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Asha Pant Vs. State and ors.

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Court : Delhi

Decided On : Mar-17-2008

Reported in : 2008(102)DRJ216

Judge : S. Muralidhar, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 107, 107(1), 111, 113, 116(3), 117, 150, 156(3) and 482; Constitution of India - Article 22

Appeal No. : Crl. M.C. 2077 and 2416/2006 and Crl. M. 3333 and 3824/2006 (stay)

Appellant : Asha Pant;kanwal Chaudhri and anr.

Respondent : State and ors.;state

Advocate for Def. : R.N. Mittal, Sr. Adv. and ; Puneet Mittal, Adv. for Respondent No. 4 in Crl. M.C. 2077/2006 and Crl. M.

Advocate for Pet/Ap. : P.N. Lekhi, Sr. Adv. and; Rajan Kumar Chourasia, Adv. in Crl. M.C. 2077/2006 and Crl. M. 3333/2006 (sta

Judgement :

S. Muralidhar, J.

1. These petitions under Section 482 of the Code of Criminal Procedure, 1973 ('Cr PC') challenge two Kalandaras arising out of the same set of events. The first is titled State v. Asha Pant And Anr. and the other is titled State v. Kanwal Chaudhri and Anr. both pending in the court of Special Executive Magistrate ('SEM'), New Delhi and the notices issued to the petitioners in each of the petitions under Sections 107 and 111 Cr PC.

2. The events leading to the filing of the present case, as stated in the petition Crl.M.C. No. 2077 of 2006, is that the property at 10A Kasturba Gandhi Marg, New Delhi (hereinafter 'the property') was owned by Mrs. Kanwal Chaudhri, the Petitioner No. 1 in Crl. M.C. 2416-17 of 2006. Mr. Ranjan Pant , the husband of Mrs. Asha Pant, the petitioner in Crl.M.C. No. 2077 of 2006, purchased a portion of the said property from Mrs. Kanwal Chaudhri on 8th July, 2002. It is stated that Mrs. Asha Pant and her husband stay out of Delhi most of the time as they are engaged in consultation business. Although according to Mrs. Pant things were peaceful soon after the purchase of the portion of the property, she was surprised when some time in 2003 Mrs. Chaudhri filed a Civil Suit No. 1447 of 2003 against her claiming that she was the owner of the entire first floor including the appurtenances to the portion sold by her to Mr.Pant. This led to further cases filed by one party against the other. Mr. Pant filed Suit No. 1453 of 2003 in this Court against Mrs. Chaudhri. Mrs. Chaudhri filed Complaint Case No. 1406/1 of 2003before the learned Metropolitan Magistrate ('MM') against Mr. Pant in which he was summoned. Mr. Pant filed Criminal Writ Petition No. 335 of 2004 in which a stay of the above Criminal Complaint case was granted. Consequent upon an order by the learned MM under Section 156 (3) Cr PC, FIR No. 126 of 2004 was registered against Mr.Pant. This led to the filing of another Criminal Writ Petition No. 1334 of 2004 by him in this Court. The said writ petition was listed for final disposal on 21st February, 2005.

3. On 31st March 2006 Mrs. Chaudhri complained to the police about a quarrel that took place between her and some unknown person in relation to an attempted trespass on the property. It appears that Mrs. Pant too gave a complaint at the same time as is evident from the following entry in DD No. 21A was recorded by ASI Naubat Ram, Police Station Tilak Marg at 7.45 pm on 31st March, 2006:

That Smt. Kanwal Chaudri and Smt. Pant submitted their respective complaints in writing to Additional SHO that civil and criminal cases are pending between both the parties and both of them keep on complaining against each other.... No cognizable offence is found to take place hence DD No. 11-A is filed.

4. According to Smt. Asha Pant within 24 hours of the aforementioned DD, another DD entry No. 12A dated 1st April, 2006 was recorded at her instance when she informed the police that somebody who had forcibly entered the property had been detained by her.

5. Turning to the narration in Crl. M.C. No. 2416 of 2006, Petitioner No. 1 Mrs. Chaudhri does not dispute that the first floor of the premises was sold by her to Mr. Ranjan Pant. She states that the remaining portion of the property and the second floor was owned and used by her. According to her the Pants had started claiming exclusive rights to the common staircase and in the process often obstructed the passage hampering the usage of the same by Mrs.Chaudhri and her employees on some pretext or the other. She also adverted to the fact that a civil suit for injunction was filed by her in this Court which is pending adjudication. She also acknowledges that Mr. Pant had filed a suit.

6. According to Mrs. Chaudhri on 31st March 2006, Mrs. Pant had placed an almirah at the front of the staircase and also occupied a certain area on the top portion of the staircase in front of the servant quarters, in violation of the status quo order. It is then stated that Mrs. Chaudhri reported the matter to the police on the same date. It is stated that on 1st April, 2006, 'another incident took place and the same was also reported but the police failed to take an action against Asha Pant and another.' She states that later she learnt that a kalandara DD No. 25 A dated 1st April 2006 had been drawn up at the instance of Mrs. Pant.

7. On the basis of the kalandaras as noticed hereinbefore notices under Sections 107 and 111 Cr PC were issued to both parties by the Special executive Magistrate (SEM). The notice issued to Mrs. Pant reads as under:

IN THE COURT OF SH ONKAR PRADAD SPECIAL EXECUTIVE MAGISTRATE POLICE STATION PARLIAMENT STREET NEW DELHI DISTT, NEW DELHI.

NOTICE UNDER SECTION 107/111 Cr.PC

Whereas, as has been made to appear to me be a credible information received in the report of SHO/- Tilak Marg New Delhi and complaint filed through SI Rajender Pradad that you Mrs. Asha Pant W/o Sh. Ranjan Pant R/o 10-A, 'B' Portion Flat, First Floor Kashtourba Gandhi Marg New Delhi on 1.4.06 at Kothi No. 10-A, K.G. Marg New Delhi along with your associate were likely to pick up quarrel with Kanwal Choudhary and others, over the issue of use of common stair case/passage. You created nuisance there and also threatened them with dire consequences. And thus there is every likelihood of disturbance of peace and public tranquility with in the area of this court.

And that you are likely to commit a breach of peace or to do a wrongful act which may probably accession in breach of peace or disturbance of public tranquility with in the jurisdiction and local limits of this court. I am thereforee, satisfied that there are sufficient ground to initiate proceeding against you under Section 107/150 Cr.PC.

I Onkar Prasad Special Executive Magistrate, New Delhi Distt. New Delhi hereby require you to attend in persons of (by a duly authorised agent) in my court on the date of 7.4.2006 at 2.00 PM to show cause as to why you may not be required to execute a personal bond in the sum of Rs.20,000 with one surety/Sureties in the sum of Rs. 20,000/- that you will keep peace for a period of one year.

Given under my hand and seal of this court on the dated 3.4.06. Case to come up on 10.4.06.

8. Simultaneously, summons was issued to Mrs. Pant which reads as under:

IN THE COURT OF SH ONKAR PRADAD SPECIAL EXECUTIVE MAGISTRATE POLICE STATION PARLIAMENT STREET NEW DELHI DISTT, NEW DELHI.

FORM NO. 14

SUMMON OF INFORMATION OF A PROBABLE BREACH OF PEACE.

SEE SECTION-113 Cr.PC

To,

Mrs. Asha Pant W/o Sh. Ranjan Pant

R/o 10-A, 'B' Portion Flat,

First Floor, Kasturba Gandhi Marg New Delhi.

Whereas it has been made to appear to me by credible information that there is tension between you and Asha Pant and his Servant Shri Dhar, over the issue of use of common stair case/passage. You created nuisance there and also threatened them with dire consequences. And thus there is every likelihood of disturbance of peace and public tranquility with in the area of this court.

And that you are likely to commit & breach of peace of to do a wrongful act which may probably occasion in breach of peace or disturb public tranquility with in local limits of this court. thereforee, you are hereby required to attend in person (or by duly authorised agent) at the office of Special Executive Magistrate, Police Station Parliament Street, New Delhi Dist, New Delhi on the 10th Day of April 2006 at 2.00PM in the forenoon to show as to why you should not be required to enter into a bond of Rs. 20,000/- and also to give security by the bond of one surety/sureties in the sum of Rs. 20,000/- that you will keep peace for the period of one year.

SPECIAL EXECTIAL MAGISTRATE

POLICE STATION PARLIAMENT STREET

NEW DELHI DISTT, NEW DELHI.

9. Similarly worded notices and summons were issued to Mrs. Chaudhri as well. Both the parties are aggrieved by the aforementioned notices and summons issued to each of them by the SEM and have accordingly asked for quashing of the said summons and notices and the respective Kalandaras against them.

10. The submission of Mr. P.N. Lekhi, learned Senior counsel appearing for Mrs.Pant is that on a plain reading of Section 107(1) Cr PC it is clear that some kind of an enquiry has to be undertaken by the SEM before he proceeds to issue

notice. He submits that although 2 years have passed since the issuance of the said notices and they have thereforee lapsed, this Court should nevertheless lay down the law for future guidance of the SEMs. He points out that despite the decision in Tavinder Kumar v. State : 40(1990)DLT210 there is a need to reiterate the basic precautions that require to be observed by SEMs while exercising powers under these provisions. He sought to point out that the format used in the issuance of notices is also pre-printed with only the name, date and certain other particulars being filled up for the purposes of a trial case. He submits that since disputes of the present kind are essentially of a civil nature, mechanically issuing notices without making a preliminary enquiry infringes the liberty of the citizen. He further points out that in any event no summons in terms of Section 113 Cr PC could have been issued at all unless there was a failure to respond to the notice under Section 107 Cr PC. Such notice cannot in any event be issued simultaneously.

11. Mr. R. N. Mittal, learned Senior counsel appearing for Mrs. Chaudhri also submits that a notice under Section 107 Cr PC has to necessarily be preceded by a preliminary enquiry and does not dispute the fact that the furnishing of a personal bond in exercise of the powers under that Section 107 Cr PC does not arise.

12. Mr. Pawan Behl, learned APP sought to point out that although a format was used, the details of particulars therein were not mechanically filled as was sought to be suggested by counsel for the petitioners. However, he submitted that the SEMs would abide by whatever guidelines are laid down by this Court.

13. Section 107(1) Cr PC 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 tranquility 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 Section 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, thereforee, 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.

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, thereforee, not apposite to characterise the provision as a law for detention contemplated by Article 22. The safeguards are thereforee 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.

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 Anr. v. State : 40(1990)DLT210 also emphasized the need for caution while exercising the powers under Section 107 and 111 Cr PC. 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 hound 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 be 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 Cr PC 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 rightaway 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 Cr PC 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 CrI. M.C. 35281 held that the decision of this Court in Ram Prakash v. State : 62(1996)DLT628 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 Cr PC in such a situation.

20. There is nothing in the impugned notices issued by the SEM to indicate that the SEM had formed an opinion as required under Section 107 prior to issuing such notices. The minimal enquiry that was required on the facts and circumstances of the present case was not undertaken. On the face of it, thereforee, neither of the notices and summons can be sustained in law. In any event the question of issuing a summons under Section 113 did not arise at all, since that was a subsequent step and not to be exercised simultaneously with the issuance of a notice under Section 107 Cr PC.

21. Although more than 2 years have elapsed and the impugned notices and summons are no longer operative, since on the face of it they are unsustainable in law, it becomes necessary to declare them to be illegal and quash them as such. In view of the passage of time both the Kalandaras are directed to be closed. The petitions and applications are accordingly disposed of.

22. A copy of this order be sent to the Government of National Capital Territory, Delhi for issuing appropriate instructions to the SEMs exercising their powers under Section 107 Cr PC. Copies of the judgment of this Court in Tavinder Kumar v. State : 40(1990)DLT210 will also be circulated by the GNCTD to the SEMs for their future guidance.

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