

IN THE COURT OF MS. CHARU AGGARWAL
ADDITIONAL SESSION JUDGE-02: CENTRAL DISTRICT:
TIS HAZARI COURT: DELHI.

CR No. 20/2020

1. Pawan Kumar
S/o Sh. Sunder Singh
2. Poonam Vs.
W/o Sh. Pawan Kumar

Both are R/o Upper Ground Floor,
H. No. 16, Gali No. 1, Lal Dora Extension,
Sant Nagar, Burari, Delhi.

.....Petitioners

Vs.

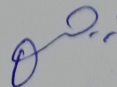
1. The State
(Govt. of NCT of Delhi)
2. Sh. Ajit Kumar Verma
S/o Sh. P. N. Verma
R/o 3rd Floor, H. No. 16,
Gali No. 1, Lal Dora Extension,
Sant Nagar, Burari, Delhi.

.....Respondents

Date of institution : 08.01.2020
Date of decision : 25.06.2020

ORDER

1. The present revision petition is directed against the order dated 07.11.2019, passed by Ld. Special Executive Magistrate on the kalandra u/s 107/150 Cr.PC filed by the police. In the impugned order, Ld. Special Executive Magistrate has observed that there are sufficient grounds to proceed against the



petitioners, who both are husband & wife on one hand and Sh. Ajit Kumar Verma on the other hand (Sh. Ajit Kumar Verma is respondent no. 2 in the present revision petition), therefore, notice u/s 107/150 Cr.PC was directed to be given to both the parties. Aggrieved by this order, the petitioners have filed the present revision.

2. The facts leading to initiate proceedings u/s 107/151 Cr.PC by the Police are that both the parties i.e. petitioners and respondent no. 2 are neighbours. Both the parties are residing in H. No. 16, Gali No. 1, Lal Dora Extension, Sant Nagar, Burari, Delhi. The petitioners are residing on the ground floor and respondent no. 2 is residing on the third floor of the said house. As per the ka-landra filed u/s 107/150 Cr.PC dated 07.11.2019, both the parties had filed several complaints against each other regarding using of abusive language against each other.

3. Both the respondents i.e. State and respondent no. 2 Sh. Ajit Kumar Verma have raised the preliminary objection regarding the maintainability of the present revision petition on the ground that the impugned order is interlocutory in nature and in view of Section 397 (2) IPC, the revision against the interlocutory order is not maintainable. Respondent no. 2 in order to butter his submissions has relied upon the judgment of "**Sanjeev Kapoor Vs. State of Delhi**", 2010 Law Suit (Del) 3109, in which the Hon'ble Delhi High Court has held that that *show cause notice issued by SEM is a purely interlocutory order against which no revision lies. The relevant portion of the judgment is re-produced as under:-*

"3. In this case, the petitioner was served upon a notice under Section 107/111 Cr.PC by Special Executive Magistrate asking him to attend the SEM's Court and to show cause as to why he should not be ordered

to execute a surety bond and a personal bond. Whenever a show cause notice is issued, a person is given opportunity to reply to show cause notice and to put up his case as to why it was not necessary to call him to SEM's Court and why it was not necessary for him to execute a bond of keeping peace.

4. Show cause notice is a purely interlocutory order and I consider that the learned Additional Sessions Judge rightly dismissed the revision”.

4. On the other hand, counsel for petitioners have argued that the present revision petition is maintainable since the impugned order is not interlocutory in nature as it is a summoning order deciding the substantial rights of the parties. To support their arguments, the petitioners have relied upon the following judgments:-

- (i) *Amarnath Vs. State of Haryana, AIR 1977 SC 2185;*
- (ii) *Madhu Limaye Vs. State of Maharashtra, AIR 1978 SC 47;*
- (iii) *Shiv Prasad Shakyawar Vs. State of UP & Anr, passed by Hon'ble High Court of Allahabad in criminal revision no. 781 of 2007;*
- (iv) *Moinnudin Vs. State & Ors., passed by Hon'ble Delhi High Court in WP (C) 6046/2008.*

5. I have carefully gone through all the judgments relied upon by both the parties. In the judgments relied upon by the petitioners, the Hon'ble

Apex Court as well as the various High Courts have interpreted the term “interlocutory order” and the crux of such judicial decisions is that any order which does not decide the important rights and liability of the parties is interlocutory in nature.

None of the judgment relied upon by the petitioners is directly dealing with the issue whether the order passed in the proceedings u/s 107/151 Cr.PC is interlocutory or not. On the contrary, the judgment of “*Sanjeev Kapoor*” (*Supra*), relied upon by the respondent no. 2 is direct on the point that the revision against the show cause notice issued by SEM in the proceedings u/s 107/151 Cr.PC is interlocutory in nature.

6. The provision of S. 107 Cr.PC have been explained by the Hon'ble Apex Court in “*Ramnarain Singh V. State of Bihar*”, AIR 1972 Supreme Court 2225, in following terms:-

“Under Section 107 of the Code of Criminal Procedure, a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class may require a person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for a period not exceeding one year as the Magistrate thinks fit to fix, if such Magistrate is informed that the said person is likely to commit breach of peace or disturb public tranquility or to do any wrongful act that may occasion breach of peace, or disturb public tranquility and if the Magistrate is further of the opinion that there is sufficient ground for proceeding against that person. The underlying object of the section is preventive and not penal. The sec-

tion is designed to enable the magistrate to take measures with a view to prevent commission of offences involving breach of peace or disturbance of public tranquility. Wide powers have been conferred on the magistrates specified in this section and as the matter affects the liberty of the subject who has not been found guilty of an offence, it is essential that the power should be exercised strictly in accordance with law".

7. In this case, the petitioners were served with the notice u/s 107/111 Cr.PC by SEM asking them to attend his court and to show cause why they should not be ordered to execute a surety bond and personal bond.

8. There is clear distinction between issuing process to the delinquents asking them to execute interim bond during pendency of the proceeding under Section 107 and a notice requiring them to show cause why they would not be asked to execute interim bond. In the latter cause no right of the party is decided. The delinquent has the opportunity to file his reply to the notice and can persuade the Magistrate to drop the proposal to require him to furnish interim bond. In the former case the Magistrate has already made up his mind to require the delinquent to furnish bond.

9. The petitioners have also relied upon the judgment of "**Moinudin**" (*Supra*) in which the Hon'ble Delhi High Court taken note of one more judgment "*Court on its own Motion Vs. State & Ors*", Crl. Ref. No. 1/2007, passed by the Hon'ble Delhi High itself laying down certain guidelines for dealing with the matters u/s 107/151 Cr.PC. The said guidelines are re-produced as under:-


- (a) The Magistrate should stress upon the recording of statements of the investigating officer/witnesses before initiating any proceeding u/s 107/116/151 Cr.PC;
- (b) The Magistrate should not order furnishing of surety in the absence of statements of IO/witnesses;
- (c) The Magistrate should not send the detenu to jail for failure to furnish surety as directed by him, in case statements of IO/witnesses have not been recorded.
- (d) The Magistrate should not sign the order in a mechanical manner on a cyclostyled paper but it should be well reasoned and detailed one.

10. The impugned order clearly reflects that the SEM prior to issuing notice u/s 107/151 Cr.PC to the petitioners and respondent no. 2, has considered the statement of IO on record as mentioned in point no. 1 of the "**Moinudin**" (*Supra*) judgment. All other three points mentioned in the said judgment are required to be taken into consideration by the SEM post issuance of notice and not at the stage of notice.

11. Keeping in mind the observation of Hon'ble Apex Court in the judgment of "**Ramnaraian Singh**" (*Supra*) that the object of proceedings u/s 107/151 Cr.PC is preventive and not penal and also in view of the ratio of "**Sanjeev Kapoor**" (*Supra*), that the show cause notice issued by SEM is purely interlocutory order, the present revision petition is not maintainable as the impugned order is interlocutory in nature, same is accordingly hereby dismissed.

Trial Court Record be sent back to the concerned court.
Revision file be consigned to record room.

Announced in the open court
on 25th June, 2020


(Charu Aggarwal)
Additional Sessions Judge-02
Central Distt./Tis Hazari Court, Delhi.