

Court No. - 29

Case :- U/S 482/378/407 No. - 2088 of 2020

Applicant :- Manish Yadav

Opposite Party :- State Of U.P. & Others

Counsel for Applicant :- Shailender Singh, Ankit Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Alok Mathur, J.

1. Heard Sri Shailender Singh, learned counsel for the applicant as well as learned Additional Government Advocate for the State of U.P.
2. By means of present application u/s 482 Cr.P.C. the applicant has challenged the notice dated 28.07.2020, issued by Assistant Police Commissioner/Special Executive Magistrate, Lucknow purportedly issued under Section 107 Cr.P.C., directing the applicant to show cause as to why he should not be directed to execute personal bond for maintaining peace and for which purpose applicant has been directed to appear in the office of Assistant Police Commissioner, Lucknow on 24.08.2020.
3. Learned counsel for the applicant has assailed the impugned notice on the ground that no reasons have been disclosed in the said notice and from the show cause notice applicant is unable to tender any response to the same as there is no mention or whisper about the acts which may have caused breach of peace for which applicant is being held liable to.
4. A notice under Section 107 Cr.P.C. is not an empty formality but is issued with purpose to elicit a response from a person to whom notice is issued. In absence of mentioning of any facts or any details in the show cause notice clearly disables the person to defend himself

effectively or give any meaningful reply to the same. For ready reference, Section 107 Cr.P.C. is quoted hereinbelow :-

"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 proceedings, 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) Proceedings 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 tranquility or to do any wrongful act as aforesaid beyond such jurisdiction."

5. This provision is in aid of orderly society and seeks to nip in the bud conduct subversive of the peace and public tranquility. For this purpose, the Executive Magistrates are invested with large discretionary powers for the preservation of public peace and order. The justification for such provisions is claimed by the State to be in the function of the State which embraces not only the punishment of offenders but, as far as possible, the prevention of offences.

6. Section 107, is a preventive provision enabling the Executive Magistrate to prevent disturbance of the public tranquility and breach of peace, by requiring the persons who are likely to cause disturbance to public peace, to execute bond with or without surety for keeping peace. It should be mentioned that preventive action under Section 107 is not meant for substitution of punishment or for harassment or humiliation to the non-applicants who are summoned.

7. The foundation of jurisdiction for action under Section 107 is credible information from a police officer or a private person. Prior to the initiation of proceedings under Section 107, information must be given against a person from whom it is sought to take security. The condition precedent to taking security is that the Magistrate should be informed that some person is likely to commit a breach of the peace or disturb the public tranquility or to do some wrongful act that may probably occasion a breach of the peace or disturb the public tranquility. The law provides for a proceedings under Section 107, being started on information received, if in the opinion of the Magistrate there is sufficient ground for a proceeding. The Magistrate has to satisfy himself that a person is likely to commit a breach of the peace or disturb the public tranquility as mentioned in Section 107 before taking action.

8. Section 107, does not give a discretion to the Magistrate in the sense that he "may" require the person to show cause. But when he does exercise that discretion and does decide that he will issue a notice to show cause, then that notice to show cause must be a notice which satisfies the requirements of Section 111. Persons who are sought to be bound over to keep the peace should be given an opportunity to show cause and all the procedure laid down in Chapter VIII should be followed.

9. For taking action under Section 107, the manner provided is clearly laid down under Section 111. Issue of a preliminary notice to show cause apart from what is provided in Section 111 does not appear to be justified. Before the Magistrate two courses are open. If he is satisfied on report on information, he will immediately draw up a proceedings under Section 107, but if he is not satisfied, then he will not take any action and leave the matter as it is.

10. A show cause notice has solemn purpose to inform the person about the material for which response is being sought with regard to the acts which may constitute breach of peace for which he is being directed to file personal bond for maintaining peace. For a person who is not aware of the acts or incident for which he may or may not be culpable, it is impossible for him to reply to such a show cause notice.

11. In the case of **Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others, 1970 (3) SCC 746**, it has been held by Hon'ble the Apex Court that the person proceeded against show cause notice must be informed of the allegations made against him, by giving him the substance of the information so that he may meet such allegations.

12. This Court in **Criminal Misc. Case No. 492 of 2010 - Sheo Raj Yadav Vs. State of U.P. and Two Others** (decided on 15.02.2010), while dealing with a similar issue, has observed as under

"The preliminary order contemplated under Section 111 Cr.P.C. is a judicial order and has to be prepared and drawn up cautiously and carefully in compliance with the provisions of Section 111 Cr.P.C. and the order must contain reasons of the Magistrate's satisfaction. The substance of the information is the matter upon which he has to show cause. If substance of

information is not given in the order under Section 111 Cr.P.C. the person against whom the order has been made will remain in confusion. The extent of information which must be set forth depends in each case upon the circumstances of that case. The basic object of preliminary order being to give the person proceeded against an opportunity to meet the allegation made against him as well as nature of the order proposed.

In the instant case, the impugned order without recording reasons show non-application of judicial mind. Notice under Section 111 Cr.P.C. containing vague apprehensions and allegations indicate pre-conceived notions. The impugned notice under challenge is void and proceedings against the petitioner are nullity and without jurisdiction as substance of information received as required is incomplete and ambiguous. Notice without substance of information vitiate the proceedings drawn on the basis of such vague notice are apparently abuse of process of Court. Failure to comply with the mandatory requirements of Section 111 Cr.P.C. vitiate the preliminary order and consequently the proceedings. The procedure followed by the learned Magistrate is not in consonance with the provisions of law."

13. Perusal of the impugned show cause notice clearly indicates that the same has been issued on printed proforma where proposed date of appearance and the name of the party has been written. It clearly indicates that such a notice has been issued without any application of mind and does not conform to the statutory provisions of Section 107 Cr.P.C..

14. The notice does not mention any act or omission on the part of the applicant which may have been considered by the Magistrate at the time of issuance of the notice. The material is the foundation of the exercise of power u/s 107 Cr.P.C. which is clearly lacking in the notice. The notice either should clearly disclose the material indicating the satisfaction of the Magistrate or the same should be accompanied by the Police report and other material being relied upon by the Magistrate at the time of issuing of notice. In the present case, both are missing and therefore, the impugned notice does not fulfill the prescription of law in this regard and therefore is liable to be set aside.

15. In the light of above, the impugned show cause notice dated 28.07.2020 (Annexure-1 to the affidavit filed in support of application), issued by Assistant Police Commissioner/Special Executive Magistrate, Lucknow is hereby set aside. It is open for the concerned Magistrate to pass fresh order in accordance with law, if he so chooses.

16. With the aforesaid directions, the application stands **allowed**.

Order Date :- 8.12.2020

A. Verma

(Alok Mathur, J.)