

AGK

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

**WRIT PETITION NO.629 OF 2023
WITH
INTERIM APPLICATION NO.690 OF 2023**

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Shailesh Chandrashekhar Verma ... Petitioner

V/s.

The State of Maharashtra, through
Special Executive Magistrate – ACP. ... Respondent

Mr. K.H. Giri with Ms. Dhinika Jain and Mr. Pratik
Yadav for the petitioner.

Mr. M.G. Patil, APP for the respondent/State/

CORAM : AMIT BORKAR, J.

DATED : MARCH 29, 2023

PC.:

1. The challenge in this petition under Article 227 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the said Code”) is to the show cause notice dated 17th December 2022 issued by the Special Executive Magistrate, under section 111 of the Code of criminal procedure 1973.

2. In my opinion case of the petitioner is covered by the judgment of this Court in **Christalin Costa (Smt.) & Ors. v. State of Goa & Ors.** reported in 1993 Mh.L.J. 1409, in paragraph 7 this Court observed thus:

“7. In my view all these submissions of Shri Nadkarni seems

to be sound and deserve acceptance. As far as the last grievance is concerned a bare perusal of section 107 of Criminal Procedure Code read with section 111 shows that such proceedings are to be instituted only in respect of information received by the Magistrate if he is satisfied that there is any danger or likelihood of somebody committing breach of the peace and disturbing public tranquillity. Obviously when there are quarrels between two private individuals it appears that this situation is not contemplated by these legal provisions. Quarrels between individuals are not normally creating any problem of public order and at the most it may lead to a problem of law and order to be dealt with by the appropriate penal law. Proceedings under section 107 are always dealing with preventive measures to be taken by the Magistrates in order to pre-empt any possibility of breach of peace and disturbance of public tranquillity.
”

(Emphasis supplied).

3. In paragraph 8 the learned Single Judge after considering the provisions of sections 107 and 111 of the Code proceeded to hold thus:

“8.The execution of the bond appears therefore to be an independent facet of the inquiry which the Magistrate is entitled to hold on the basis of the report forwarded to him by the police. Such inquiry as to the truth of the information forwarded to him in the report by the police is contemplated in section 116 of Criminal Procedure Code. It is true that its sub-section (3) provides that the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may direct the person against whom proceedings have been instituted under section 107 and an order under section 111 has been made to execute a bond. But this power of the Magistrate can be exercised by him only after the commencement and before the completion of the inquiry.”

(Emphasis supplied).

4. Considering the show-cause notice dated 17th December 2022 and reply filed by the Assistant Commissioner of Police, I am satisfied that there is no material to show that the peace and tranquility as contemplated under section 111 or commission of offence for public safety was on the record. Though it is stated that the petitioner has executed interim bond as per section 116(3), no such order directing the petitioner to execute such bond in exercise of such power has been produced on record.
5. The writ petition is, therefore, allowed in terms of prayer clause (a). No costs.
6. In view of disposal of the writ petition, the interim application does not survive and stands disposed of accordingly.

(AMIT BORKAR, J.)