



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.878/2024

(Abdul Zahir Abdul Jabar Vs. State of Maharashtra and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Mir Nagman Ali, Advocate for the petitioner.
Ms. Mayuri Deshmukh, A.P.P for respondent Nos.1 and 2.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 5.12.2024.

Heard.

2. Notice dated 16.9.2024 and a summons of the same date i.e. 16.9.2024 came to be issued to the petitioner by the respondent No.1- the Special Executive Magistrate and Additional Superintendent of Police, Khamgaon, District Buldhana.

3. The facts necessary for deciding the petition are as under:-

In Crime No.421/2024, registered on 17.8.2024, the petitioner is implicated as an accused for an offence punishable under Sections 126(2), 189(2) of the Bharatiya Nyaya Sanhita, 2023 and Section 135 of the Maharashtra Police Act.

The allegation in the F.I.R. against the petitioner is that of disturbing the peace and tranquility in the society.

The Istegasha was submitted to the Magistrate which has led to initiation of proceedings under Section 126 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "B.N.S.S."). Pursuant to that, a summons under Section 132 and an order under Section 130 of the B.N.S.S. came to be served on the petitioner.

Accordingly, the petitioner submitted his reply/objection to the respondent No.1 Magistrate on 4.10.2024 thereby resisting the action proposed against him.

4. It appears that the petitioner pursuant to issuance of summons has failed to appear before the respondent authorities and as a sequel of above, the petitioner is claiming to have failed to furnish security for keeping peace and good behaviour via execution of bond and surety to that effect.

5. Though the entire proceedings are questioned by the petitioner, however, according to him, Section 126(1) of the B.N.S.S. provides for issuance of a show cause notice as to why he has failed to execute a bond for keeping peace and good behaviour and surety to that effect, which is absent in the present case.

6. According to him, directly action under Sections 132 and 130 of the B.N.S.S. is saddled on the petitioner without following the procedure as contemplated under Chapter IX of the said Sanhita.

7. As against above, learned A.P.P. would urge that perusal of the summons dated 16.9.2024 depicts that the petitioner was issued a show cause notice and as such, there is sufficient compliance. According to her, mentioning of wrong provision i.e. Section 132 by itself would not invalidate the proceedings as the powers to issue show cause notice are available under Section 126(1) of the B.N.S.S. According to her, considering the conduct of the petitioner as reflected in the F.I.R and the reasons mentioned in the order issued under Section 130, the petitioner is duty-bound to execute the bond of good behaviour and also furnish surety which he has failed to do, and as a sequel, an action is initiated against the petitioner.

8. We have appreciated the aforesaid submissions.

9. The fact remains that the registration of offence against the petitioner vide Crime No.421/2024 is not a fact in dispute. Such registration has led to the initiation of the proceedings against the petitioner and the Police Constable has submitted an Istegasha to that effect with the office of the Special Executive Magistrate. Post submission of the Istegasha, it appears that a summons came to be issued to the petitioner on 16.9.2024 which is claimed to be a show cause notice also.

10. It appears that instead of waiting for the response of the petitioner on the alleged show cause notice, immediately on the very same date, an order came to be passed under Section 130 of the B.N.S.S.

11. The perusal of the summons would reflect that the same cannot be termed as a show cause notice particularly when the petitioner was not served with all the relevant material which had formed basis for issuance of show cause notice to the petitioner as provided under Section 126 of the B.N.S.S. Upon perusal of the Istegasha and other documents, the authority has to satisfy itself that a case for issuance of show cause notice for ordering a prohibitory action and furnishing of surety and execution of bond for good behaviour is made out against the accused person. The perusal of the summons dated 16.9.2024 depicts that the recourse is taken to the proceedings under Section 132 of the B.N.S.S. and a summons styled under Section 126 came to be issued to the petitioner.

12. It was issuance of summons under Section 132 and no show cause notice was issued to the petitioner under Section 126 of the

B.N.S.S. Rather from the language employed in the summons, it is claimed that, same has to be treated as a show cause notice. In such an eventuality, the respondents cannot put the cart before the horse viz. the issuance of summons for non-attendance without there being any notice for attendance or a show cause notice.

13. Apart from above, the fact remains that on the very same date the respondent authority has proceeded to pass an order under Section 130 of the B.N.S.S. thereby asking the petitioner as to why an order of execution of a bond for good behaviour and a restraint order should not be passed against him.

14. The recourse taken to the provisions of Sections 130 and 132 of the B.N.S.S, in our opinion, is by adopting a procedure which is not contemplated under the said provisions.

15. In that view of the matter, both summons and order dated 16.9.2024, viz. one issued under Section 132 and another issued under Section 130 of the B.N.S.S. are not sustainable.

16. That being so, the summons dated 16.9.2024 and order dated 16.9.2024 are quashed and set aside.

17. The writ petition is allowed accordingly.

18. In view of above order, pending applications, if any, stand disposed of.

(MRS.VRUSHALI V.JOSHI, J.)

(NITIN W. SAMBRE, J.)