

25.11.2024

Sl. No.: 16

Court No.30
BM

CRR 974 of 2023

+

IA No.: CRAN 4 of 2024

Reetu Mukherjee & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Kamalesh Chandra Saha

Ms. Payel Mitra

Mr. Samannya Saha

Mr. Mishuk Saha

... for the petitioners

Mr. Anindya Sundar Chatterjee

... for the State

1. The present revisional application has been preferred against an order dated 17.02.2023 passed by the learned Executive Magistrate, Barrackpore, North 24 Parganas in connection with M.P Case No.240/22 under Section 107 of Cr.P.C.

2. It appears that the present petitioner no. 1 is the wife of the opposite party no.2, petitioner no. 2 is the mother of the petitioner no. 1 and the daughter-in-law of the opposite party nos. 3 and 4. The marriage between the parties had taken place on 08.12.2004 and since 2014 the petitioner no. 1 is residing in her own flat at Dumdum along with petitioner no.2, and is a Teacher in a School at Banshberia.

3. It is submitted that the private opposite party no.2 lodged a GD entry on 15.03.2022 against the petitioners and also filed application under Section 107 of the Cr.P.C.

4. By the order under challenge dated 17.02.2023 the learned Magistrate passed the following order:-

“ M.P. Case No: 240/22

Dated: 17.02.2023

F.P filed hazira petition.

The petitioner is present and files hazira.

The O.P are absent.

PR has been recovered. Perused PR-1 and PR-2. It is evident that there is disturbance of serious nature between the FP and O.P who are bonded by marital relation. The O.P was non-cooperative during police inquiry. The parties are living separately at present but the O.P is repeatedly threatening the F.P over phone which is having adverse speaks on the F.P No.2 and 3 who are senior citizens. The O.P is also harassing the petitioners positively causing breach of peace and tranquility in the family of the petitioners and the locality. Thus, the O.P is ordered to (illegible) from doing such unlawful and wrongful acts such as threatening or harassing the petitioners and execute a bond for keeping peace and tranquility in the locality within seven days of issue of this order. I/C Halishahar directed to maintain order. Let a copy of this order be served upon all concerned.

To 24.03.2023

**Sd/-
Ld. Executive Magistrate
S.D.E.M Court
Barrackpore,
North 24- Parganas”**

5. Section 107 of the Code of Criminal Procedure lays down as follows :-

“Section 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 tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility 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) Proceeding 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 tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.”

6. The public officers are repository of public trust. They are creation of the statute and vested powers to discharge public functions. The entrusted power must be exercised for giving effect to the objective of law. Public officers must not wield powers to victimize or implicate any person or interfere in private disputes. Such abuse of power deplete the scarce finances of the common citizens and waste the energy, resources and infrastructure of the police and the Courts.

7. The Supreme Court in ***Istkar Vs The State of Uttar Pradesh & Anr., Criminal Appeal No. 2034 of 2022,[Arising out of SLP(Crl.) No. 8586 of 2022] dated 11th November 2022:-***

“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 tranquillity 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 tranquillity. The provision authorises 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 tranquillity 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.”

8. The Delhi High Court in ***Ram Prakash and Anr. Vs State., 62 (1996) DLT 628 dated 1st May, 1996***, held that:-

“.....On this material, to my mind, no action could have been taken. Section 107 Cr.P.C. requires that there has to be a sufficient ground for proceeding against the person. But in this case, I find no sufficient ground except the complaint by the tenant against the land lord. As already pointed out above, the case for non-payment of rent, for unauthorised occupation of the passage, for non-payment of electricity dues are matters subjudice before the appropriate Courts. Now by issuing tills Kalandra against petitioner, the police has tried to favour one party against the other. That is not the scope of the provisions of Sections 107 Cr.P.C. **The purpose of Section 107 is preservation of public peace and tranquillity which question in the facts of this case did not arise.** This Section does not confer any power on the Special Executive Magistrate to adjudicate or decide disputes of civil nature or to decide the question of titles to property or entitlement to rights. The exercise of this power must be in aid of those rights and against those who interfere with the lawful exercise therefore and even in case where there are no declared or established rights. The power cannot be exercised in a manner that would give material advantage to one party to the dispute over the other. It would not be proper exercise of discretion on the part of the Special Executive Magistrate to interfere with the lawful exercise of the right by a party on consideration. Legal right should be regulated and not prohibited altogether.....”

9. The Delhi High court in **Asha Pant Vs. State and Ors, CRL.M.C. 2077/2006**, dated **17th March, 2008**, held:-

“13. Section 107(1) CrPC gives the power to the SEM to issue a show cause notice to a person as to why "he should not be ordered to execute a bond with or without surety for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit." The Section envisages that the SEM should base the above action on the information that he has received that such person is likely to commit breach of peace, disturb public tranquillity and on receipt of such information he should form "opinion that there is sufficient ground for proceeding...." The very wording of the above Section indicates that it is a two step process. First, the Magistrate receives information on which he forms an opinion. On the basis of such opinion, he issues a notice. This is the second step. It was only after the person to whom such notice is issued response or fails to respond, as the case

may be, the provisions of Section 111 will come into play and an order can be made asking such person to furnish a bond.

14. The mandatory nature of the precautions to be observed by an SEM while exercising the powers under Section 107 Cr.PC has been explained by the Supreme Court in **Madhu Limaye v. Ved Murti, AIR 1971 SC 2481**. The Constitution Bench explained that Section 107 “is in aid of orderly society and seeks to nib in the bud conduct subversive of the peace and public tranquility. For this purpose Magistrates are invested with large judicial discretionary powers for the preservation of the public peace and order.” The Court then proceeded to explain the significance of the procedural safeguards in para 36 of that judgment which reads as under:-

“**36.** We have seen the provisions of S. 107. That section says that action is to be taken „in the manner hereinafter provided” and this clearly indicates that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is very salutary because the liberty of the person is involved and the law is rightly solicitous, that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned. It behoves us, therefore, to emphasise the safeguards built into the procedure because from there will arise the consideration of the reasonableness of the restrictions in the interest of public order or in the interest of the general public.”

(emphasis supplied)

15. Thereafter, in para 44 the Court explained the need for the Magistrate to state his reasons in writing at every step which reads as under:-

“**44.** The power which is conferred under this Chapter is distinguished from the power of detention by executive action under Article 22 of the Constitution. Although the order to execute a bond, issued before an offence is committed, has the appearance of an administrative order, in reality it is judicial in character. Primarily the provision enables the Magistrate to require the execution of a bond and not to detain the person. Detention results only on default of execution of such bond. It is, therefore, not apposite to characterise the provision as a law for detention contemplated by Article 22. The

safeguards are therefore different. The person sought to be bound over has rights which the trial of summons case confers on an accused. The order is also capable of being questioned in superior courts. For this reason, at every step the law requires the Magistrate to state his reasons in writing. It would make his action purely administrative if he were to pass the order for an interim bond without entering upon the inquiry and at least prima facie inquiring into the truth of the information on which the order calling upon the person to show cause is based. Neither the scheme of the chapter nor the scheme of Section 117 can bear such an interpretation.”

(emphasis supplied)

16. It is abundantly clear from the above observations of the Supreme Court that the powers under Section 107 and the Section that follow are to be exercised by Executive Magistrate with great care and caution. At every stage an SEM would be required to state reasons for taking such action.

17. This Court in **Tavinder Kumar and another v. State 40 (1990) DLT 210** also emphasized the need for caution while exercising the powers under Section 107 and 111 CrPC. After noticing the prevailing law on the topic and analyzing the scope of the powers under the above provisions, this Court observed as under:-

“(9) In nutshell the above provisions, of law show that on receipt of the information in the present case kalandra given by the police, the Magistrate was bound to record his opinion as contemplated by Section 107 and thereafter was to prepare the notice under Section 111 which must contain the substance of the information so received and was bound to send the copy of such notice along with the summons to the person concerned. The stage for passing any order under Section 116(3) could arise only after the summons and notice as required by Sections 111 and 113 had been served on the petitioners and the enquiry had commenced. It is really surprising that the learned Magistrate had got ready an order under Section 116(3) of the Code before, even he had applied his mind regarding holding of inquiry or before even commencement of the inquiry. This is not a judicial approach expected of a judicial officer who is bound to decide such matters in a judicial manner.”

18. The sum total of the above discussion is that in every case, it would be incumbent upon the SEM to follow the steps envisaged in Section 107 strictly in accordance with the procedure outlined in the provisions of the CrPC set out thereafter. Such steps should be preceded by the formation of an opinion in writing by an Magistrate which should be discernable when the decision is challenged in the Court. Such formation of the opinion should, normally, be based on some preliminary enquiry that should be made by an SEM to justify the formation of an opinion. Of course this cannot be straitjacketed since there may be cases where an SEM may to form an opinion right away to prevent the breach of peace or public tranquility. However, that should be the exception and not the rule. For instance, as in the present case, where the dispute is essentially between the neighbors in a property, or between a landlord and tenant residing in the same premises, the notice under Section 107 CrPC should not be issued only upon a perusal of the Kalandara prepared by the police. Such a mechanical exercise without the SEM forming an independent opinion on the basis of some sort of a preliminary enquiry would render the exercise of the power vulnerable to being invalidated.

19. This Court had very recently in **Sushma Arora v. State (Order dated 15th February, 2008 in CrI.M.C. 35281 of 2006)** held that the decision of this Court in **Ram Prakash v. State 62 (1996) DLT 628** ought to have been followed by the SEM in that case, which was really a dispute between a landlord and tenant . This Court has cautioned the SEMs against using their powers under Section 107 CrPC in such a situation.”

10. It is clear from the said Section that the said provision is applicable where there is an apprehension of breach of peace or disturbed **public** tranquility, the Magistrate shall proceed under the said Section.

11. The findings of the Magistrate clearly show that the dispute between the parties is a **private marital dispute**. Though the learned Magistrate had held that the petitioners were causing breach of peace and tranquility in the locality, this court finds that the said findings of the learned Magistrate is

not in accordance with law as the same has been passed not in accordance to the relevant provisions of law by considering the facts of the case.

12. The petitioners now reside in Dumdum and Petitioner No. 1 is a school teacher at Bansheria, Hooghly. The Opposite parties reside in Bizpur, North 24- Parganas.

13. Admittedly the dispute of the petitioners is entirely with the opposite parties and not the (any) public and no member of the public has come forward to make any allegations.

14. The opposite parties are always at liberty to approach the appropriate forum under the appropriate provision of law but the present proceeding is prima facie not applicable in the facts and circumstances of this case.

15. On perusal of the materials on record and the nature of dispute between the parties, the order under revision being not in accordance with law is clearly an abuse of the process of court.

16. The entire proceedings including the order dated 17.02.2023 passed by the learned Executive Magistrate, Barrackpore, North 24 Parganas in connection with M.P Case No.240/22 under Section 107 of Cr.P.C, is set aside and quashed against the petitioners namely **Reetu Mukherjee and Sipra Mukherjee.**

17. Affidavit of service filed be kept with the record.

18. Criminal Revision CRR 974 of 2023 is allowed.

19. All applications connected thereto stand disposed of.

20. Interim order, if any, stands vacated.

21. Copy of the order be sent to the learned trial court for compliance.

22. Urgent Xerox certified copies of this order, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities

(Shampa Dutt (Paul), J.)