

(2011) 03 DEL CK 0336

Delhi High Court

Case No: Criminal M.C. No. 2632 of 2010

Varun Agarwal

APPELLANT

Vs

State and Others

RESPONDENT

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**Date of Decision:** March 29, 2011**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 107, 116, 150, 151, 482

**Citation:** (2011) 2 JCC 1197**Hon'ble Judges:** Mukta Gupta, J**Bench:** Single Bench**Advocate:** V.P. Singh and S.C. Sagar, for the Appellant; Pawan Bahl, APP for State and Abhijat, for R-2, for the Respondent**Final Decision:** Dismissed

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### Judgement

@JUDGMENTTAG-ORDER

Mukta Gupta, J.

By this petition, the Petitioner seeks quashing of the Kalandara u/s 107/151 Code of Criminal Procedure dated 29th July, 2010 at P.S. Connaught Place pending before the Special Executive Magistrate, Parliament Street, New Delhi, the notice dated 30th July, 2010 and the proceedings emanating therefrom.

2. The brief background of the case according to the Petitioner is that the Petitioner's grandfather died leaving behind substantial properties. In the suit for partition in respect of the estate left behind a decree was passed in terms of the settlement between the parties i.e. the father of the Petitioner i.e. Purshotam Sarup Aggarwal, the father of Tarun Aggarwal and the other brothers. According to the Petitioner, his father got the exclusive possession of property No. M-87 First Floor at plot No. 12, M-Block, Connaught Circus, New Delhi and M-36 ground floor in the same building with the open land behind it in the rear portion with Chhabutra in front of it in Verandah. The Petitioner's father was keeping a generator under the

tin shed protected with side brick walk in the rear portion of property No. M-36. However, the Respondent No. 2 and 3 with other persons forcibly tried to encroach the rear portion of Petitioner's property from M-36. The security guard at Petitioner's property called up on the Petitioner's mobile who sent information to the police at 100 number which was recorded vide DD 13 A. Despite the fact that the Petitioners had made the complaint, the police registered a Kalandara against the Petitioner and took him into custody. The Petitioner was produced before the Magistrate on 30th April, 2010 and was released on bail.

3. Learned Counsel for the Petitioner states that after the incident he filed a civil suit in this Court seeking permanent injunction against the Respondent No. 2 and 3 from interfering in his peaceful possession in which interim order has been granted in favour of the Petitioner. The grievance of the Petitioner is that he has been falsely implicated in the said Kalandara and while issuing notice, the Spl. Executive Magistrate conducted no enquiry in terms of Section 116 Code of Criminal Procedure. It is urged by the learned Counsel that even prior to issuance of notice, an enquiry ought to have been conducted. In the proceedings initiated under Sections 107/150 Code of Criminal Procedure the Petitioner would have had an opportunity to file a reply and place his case, however since it is a proceedings u/s 107/151 Code of Criminal Procedure no opportunity has been granted to him and hence the Kalandara and proceedings arising thereto are liable to be quashed. It is also contended that the fight between two family members cannot lead to any public tranquility. Moreover, the notice has been issued on cyclostyled proforma and thus suffers from non-application of mind.

4. On 17th August, 2010 when the matter came up for hearing before this Court it was stated that the parties are negotiating a settlement. This Court did not issue notice to the Respondents however, in the meantime, directed the Petitioner to appear before the Spl. Executive Magistrate and file his reply to the show-cause notice, and further directed that no order shall be passed till the next date of hearing. Ultimately, on 1st November, 2010 it was reported that the mediation has not been successful and thus the matter was listed for consideration for today.

5. I have heard learned Counsel for the Petitioner at length. I find no force in the contention of the learned Counsel for the Petitioner that in a case u/s 107/150 Code of Criminal Procedure, the Petitioner would have got an opportunity to file a reply whereas u/s 107/151 Code of Criminal Procedure he got no such opportunity. The procedure of enquiry which is in the form of a summary proceeding contemplated under both the provisions is the same. On a Kalandara having been filed before the Special Executive Magistrate if he is prima facie satisfied that the act of a party/parties is likely to commit a breach of peace or disturb the public tranquility or to do any wrongful act which is likely to cause breach of peace or disturb the public tranquility, he may require such person to show-cause as to why he should not be ordered to execute a bond for keeping the peace for a period not exceeding one

year. Thus, the very purpose for issuance of show-cause notice is to give an opportunity to the Petitioner to explain his case. The facts which have been urged by the Petitioner are to be looked into by the Spl. Executive Magistrate during the proceedings pending before it. At the stage of show cause notice u/s 107, no prior enquiry is required to be conducted by the Spl. Executive Magistrate. He has to form an opinion that there is a ground for proceedings on the basis of information received by it. Thus, the contention that since no enquiry was conducted while issuing show-cause notice, is wholly fallacious.

6. This Court in its earlier decision in [Vimal Kumar Singh and Another Vs. State and Others](#), has held that where notices are issued in cyclostyled proforma, they are not mechanical if they are issued keeping in mind the relevant information placed before them. In the present case, though, the notice is on cyclostyled proforma but a perusal thereof would show that all the details of material facts are mentioned. Thus, the show cause notice does not suffer from non-application of mind. In the present case as noted already, the dispute is between the family members and the contention that in a case of lighting between two family members, there can be no public tranquility is misconceived. When family members fight on the street, it would cause breach of peace and public tranquility is affected.

7. Be that as it may, on the Petitioner filing the reply, the Magistrate is duty bound to consider it and to come to the conclusion whether the Petitioner should be directed to furnish a bond for keeping peace. The contentions raised on merit stating that the Petitioner has been falsely implicated, cannot be considered by this Court as it would not evaluate the evidence of the parties. This is an exercise to be undertaken by the Executive Magistrate. There is no ground urged which would warrant interference by this Court u/s 482 Code of Criminal Procedure as the proceedings before the Magistrate are neither the abuse of the process of the court nor any gross illegality has been pointed out therein.

8. The Petition is dismissed. Order Dasti.