

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

960 CRIMINAL WRIT PETITION NO.1488 OF 2022

DILIP SHIVRAJ PATIL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr.P.G. Godhamgaonkar
APP for Respondents-State : Mr.M.M.Nerlikar

...
**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 12 April 2023

PER COURT :-

. Heard learned Advocate for the petitioners and learned APP for respondents-State.

2. The petitioners claim that there is a civil dispute in the form of regular civil suit, which was decreed in their favour. They had preferred execution proceeding and were soliciting Police protection by submitting an application Exhibit-37, which was rejected by the Executing Court. They claim that simultaneously, respondent Police machinery and the authorities, instead of taking steps to protect their possession, have initiated a proceeding under Section 107 of the Code of Criminal Procedure (Cr.P.C.) by communication dated 26-08-2022.

3. Learned Advocate for the petitioners would submit that except the remedy of approaching this Court, the petitioners are left with no other alternative. The Executing Court is not providing Police protection so that they can maintain their peaceful possession and on the contrary, they are being harassed by initiating a proceeding under Section 107 of the Cr.P.C. without there being clear indication of circumstances which compel the respondent Executive Magistrate to initiate that proceeding. The communication is vague and does not precisely indicate the circumstances or give the particulars on the basis of which, he formed opinion that prohibitive action needs to be initiated against them. Though the petitioners are not pressing the prayer to the extent of providing Police protection, the impugned communication dated 26-08-2022 being illegal be quashed and set aside.

4. The learned APP submits that the communication dated 26-08-2022 is merely a notice of impending action under Section 107 of the Cr.P.C. The petitioners could have responded to the notice. No final opinion was formed. Instead of showing cause, they are assailing the notice in this proceeding. The challenge is not sustainable.

5. Learned APP further submits that the action as contemplated under Section 107 of the Cr.P.C. survives for six months only in view of Section 116 of the Cr.P.C.. The period having been already lapsed, the matter becomes infructuous.

6. We need not deal with the prayer of providing Police protection as that prayer has already been withdrawn. So far as the communication dated 26-08-2022, apparently it is only a notice calling petitioner No.2 to show cause as to why a bond should not be solicited from him. Obviously, any action proposed under Section 107 of the Cr.P.C. is regulated by Section 116 of the Cr.P.C. and life of such action is six months. Irrespective of merits or otherwise of the matter, the notice itself has become infructuous. If any action is needed to be initiated against the petitioners under Section 107 of the Cr.P.C., it can be in the form of fresh proceeding.

7. Be that as it may, the communication dated 26-08-2022 is merely a notice calling upon petitioner No.2 to show cause as to why he may not be directed to furnish a bond for his good behaviour and for maintaining peace. It was always open for them to have appeared before the respondent Executive Magistrate and demonstrated the cause. Without resorting to

such course, they are challenging that communication, which in our considered view, is not sustainable.

8. The petition is dismissed.

(ABHAY S. WAGHWASE)
JUDGE

(MANGESH S. PATIL)
JUDGE

SPT