

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 08.11.2021
Pronounced on: 12.11.2021

APPCR No. 40/2015
c/w
CRMC No. 396/2015
(O & M)

Masood Ahmed and another

...Appellant/Petitioner(s)

Through :- Mr. Masood Ahmed, Advocate
(Petitioner No. 1)

v/s

Executive Magistrate Ist Class, Doda and
others

.....Respondent (s)

Through :- Mr. Suneel Malhotra, GA

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The petitioners have impugned the complaint as well as proceedings initiated under sections 107 and 117 of Cr.P.C before the respondent No. 1 on the following grounds:-

- (i) That the respondent No. 1 has not conducted any enquiry in terms of section 117 of Cr.P.C which is mandatory as per procedure.
- (ii) That the Magistrate has not formed any opinion that there are sufficient grounds for proceeding under section 107 of Cr.P.C.
- (iii) That the only allegation against the petitioners is that the petitioners often threaten the respondent No. 6 and his family members telephonically and the

respondent No. 1 has not relied upon any documentary evidence to demonstrate the same.

2. The petitioner No. 1 appeared in person and has vehemently argued that no proper procedure has been followed by the respondent No. 1 for issuing the process against the petitioners.
3. Mr. Suneel Malhotra, GA submitted that there is no illegality in the order impugned and the petitioners have been rightly summoned by the respondent No. 1.
4. Heard and perused the record.
5. From the record, it is evident that an application was filed by the respondent No. 6 before the Senior Superintendent of Police, Doda, who marked the same to the In-charge, Police Post, Kastigarh, Doda. In the said application, it is stated that the petitioners often threaten the respondent No. 6 and his family members with regard to the some ancestral land and they also abuse him. Pursuant to the said application, complaint under section 107/117 Cr.P.C was filed before the respondent No. 1 and the respondent No. 1 vide order dated 03.07.2015, summoned the petitioners.
6. The proceedings under section 107 of Cr.P.C are preventive in nature and intended to maintain peace and tranquility in the area. If any person who commits an act that results into disturbing the peace and public tranquility of an area, he can be bound down by directing him to execute bond for keeping the peace in the said area, provided such an act is against the public at large.

7. The Hon'ble Apex Court in case titled **Madhu Limaye vs. S.D.M. Mongyr 1971AIR(SC)2486** while construing the provision delineated the details required to be reflected in a show cause notice by holding thus:

“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 indicate 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 emphasise 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 the general public.”

“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.”

8. A perusal of the order impugned reveals that nothing has been mentioned except the proceedings under section 107/117 of Cr.P.C have been filed against the petitioners. The Magistrate was required to set forth the substance of the information received in the order so as to enable the petitioners to know about the said information but he has not done so. Learned Magistrate has nowhere recorded his opinion that there exists sufficient ground to take action under the provision of 107 of the Code.

9. Otherwise also, there is nothing on record to substantiate the allegations leveled in the complaint as all the witnesses examined by the Police clearly demonstrate that the petitioners have been residing at Jammu and they were threatening the respondent No. 6 on phone.
10. Viewed thus, the present petition is allowed. The order impugned is set aside and the proceedings are also quashed.

(RAJNESH OSWAL)
JUDGE

JAMMU:
12.11.2021
Neha

