IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1658 OF 2023

Rameshwar Rajaram Kabra Petitioner

Versus

1. The State of Maharashtra
2. Superintendent of Police, Jalna
3. Police Inspector, Jafrabad P.S.
4. District Magistrate/Collector, Jalna
5. Sub Divisional Magistrate / Sub Divisional Officer, Jalna.
6. Executive Magistrate/Tahsildar, Jafrad, District Jalna Respondents

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Ms. Rashmi Kulkarni, Advocate for the petitioner.
Mr. S.J. Salgare, A.P.P. for respondent Nos.1 to 6.

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CORAM : SANDIPKUMAR C. MORE AND
VAISHALI PATIL-JADHAV, JJ.

Reserved on : 27.10.2026
Pronounced on : 02.11.2026

Final Order (Per Sandipkumar C. More, J.) :

1. Rule. Rule made returnable forthwith. Heard learned counsel Ms. Rashmi Kulkarni for the petitioner and learned A.P.P. Mr. S.J. Salgare for respondent Nos.1 to 6 finally at the admission stage.

2. By way of this writ petition, the petitioner has made several prayers which are as follows :

> *"A) By issuing a Writ of Certiorari, order or directions in the like nature be pleased to quashed and set aside the show cause dated 4.9.2023 which appears to have been signed on 78.9.2023 issued by respondent No.6 to the petitioner.*
>
> *B) By issuing a Writ of Mandamus, order or directions in the like nature be pleased to direct the respondent No.4 to conduct an enquiry into the complaint dated 19.2.2023 and take appropriate Departmental actions against the delinquent.*
>
> *C) By issuing a Writ of Mandamus, order or directions in the like nature be pleased to direct the respondent Nos.1 to 5 to initiate appropriate Criminal Action against the delinquents.*
>
> *D) Be pleased to take appropriate action of Contempt against the respondent No.6 under the provisions of Contempt of Courts Act.*
>
> *E) Be pleased to direct the respondents to pay an amount of Rs. 50,00,000/- (Rupees Fifty Lakhs only) as compensation for mental harassment caused to the petitioner".*

3. According to the petitioner, he is owner of land bearing Gut No.110 of village Borkhedi (Gayake). A revenue dispute arose in respect of the aforesaid land between himself and one Narmadabai Gayake resulting into issuance of impugned

notice issued by respondent No.6 to petitioner under Section 111 of the Code of Criminal Procedure ("Cr.P.C." for short), calling upon the petitioner to submit bond of good behaviour and also his say, by 12.09.2024. According to the petitioner, he was not resident of Tembhurni village, Taluka Jafrabad, District Jalna at the relevant time. The notice was not served upon him, but later on it was served upon him through Whats App.

4. Learned counsel for the petitioner vehemently argued that issuance of impugned notice itself is an illegal act on the part of respondent No.6, as there was no order passed by respondent No.6 as required and no Chapter Case number was mentioned in the same. Moreover, she strongly submitted that merely on the basis of revenue dispute between the parties, the petitioner has slapped with the impugned notice without mentioning any substance therein. Therefore, she submitted that the impugned notice needs to be set aside and departmental enquiry of respondent No.6 is necessary at the hands of concerned Collector and in addition to that compensation to the tune of Rs. 50,00,000/- needs to be paid to the petitioner as unnecessarily he was dragged in one another criminal litigation.

5. On the contrary, learned A.P.P. by filing affidavit-in-reply of the concerned Police Inspector, supported the impugned notice and pointed out that as to how there was possibility of commission of breach of peace at the hands of petitioner over a long standing dispute between himself and Narmadabai Dagdu Gayake. Learned A.P.P. has also filed affidavit-in-reply on behalf of respondent Nos.4 and 6 through the concerned Tahsildar of Jafrabad, District Jalna wherein an additional ground is set up that Narmadabai Dagdu Gayake has not been joined by the petitioner in this petition, who, according to them, is necessary party, since the dispute between petitioner and Narmadabai was going on.

6. Admittedly, a long standing revenue dispute is going on between the petitioner and Narmadabai Dagdu Gayake and earlier to that with one Daulat Mahadu. However, it is pertinent to note that the petitioner has challenged the impugned notice mainly on the ground that no substance was mentioned in the said notice by respondent No.6 and no order as per law was passed by respondent No.6 as per Section 111 of Cr.P.C.

7. It is not in dispute that a revenue dispute is going on between petitioner and Narmadabai Gayake. However, it is to

be noted that no criminal prosecution was going on against the present petitioner. Learned counsel for the petitioner has placed reliance on the following judgments.

(i) Vasantkumar Jivrambhai Majithia vs State of Maharashtra and others; MANU/MH/0913/2005

(ii) Judgment of this Court in Criminal Writ Petition No.1348 of 2023 (Mohammed Faisal Mohammed Salim Sopariwala vs Avinash Singte and others) dated 02.05.2023.

(iii) Sana Nadim Pawaskar and others vs The State of Maharashtra; MANU/MH/0071/2003

(iv) Jitendra R. Deshprabhu and others vs Executive Magistrate and others; MANU/MH/0557/1990

8. In the case of ***Vasantkumar vs State of Maharashtra*** (supra), this Court has discussed the requirements of Section 111 of Cr.P.C. under which the impugned notice is issued. Following observations are made by this Court in the said judgment :

> "*9. The power under Section 107 can be exercised when the Special Executive Magistrate receives an 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 peace or disturb the public tranquility. The said section further provides that if the Executive Magistrate is of the opinion that there is sufficient ground for proceeding, he may in the manner provided in the Code require such person to show cause why he should not be ordered to execute a bond (with or without sureties) for keeping peace for such period, not exceeding one year, as the Magistrate deems fit. Section 111 of the said Code mandates that when a Magistrate acting under Section 107 deems it necessary to require any person to show cause, 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. Section 113 provides that if such person to whom notice is intended to be issued is*

not present in Court, the Magistrate shall issue a summons requiring him to appear. In exceptional circumstances, the said section gives powers to the learned Magistrate to issue warrant of arrest. Section 114 mandates that every summons issued under Section 113 shall be accompanied by a copy of the order made under Section 111 and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with or arrested under the same. Section 116 lays down the procedure for holding the inquiry. Under Section 116, the Executive Magistrate is under an obligation to make enquiry into the truth of the Page 1156 information upon which action has been taken and for that purpose he has to take such further evidence as may be necessary. Sub-section (2) of Section 116 mandates that such an enquiry shall be made as nearly as may be practicable in the manner prescribed for conducting the trial and recording evidence in summons cases. Sub-section (3) provides that if the Magistrate 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, he may after commencement but before completion of the enquiry, for reasons to be recorded in writing direct the person in respect of whom the order under Section 111 has been made to execute a bond with or without surety for keeping peace or maintaining good behaviour until conclusion of the inquiry and may detain him in custody until such bond is executed or in default of execution, until the inquiry is concluded.

10. In the present case a perusal of the case file which was produced before this Court shows that a copy of the order passed under Section 111 was not forwarded with the summons issued to the Petitioner under Section 113 of the said Code. In fact the Roznama of the proceedings does not record that a separate order as contemplated by Section 111 is passed setting forth the substance of the information received. The roznama of the proceedings records that on 10th May 2005, the Petitioner remained present and he submitted a reply to the show-cause notice. Roznama dated 18th May 2005 records that witness No. 1 was present and he was heard. On that day the Petitioner sought time. The next date was fixed as 26th May 2005 on which adjournment was granted to the Petitioner. On the next day, the hearing could not take place as the concerned Officer was not available. Roznama dated 7th June 2005 records that after commencement of the proceedings, there are complaints filed against each other by the Petitioner and the witness No. 1. The case was adjourned to 14th June 2005.

Roznama dated 14th June 2005 records what transpired on that day. The English translation thereof is as under:

> *"Opponent present for hearing.*
>
> *Witness No. 1 present for hearing. Enquiry was made with the opponent herein whether he was prepared to execute a bond, the opponent made a request to accept personal bond. Therefore, the request of the opponent was accepted.*
>
> *The contents of the show-cause notice were read over and explained to the Opponent. A personal bond for maintaining peace and keeping good behaviour in the sum of Rs. 5,000/- for a period of one year was obtained in writing from the Opponent and the matter was disposed of."*

The order passed on 14th June 2005 appears to be in a printed or cyclolstyled form. The printed portion of the order records that the Petitioner accepted the allegations made against him and has prayed for acceptance of apology. The printed portion of the order further records that on the basis of the evidence produced by the Senior Inspector of Police, Mulund Police Station, the Special Executive Magistrate has come to the conclusion that the Petitioner was having criminal tendancies and from the Petitioner there was a likelihood of breach of peace and tranquillity in the area and therefore, the order was passed directing him to furnish bond. In the printed Page 1157 format of order, only the name of the Petitioner, his address and the bond amount has been filled in by hand. It is pertinent to note that the Roznama dated 14th June 2005 does not record that the Petitioner accepted the correctness of the allegations made against him and tendered apology. What is recorded in the Roznama is that the Special Executive Magistrate asked the Petitioner whether he was willing to furnish a bond and the Petitioner requested that he may be allowed to furnish a personal bond. There is no reference to any separate order passed by the Executive Magistrate on 14th June 2005. There is no reference in the Roznama to evidence produced by the Senior Inspector of Police. After perusing the file, I found that no such evidence by the Senior Inspector of Police is on record. Thus the order dated 14th June 2005 shows a complete non-application of mind. Though there is nothing on record to show that the Petitioner accepted the allegations made against him and tendered an apology, the order records the acceptance of allegations by the Petitioner and apology".

Further, in the case of Vijaykumar vs State of Maharashtra (supra) this Court had followed the judgment in the case of ***Christallin Costa and others vs State of Goa and others*** by emphasizing on the nature of dispute between two individuals which may not lead to disturbance of public tranquility.

9. Moreover, this Court in the case ***Sana Nadim Pawaskar vs The State of Maharashtra*** (supra) has made following observation :

> *"3. Whenever, a Magistrate decides to issue a notice in view of provisions of Section 111 of the Code, he has to give sufficient idea to the petitioner for knowing the exact nature of apprehension, which is lingering in the mind of the Magistrate in respect of the possibility of breach of public peace. Those instances should be serious enough to really cause a threat to the public tranquillity. Domestic quarrels are common with human beings, because on account of conflict of personalities, there are bound to be bickering and disputes. Those disputes can be settled in the domestic domain and they generally do not cause any danger to the public peace as such".*

10. Similarly, in the case of ***Jitendra vs Executive Magistrate*** (supra) this Court has made the following observation :

> *"A Magistrate is required to make an Order under section 111 when he deems it necessary to require any person to show cause, in the first place in writing, setting forth the substance of the information received, the amount of the bond to be executed and the term for which it is to be in force. When a person is not present in Court, it is incumbent upon the Magistrate to issue summons requiring that person to appear and when such a person*

> *is in custody, a warrant directing the officer in whose custody he is to bring that person before the Court, Section 114 mandates that every summons or warrant issued under section 113 shall be accompanied by a copy of the order made under section 111 and such a summons or warrant as the case may be, served on the person sought to be proceeded against".*

11. On going through the aforesaid observations, it is amply made clear that for issuance of notice under Section 111 of Cr.P.C. issuance Authority must record the substance which led to issuance of such notice. Moreover, a specific order under Section 111 of Cr.P.C. is required to be passed. In the instant matter, even the Chapter Case number is not mentioned in the notice and nothing is there to show that on certain grounds there was possibility of committing breach of peace at the hands of petitioner. It is extremely important to note that only a revenue litigation is going on between the petitioner and Narmadabai Gayake and there was no criminal prosecution filed against petitioner in the past. On the contrary, it appears that only on the basis of application given by Narmadabai the action of issuance of notice appears to be taken against the petitioner. Even in the complaint lodged by Narmadabai it is not mentioned that the petitioner had in fact in any manner committed any crime against her. On the contrary, the complaint only indicates that there was possibility of committing crime at the hands of petitioner, since

he is an influential person. Under such circumstances, we are of the opinion that the impugned notice is definitely bad in law and needs to be quashed and set aside.

12. So far as other prayers of taking action against respondent No.6 and paying compensation to the petitioner are concerned, it is clearly evident from the record that the impugned notice was stayed by this Court, and therefore, no further proceeding before respondent No.6 took place. Under such circumstances, we are of the opinion that when no further action is taken against the petitioner pursuant to the impugned notice, no further inquiry or any compensation as prayed by the petitioner by the petitioner, is required in this matter because if such orders are made, then it would be disproportionate with the action taken by respondent No.6. Therefore, considering all these aspects, the writ petition stands allowed only in terms of prayer clause 'A' and disposed of.

13. Rule is partly made absolute in above term.

(VAISHALI PATIL-JADHAV)
JUDGE

(SANDIPKUMAR C. MORE)
JUDGE

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