Balaram Dey Street, Kolkata 700 006 wherein he has been running a business under the name and style of "Sreekrishna Embroidery" tailoring shop and had been paying rent for his tenanted shop room to the Respondent No. 2 as per English Calendar Month and at present he is paying rent with the office of the Learned Small Causes Court, Kolkata.
3. The respondent No. 2 being the landlord of the petitioner No.1 lodged a written complaint dated 10.02.2017 against the petitioner on the allegation that the petitioners were in the habit of teasing and abusing him over the issue of permission for subletting the tenancy and change of name of the tenancy.
4. That allegedly the same petition of complaint was time and again submitted to the same police station over the same issue with the same

contents. From the bare perusal of the alleged complaint dated 10.02.2017 it reflects that the same was submitted to the Office-in-Charge of Posta Police Station on 15.02.2017, 17.02.2017 and 24.02.2017.

5. That due to several complaints made by the Opposite Party No. 2, Posta Police Station recorded several G.D.E. Nos. as follows:-
 - 1) 118 dated 15.02.2017,
 - 2) 128 dated 17.02.2017,
 - 3) 391 dated 16.02.2017,
 - 4) 419 dated 21.02.2017
 - 5) 71 dated 01.03.2017 and
 - 6) 59 dated 01.04.2017.
6. That consequent to recording of the aforesaid G.D.Es, on 03.04.2017 a Sub Inspector of Posta Police Station, namely Md. Fajlu Haque made an application before the Learned Special Executive Magistrate, Central Division, Kolkata for drawing up proceeding under Section 107 of the Code of Criminal Procedure, 1973 against the petitioners.
7. That only one person was found to have been empowered to investigate all the G.D.Es. and complaint of the Respondent No. 2 i.e. Sub Inspector of Posta Police Station namely Md. Fajlu Haque and the same person was also in charge of initiating proceedings under Section 107 of the Code of Criminal Procedure, 1973 against the petitioners.

8. On 04.04.2017, the Learned Special Executive Magistrate, Central Division, Kolkata, on the basis of the report dated 03.04.2017, took cognizance of the matter and by starting the impugned proceeding vide M/SEM Case No. 12 of 2017, dated 04.04.2017, under Section 107 of the Code of Criminal Procedure, 1973 served a show cause notice upon the petitioners.
9. Subsequent to service of the aforesaid notice upon the petitioners, the petitioners appeared before the Learned Special Executive Magistrate, Central Division, Kolkata and participated in the proceeding.
10. That since the Learned Special Executive Magistrate, Central Division, Kolkata on 13.09.2017 passed an impugned order, the said proceeding was challenged by the petitioners before the Learned City Sessions Judge, Kolkata in Criminal Revision no. 49 of 2018. On 23.08.2018, the learned Sessions Judge, Kolkata on hearing, affirmed the order of the learned Executive Magistrate.
11. That challenging the judgment and order dated 23.08.2018 passed by the Learned Additional District and Sessions Judge, Fast Track Court No. II, Bichar Bhawan, Calcutta in Criminal Revision No. 49 of 2018, the petitioners preferred a revisional application before the Hon'ble High Court at Calcutta.
12. That the said revisional application was recorded as C.R.R. No. 3155 of 2018 and the same was allowed by the Hon'ble High Court on contest on 11.04.2019 by setting aside the order dated 13.09.2017 passed by

the Learned Special Executive Magistrate, Central Division, Kolkata in proceeding of M/SEM Case No. 12 of 2017, dated 04.04.2017.

13. The Learned Special Executive Magistrate, Central Division, Kolkata by its impugned order dated 08.08.2019 disposed of the proceeding in M/SEM Case No. 12 of 2017, dated 04.04.2017 and thereby directed the petitioners to execute a bond for keeping peace and tranquility in the area for a period of one year starting from 08.08.2019.
14. **Mr. Pawan Kumar Gupta, learned counsel for the petitioners** has submitted that the initiation of the impugned proceeding is an abuse of the process of Court. The respondent has suppressed material facts in the instant complaint amounting to *suppressio veri and suggestio falsi*. The respondent has twisted material facts for initiating the complaint case against the petitioners. That the instant proceeding which has been initiated by the respondent is accentuated with manifest, mala fide and the same was instituted in order to spite the petitioners for sinister purpose.
15. That the entire proceeding is thus bad in law and is not maintainable in the eye law.
16. That the respondent no. 2 has initiated the present proceeding in order to create pressure upon the petitioners and also to coerce them to vacate their tenanted portion.

17. That the entire proceeding is bad in law in view of the settled law that the enquiry of the proceeding has to be completed within six months and the same was not done in the present case.
18. That the impugned order was passed in violation of Section 116 (6) of the Code of Criminal Procedure, 1973.
19. The Learned Special Executive Magistrate Central Division, Kolkata has erred in passing the impugned order which is in gross violation of Section 111 of the Code of Criminal Procedure, 1973.
20. That such non compliance of the mandatory provisions of the law has vitiated the entire matter and has rendered the subsequent proceeding as void.
21. The impugned proceeding is otherwise bad in law and is liable to be set aside and /or quashed.
22. **Mr. Kaushik Gupta, learned counsel for the Opposite Party No. 2** has submitted that admittedly a Civil Suit for eviction is pending between the parties, but the proceedings under Section 107 Cr.P.C. had been initiated as the petitioners have been threatening the opposite party and abusing in filthy language, with even threat to kill.
23. **Section 107 of the Code of Criminal Procedure, lays down:-**

“107. 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 tranquility or to do any wrongful act as aforesaid beyond such jurisdiction."

24. The order under revision is as follows:-

"Order No.31
Dated 08.08.2019

.....After going through the records it was ascertained that there are several GDs and Police reported by the complainant against OP's. The Police Officer has received substantive ground that OP's may disturb peace and tranquility in the locality.

After applying its mind. This Court is of the opinion that, there is sufficient ground against OP to executive bond for keeping peace and tranquility in the area for a period of one year starting from today i.e. 08.08.19. DA please take n/a and give update in this regard.

Sd/-
I.P.S.
DC/3rd BN.KAP"

25. Learned counsel for the petitioner has further submitted that the order under revision is not in accordance with law and thus liable to be set aside. It is also submitted that the opposite party has given a criminal colour to a civil dispute, which is an abuse of the process of law and court.

26. The following judgments have been relied upon on behalf of the petitioner.

1) *Moni Sikari vs State of West Bengal & Ors., CRR 212 of 1984, dated 16.11.1989, Calcutta High Court.*

“7. It is clear that substance of the information is not stated in the notice which merely gives a bad name to the petitioners and sets down the clause of the section. The report of the Officer-in-Charge and the petition of the State have been referred to but substance of the allegation contained therein is not stated nor the copies of the same were sent along with the notice. The petitioners were entirely in the dark what they would show cause about. In my opinion, the impugned order initiating the proceeding under Section 107 Cr.P.C., 1973 is illegal for non-compliance of the mandatory provisions of Section 111 Cr.P.C., 1973 and it as such liable to be quashed.”

2) *Rajender Singh Pathania and Ors. vs State of N.C.T. of Delhi and Ors., Criminal Appeal No. 1582 of 2011 with Criminal Appeal No. 1583 of 2011, on 12.08.2011.*

“14. The object of the Sections 107/151 Criminal Procedure Code are of preventive justice and not punitive. Section 151 should only be invoked when there is imminent danger to peace or likelihood of breach of peace under Section 107 Criminal Procedure Code. An arrest under Section 151 can be supported when the person to be arrested designs to commit a cognizable offence. If a proceeding under Sections 107/151 appears to be absolutely necessary to deal with the threatened apprehension of breach of peace, it is incumbent upon the authority concerned to take prompt action. The jurisdiction vested in a Magistrate to act under Section 107 is to be exercised in emergent situation.”

27. It is submitted by the learned counsel for the petitioner that the mandatory provision of Section 111 Cr.P.C. has not been complied in this case.

28. **Section 111 of the Code of Criminal Procedure, lays down:-**

“111. Order to be made.- When a Magistrate acting under section 107, section 108, section 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 (if any) required.”

29. **The Copy of Notice dated 05.04.2017 at page 22 is perused.** It is seen that though it is a notice under Section 107 Cr. P.C., the substance of the information as received has not been set forth in the notice.

30. Learned counsel for the opposite party has on the other hand submitted that the present proceedings were initiated only regarding the conduct of the petitioners, which was disturbing the public tranquility and there was apprehension of breach of peace. There being sufficient materials on record and on being satisfied, the Learned Magistrate passed the order under revision, which is in accordance with law. Thus the dismissal of the revision is prayed for.

31. **The relevant portion of the Police Report is reproduced here:-**

“.....Beg to submit before your honour that the above noted accused persons habitually teases to the complainant abuse most filthy languages and adopt various ways to harass and threatened to the complainant over the issue to change the tenanted name of premises no. 8 Balaram Dey

Street, Kolkata 700 006 as the accused persons wants to sublet the said room but the landlord that is complainant denied to do the same. Thereof the above noted accused person came to the complainant business place of 5 Nalini Seth Road, Kolkata 000007 and creating various type of disturbance.”

32. On perusal of the order under revision, it is seen that the Magistrate on being satisfied with the police report submitted on inquiry and also other facts and circumstances, passed the order dated 08.08.2019.

33. **From the record it is seen that:-**

- 1) Section 111 Cr.P.C. has not been complied with as the substance of information as received has not been set forth in the notice under Section 107 Cr.P.C.
- 2) The police report at page 22, which was relied upon by the Executive Magistrate while passing the order under revision dated 08.08.2019, is only on the basis of the written complaint and not even on a prima facie inquiry as to its contents. The finding of the Magistrate that ‘The police officer has received substantive ground that OP’s may disturb peace and tranquility in the locality’ is totally without any basis and thus the order under revision being not in accordance with law is liable to be set aside.

34. **CRR 2750 of 2019 is allowed.**

35. The order dated 08.08.2019 passed by the Special Executive Magistrate, Central Division, Kolkata in M/SEM Case No. 12 of 2017,

dated 04.04.2017, under Section 107 of the Code of Criminal Procedure, 1973 and the proceedings therein, is hereby quashed.

36. No order as to costs.
37. All connected Applications stand disposed of.
38. Interim order if any stands vacated.
39. Let a copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
40. Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)