

Court No. - 28

Case :- U/S 482/378/407 No. - 2567 of 2021

Applicant :- Noor Alam @ Noor Alam Khan

Opposite Party :- State Of U.P. & Ors.

Counsel for Applicant :- Bhanu Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

Heard Shri Bhanu Pratap Singh, learned counsel for the applicant, Shri Arpit Kumar, learned counsel appearing the State i.e. opposite party nos.1 to 3 and perused the record.

The instant application under Section 482 Cr.P.C. has been filed by the applicant with the following prayer:

"Wherefore, it is most respectfully prayed that this Hon'ble High Court may kindly be pleased to quash the impugned notice dated 12.07.2021, passed by the opposite party no.2 i.e. Pargana Magistrate, Sadar, Bahraich in case no.164/2021, under section 111/100 (G) of the Code of Criminal Procedure (Cr.P.C.) (State Vs. Noor Alam) and its consequential proceeding, contained as Annexure No.1 & 2 to this petition, in the interest of justice."

Learned counsel for the applicant while referring to the report of Police Station Risiya placed at page no.8 of the paper book and notice under Section 111 Cr.P.C. issued under the signature of the Sub Divisional Magistrate, Sadar, Bahraich submits that the instant proceedings are nothing but the sheer abuse of the process of law as only on the basis of single case pertaining to under Sections 323, 504, 506 I.P.C. the Magistrate appears to have been satisfied in invoking the provisions of Section 111 Cr.P.C. and had directed the applicant to show cause as to why he be not directed to furnish sureties of the amount of Rs.50,000/- and personal bond to keep peace for the next three years.

It is vehemently submitted that the notice issued by the Sub Divisional Magistrate, Sadar, Bahraich is a glaring example of non application of mind and therefore, there was no material available before the Magistrate, which might have persuaded him to issue the process against the applicant and therefore, all the proceedings of the case pending before the Magistrate concerned are nothing but the abuse of process of law.

Learned A.G.A. on the other hand submits that on the basis of

the report submitted by the concerned police station, the Sub Divisional Magistrate concerned has issued a notice and simply a direction has been given to the applicant to appear before the Magistrate for the purpose of filing sureties and personal bond, therefore, the applicant could not be deemed to have adversely affected by the same as it is a matter of law, order and peace.

Having heard learned counsel for the parties and having perused the record this Court is reminded of ***Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and others*** [1970 (3) SCC 746] wherein it has been 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.*"

There cannot be any doubt in the proposition that summoning of a person by any criminal court for either purpose is a very serious matter and it is to be understood by one and all that there cannot be anything precious than the personal liberty as well as the reputation of a person. It is imperative or in other words a duty has been casted on the Magistrate while acting under Section 111 Cr.P.C. to get himself satisfied about the existence of any emergent situation and if it is so then he further oblige to record the reasons for issuance of notice to any accused persons under Section 111 Cr.P.C. Admitted case, so far as it reflects from the documents made available on record, is that the instant applicant is involved in only one criminal case, which is also evident from the report of the concerned police station i.e. Case Crime No.111/2021, under Sections 323, 504, 506 I.P.C. and perusal of the first information report of this case, which has been made available on record would reveal that apart from the applicant one more accused persons has been named therein namely Iqbal Khan. The dispute as alleged in the F.I.R. appears to be purely of personal in nature. However, very strong words have been used by the Sub Divisional Magistrate, Sadar, Bahraich in the notice placed at page 7 of the paper book and it has been stated that the applicant is a 'habitual offender' whose main occupation is 'theft', rioting, 'harbouring the criminals' and is of committing assault and the public at large is living in fear due to him and there is a strong possibility of breach of public peace from him.

It is not clear as to how the Magistrate has got the knowledge that the applicant is a habitual offender, indulging in '*marpeet*', theft and in rioting and public is living in fear due to him. It is also not clear as to why by involving in a private dispute of criminal nature the public tranquility could be disturbed by the applicant, thus in view of above facts and circumstances this Court is not having any hesitation in observing that the instant case is an example of sheer non application of mind by the Magistrate concerned. At the cost of repetition it is reiterated that nothing could be more precious to a person than his liberty and reputation.

In view of the above, list this case on 08.09.2021.

Learned A.G.A. appearing for opposite party nos.1 to 3 shall file detailed counter affidavit in the matter.

Till the next date of listing, further proceedings of the court below shall remain stayed.

Order Date :- 12.8.2021

Anupam S/-