

Court No. - 86

Case :- APPLICATION U/S 482 No. - 5640 of 2022

Applicant :- Titu

Opposite Party :- State Of U.P.And 2 Others

Counsel for Applicant :- Ranjeet Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Gautam Chowdhary,J.

1. Learned counsel for the applicant and learned AGA are present.

2. This application u/s 482 Cr.P.C. has been filed by the applicant with a prayer to quash the notice dated 03.01.2022 issued by Sub Divisional Magistrate (S.D.M.), Bahjoi, Sambhal U/s 111/110 (G) Cr.P.C. whereby he was asked to show cause why he may not be required to furnish personal bonds of Rs.50,000/- and two sureties in the like amount for maintaining peace and good conduct for a period of one year.

3. It is submitted by learned counsel for the applicant that in the present case, a notice dated 03.01.2022 under Section 111/110(G) of Cr.P.C. has illegally been issued against the applicant by the Sub Divisional Magistrate (S.D.M.), Bahjoi, Sambhal wherein it has been mentioned that applicant is an addicted gambler and person of criminal in nature and is so desperate and dangerous as to render is being at large without security hazardous to the community. It is further submitted that it has not been mentioned in notice that what criminal charges are pending against applicant. The essential ingredients of Sections 111/110 (G) of Cr.P.C. are not made out. The substance of the information has not been mentioned.

4. The object of Section 110 under Chapter-VIII of Cr.P.C. is to afford protection to the public against a repetition of crimes

against their person or property. It is not a punishment of the offender for his past offences but it is for securing good behaviour for the future.

5. The power under section 110 Cr.P.C. must be exercised after observing all the formalities required under the law. The Magistrate can apply his power only on convincing substance. It is for the prevention, not the punishment of the crime. The Magistrate has to exercise its discretion in judicious manner.

6. In the case of **Gopalanachari Vs. State of Kerala [AIR 1981 SC 674]**, Hon'ble the Apex Court observed in para -6 of the judgment as under :-

"6. The constitutional survival of Section 110 certainly depends on its obedience to Article 21, as this Court has expounded. Words of wide import, vague amplitude and far too generalised to be safe in the hands of the police cannot be constitutionalised in the context of Article 21 unless read down to be as a fair and reasonable legislation with reverence for human rights. A glance at Section 110 shows that only a narrow signification can be attached to the words in clauses (a) to (g), "by habit a robber.....", " by habit a receiver of stolen property", "habitually protects or harbours thieves.....", "habitually commits or attempts to commit or abets the commission of....." "is so desperate and dangerous as to render his being at large without security hazardous to the community." These expressions, when they become part of the preventive chapter with potential for deprivation of a man's personal freedom up to a period of three years, must be scrutinized by the court closely and anxiously. The poor are picked up or brought up, habitual witnesses swear away their freedom and courts ritualistically. commit them to prison and Article 21 is for them a freedom under total eclipse in practice.

Courts are guardians of human rights. The common man looks upon the trial Court as the protector. The poor and the illiterate, who have hardly the capability to defend themselves, are nevertheless not 'non-persons', the trial Judges must remember. This Court in Hoskot case has laid down the law that a person in prison shall be given legal aid at the expense of the State by the court assigning counsel. In cases under Section 110 of the Code, the exercise is often an idle ritual deprived of reality although a man's liberty is at stake. We direct the Trial Magistrates to discharge their duties, when trying cases under Section 110, with great responsibility and whenever the counter-petitioner is a prisoner give him the facility of being defended by counsel now that Article 21 has been reinforced by Article 39- A. Otherwise the order to bind over will be bad and void. We have not the slightest doubt that expressions like 'by habit', 'habitual', 'desperate', 'dangerous', 'hazardous' cannot be flung in the face of a man with laxity of semantics. The court must insist on specificity of facts and be satisfied that one swallow does not make a summer and a consistent course of conduct convincing enough to draw the rigorous inference that by confirmed habit, which is second nature, the counter-petitioner is sure to commit the offences mentioned if he is not kept captive. Preventive sections privative of freedom, if incautiously proved by indolent judicial processes, may do deeper injury. They will have the effect of detention of one who has not been held guilty of a crime and carry with it the judicial imprimatur, to boot. To call a man dangerous is itself dangerous ; to call a man desperate is to affix a desperate adjective to stigmatize a person as hazardous to the community is itself a judicial hazard unless compulsive testimony carrying credence is abundantly available. A sociologist may pardonably take the view that it is the poor

man, the man without political clout, the person without economic stamina, who in practice gets caught in the coils of Section 110 of the Code, although, we as court, cannot subscribe to any such proposition on mere assertion without copious substantiation. Even so, the court cannot be unmindful of social realities and be careful to require strict proof when personal liberty may possibly be the causality. After all, the judicial process must not fail functionally as the protector of personal liberty."

7. Learned AGA submitted that applicant has two cases previous criminal history i.e. Case Crime No. 272 of 2021, under Sections 354, 452, 323, 506 I.P.C. and second is the proceedings under Sections 107 and 116 Cr.P.C.

8. The passing of preliminary order under Section 111 Cr.P.C. is obligatory. As a procedure the first thing that a Magistrate must do after receipt of the information referred to in Sections 107 to 110 of Cr.P.C. is to apply his mind to such information and, if he is satisfied that there is ground for proceeding under the chapter, to pass an order in writing under section 111 Cr.P.C.. The order under section 111 Cr.P.C. must be in a writing and broadly contain the elements (i) Substance of the information received under Sections 107 to 110 of Cr.P.C. (as the case may be), (ii) Upon a consideration of such information he has formed the opinion that there is a likelihood of a breach of the peace and that it is necessary to proceed under the relevant sections (Sections 107 to 110 of Cr.P.C. as the case may be). He is not bound to draw up an order under Section 111 Cr.P.C. merely because he has received a Police Report or other information, (iii) the amount of the bond to be executed, (iv) the term for which the bond is to remain in force, (v) The number, character and class of sureties if any required.

9. The Hon'ble Supreme Court in the case of **Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and others** [1970 (3) SCC 746] has observed that *"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 that 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."*

It has been further held by Hon'ble 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.

10. The order contemplated under Section 111 Cr.P.C. requires application of mind 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 satisfaction. The substance of the information is the matter upon which he has to issue show cause notice. 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 may remain in confusion and may not be able to give explanation. 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.

11. In the present case as it has been submitted by learned counsel for the applicant that applicant is not a habitual

offender. His involvement in offence as submitted by learned AGA is also not grave. The sections 354, 452, 323, 506 I.P.C. are triable by the Magistrate. Proceedings under Sections 107 and 116 Cr.P.C. is also not a crime defined in IPC. The so called notice which is subject matter of this application suffers from illegality, vagueness of the substance of information received as set forth is wholly incomplete vague and ambiguous which is invalid and defective in the eye of law. The Sub Divisional Magistrate has no jurisdiction to proceed on the basis of void notice and proceedings pending against the applicant are a nullity and without jurisdiction. It is well settled that the objective of setting forth in the order, the substance of information received by the Sub-Divisional Magistrate is to inform the person asked to show cause what allegations he has to answer. If the substance of the information set forth in the notice is vague and ambiguous, the object of Section 110 Cr. P. C. is bound to be defeated.

12. In view of above, the petition under Section 482 is **allowed** and the order of notice dated 03.01.2022 issued by the Sub Divisional Magistrate, Sambhal, PS Bahjoi, District Sambhal under Section 111/110 (G) Cr.P.C. is hereby quashed. However, learned Sub Divisional Magistrate is at liberty to draw a fresh proceedings against the applicant in accordance with provisions of law.

Order Date :- 10.3.2022/AKT