

(2005) 09 AHC CK 0195

Allahabad High Court

Case No: Criminal Miscellaneous Application No. 13309 of 2005

Shiv Kant Tripathi

APPELLANT

Vs

State of U.P. and The
Station Officer, Police
Station Chakeri

RESPONDENT

Date of Decision: Sept. 19, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 107, 110, 111, 116

Hon'ble Judges: Poonam Srivastava, J

Bench: Single Bench

Advocate: S.K. Srivastava, for the Appellant; A.G.A., for the Respondent

Final Decision: Allowed

Judgement

Poonam Srivastava, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. The proceedings in criminal case, State v. Shiv Kant Tripathi u/s 110/111 Cr.P.C. pending in the court of Additional City Magistrate II, Kanpur Nagar has been challenged in this application and also a prayer is for quashing the order dated 6.8.2005 whereby the applicant has been given a notice to show cause that why he should not be required to furnish personal bonds for his good behaviour for a period of three years and also two sureties for an amount of Rs. 50,000/- each. Only objection raised by counsel for the applicant is that impugned order has been passed without application of mind on a printed format and notice suffers from vagueness and ambiguous, therefore, proceeding on the basis of said notice is a nullity. Reliance has been placed on a number of decisions of this Court in the case of Ranjeet Kumar and Ors. v. State of U.P. and Ors. XLV 2002 ACC 627. A notice simply states that the applicant is habitual offender and causes harassment to the general public. The witnesses from the public refrain from deposing against him on account of fear. In the circumstances, he should not be allowed

to roam freely and mix with the general public. A copy of the notice has been annexed as annexure No. 4 to the affidavit filed in support of this application. Similar view has been expressed in the case of Aurangzeb and Ors. State of U.P. and Anr. L 2004 ACC 734. Paragraph of the said decision is quoted below:

It is submitted that notice under challenge is void and proceedings against the applicants are nullity without jurisdiction as substance of information received as required is incomplete, vague and ambiguous and notice is only defective. It is also submitted on report of police on 21.6.2004, a notice u/s 111 Cr.P.C. to initiate proceedings under Sections 107/116 Cr.P.C. is served upon the applicants vide Annexure-1 and the impugned notice does not fulfil the requirements of mandatory provisions of Section 111 Cr.P.C., thus the notice is null and void and the proceedings before the learned Magistrate are a nullity and the impugned notice is on a printed proforma in which gaps are filled and the substances of information received as set forth is wholly incomplete, vague and ambiguous. It is further submitted that the learned Magistrate (S.D.M.) has no jurisdiction or authority to proceed on the basis of this void notice and he has placed reliance in the case of Ranjeet Kumar and Ors. v. State of U.P. and Ors..

3. Similar view has been expressed in the case of Siva Nand Tyagi v. State of U.P. XXX 1993 ACC 146, while quashing a notice on a printed formal in this case, this Court has placed reliance on another case decided by this Court as well as by the Apex Court. Paragraph No. 3 of the case of Siya Nand Tyagi (supra) is quoted below:

In the case of Mohan Lal v. State of U.P. (I), this Court observed:-

"There are a series of decisions in which it has been held that the provisions contained in Section 111 of the Code are mandatory and that the non-compliance, thereof vitiated the entire proceedings "

In the case of Madhu Lemaye v. S.D.M. Mongyr (2), the apex court, in para 36 of its judgment observed: -

We have seen the provisions of Section 107. That section says that action is to be taken in the manner here-in-after 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 emphasize 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 general public.

In this very case the Apex Court went on to observe in Para 37

"Since the person to be proceeded against has to show cause, it is but natural that he must know the grounds for apprehending a breach of the peace or disturbance of the public tranquility at his hands. Although the section speaks of the "substance" of the information it does not mean the order should not be full. It may not repeat the information bodily but it must give proper notice of what has moved the Magistrate to take the action. This order is the foundation of the jurisdiction and the word "substance" means the essence of the most important parts of the information.

6. In the present case the learned Sub-Divisional Magistrate has thrown the mandatory provisions of Section 111 of the Code to the winds and has prepared a printed proforma. The learned Magistrate has also not recorded his opinion that there existed sufficient ground to take action under the provisions of Section 107 of the Code.

4. Taking into consideration earlier decisions of this Court and perusal of a notice under Sections 110/111 Cr.P.C., it is abundantly clear that the proceedings initiated on its basis are not maintainable, therefore, notice is held to be defective. It is quashed. The application is allowed.