

Ashok Tiwari @ Ashok Kumar Tiwari And ... vs State Of U.P. Thru. Prin. Secy. Deptt. Of ... on 18 September, 2024

Author: Saurabh Lavania

Bench: Saurabh Lavania

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2024:AHC-LK0:64172

Court No. - 13

Case :- APPLICATION U/S 528 BNSS No. - 30 of 2024

Applicant :- Ashok Tiwari @ Ashok Kumar Tiwari And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Civil Sectt. Lko. And O

Counsel for Applicant :- Anand Singh Pawar

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Heard counsel for the applicant and learned AGA for the State and perused the record.
2. The present application has been filed for the following main reliefs:-

"A. The Hon'ble Court may be pleased to allow this application and quash the impugned order dated 29.08.2024 as submitted against the applicant in Case No-(blank), (as served by the only through whatsapp of the accused no.-4) titled as "State of UP versus Nidhi Verma and others", U/S 126 135 of BNSS. P.S.- Bijnor, Lucknow pending before the Court of ACP Krishna Nagar Commissionerate,, Lucknow.

B. The Hon'ble Court may be pleaded to quash the impugned Challani report dated 29.08.2024 and the consequential processes issued by the learned ACP Krishna Nagar Commissionerate, Lucknow with summoning the same from the court/office of the ACP Krishna Nagar Commissionerate."

3. By means of the present application, a notice/ order dated 29.08.2024 issued under Section 130 of Bhartiya Nagrik Suraksha Sanhita, 2023 (in short "BNSS") by the Assistant Commissioner of Police, Krishna Nagar, Police Commissionerate, Lucknow.

4. It is stated that on account of apprehension that the applicant may cause breach of peace, a report dated 29.08.2024 was submitted by the Sub Inspector, Police Station- Bijnor, District- Lucknow in the light of provisions indicated under Section 126/135 of BNSS.

5. Counsel for the applicant submitted that the impugned notice under Section 130 of B.N.S.S. dated 29.08.2024 issued by the Assistant Commissioner of Police, Krishna Nagar, Police Commissionerate, Lucknow is liable to be set aside because the notice under Section 130 of BNSS has been issued without application of mind as the authority concerned has not recorded his opinion to the effect that there exists sufficient ground to take action under the provisions of Section 130 of BNSS.

6. He further submitted that a printed format cannot be a satisfaction which is required under Section 130 of BNSS while issuing notice under Section 126/135 of BNSS.

7. He has placed reliance upon the judgement of this Court in the Case of Siya Nand Tyagi v. State of U.P. reported in 1994 Cri. LJ 1298 and also the judgement of the Delhi High Court in the case of Tavindar Kumar and another v. State reported in 1990 Cri LJ 40.

8. This Court in Siya Nand Tyagi v. State of U.P. (supra) has clearly held thus:-

"3. It is unfortunate that the requirement of Section 107 of the Code that the Executive Magistrate receiving information should be of the opinion that there are sufficient grounds for proceedings under the said section have become a dead letter and are always followed in its breach. It should be borne in mind that the proceedings Under Section 107 / 116 of the Code some times cause irreparable loss and unnecessary harassment to the public who run to the Court at the costs of their own vocations of life. Unless it is absolutely necessary proceedings Under Section 107/116, Cr. P.C. should not be resorted to experience tells that proceedings like the one under Section 107/116 of the Code are conducted in a most lethargic and lackadaisical manner by the learned Executive Magistrate causing harassment to public beyond measure.

4. 107 is aimed at a person who causes reasonable apprehension of conduct likely to lead to apprehension of breach of peace or a disturbance of public tranquillity. It is a preventive measure. Proceedings under Section 107/116 should not be transformed

into persecution of innocent persons at the sweet will of the police or other persons acting mala fide.

5. In the case of Mohan Lal v. State of U.P., 1977 All Cri C 333 this Court observed:-

"There are a series of decisions in which it has been held that the provisions contained in Section 111 of the Code are mandatory and that the non-compliance thereof vitiated the entire proceedings."

6. In the case of Madhu Limaye v. S. D. M. Mongyr, , the Apex Court, in para 36 of its judgment observed:

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 curtaided 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."

In this very case the Apex Court went on to observe in para 37 "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 tranquillity 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."

7. In the present case the learned Sub-Divisional Magistrate has thrown the mandatory provisions of Section 111 of the Code to the winds and has prepared a printed pro forma. The learned Magistrate has also not recorded his opinion that there existed sufficient grounds to take action under the provisions of Section 107 of the Code."

9. In the judgment dated 04.05.2017 passed in Application U/S 482/378/407 No. 2927 of 2017(Dr. Mirza Shahab Shah vs. State Of U.P. & Ors.), this Court quashed the similar notice under Section 111 Cr.P.C., after considering the relevant provisions and judgments cited i.e. 2016 (1) U.P. Criminal Ruling page 483 and 2008 (3) U.P. Criminal Ruling page 496. The relevant portion of the judgment dated 04.05.2017 reads as under:-

"9. It has been submitted by the learned counsel for the applicant that the notice issued to the applicant under Section 111 Cr.P.C. is absolutely without jurisdiction, as

it does not fulfill the requirement of law. The learned counsel for the applicant has referred to a judgment of this Court reported in 2016 (1) U.P. Criminal Ruling page 483 and 2008 (3) U.P. Criminal Ruling page 496.

10. In both the aforesaid cases it has been held that passing of an order under Section 111 Cr.P.C. is not a mere formality. It should be clear on the face of the order that the order has been passed after application of judicial mind. If no substance of the information is mentioned in the order, the person against whom the order has been made, will remain ignorant of the material against him. The person to be proceeded against has to show cause, therefore, he must know the grounds for apprehending a breach of peace or disturbance at his hands. The preliminary order passed under Section 111 Cr.P.C. is the foundation of the jurisdiction and the words "substance" means, the essence of the information received by the Magistrate.

11. In the present case, a perusal of the notice issued to the applicant clearly reveals that no substance of the information received, is mentioned in the order or the notice. Even challani report sent by the police does not disclose, as to how the applicant, who is holding such an important post, would cause breach of peace. In these circumstances, I find that the learned City Magistrate has proceeded on a wrong assumption that the applicant is a person of such reputation that he may disturb law and order during the assembly elections. The learned Magistrate has not recorded his opinion that there exists sufficient grounds to take action against the applicant."

10. In similar circumstance, the proceedings relating to Case No. 55 of 2019 (State vs. Pradeep Singh) under Section 111 Cr.P.C, Village- Rasoolabad, Police Station-Kaiserganj, District- Bahraich pending in the Court of Pargana Magistrate, Kaiserganj, District Bahraich was challenged by way of filing 482 Petition No. 3065 of 2019 and this Court allowed the same vide order dated 23.04.2019, which on reproduction reads as under:-

"This instant petition has been filed under Section 482 Cr.P.C. challenging the entire proceedings relating to Case No. 55 of 2019 (State vs. Pradeep Singh) under Section 111 Cr.P.C. Village- Rasoolabad, Police Station Kaiserganj, District Bahraich pending in the Court of Pargana Magistrate, Kaiserganj, District Bahraich.

It is contended that Pargana Magistrate, Kaiserganj, District Bahraich has issued the impugned notice under Section 111 Cr.P.C. on the basis of the police report dated 03.03.2019 without application of judicial mind. It is alleged that impugned notice has been issued on typed format in cyclostyle manner. In the said typed format only the date and name of the police station has been filled in the gaps. It is further submitted that contrary to the provisions of Section 111 Cr.P.C., the Pargana Magistrate has not set forth the substance of the information received by him in the impugned notice which is mandatory in nature and non-compliance thereof vitiates the entire proceedings.

Learned AGA opposed the petition and has submitted that impugned proceedings under Section 111 Cr.P.C. are in accordance with law.

In this respect, learned counsel for the revisionist has relied on 2010 (2) JIC 36 (All) (LB) Rakesh Singh @ Rakesh Kumar Singh vs. State of UP. The relevant part of the judgment is reproduced as under:-

".....5. Learned counsel for the petitioner placed reliance on the law laid down by Hon'ble Apex Court in the cases of Madhu Limaye v. Sub-Divisional Magistrate, Monghyr and others, reported in 1970 (3) SCC 746, Gopalanachari v. State of Kerala, reported in A.I.R. 1981 SC 674 1980 (Supp) S.C.C. Page 649 SC and also in support of his arguments cited law laid down by this Court in the cases of, Siya Nand Tyagi v. State of U.P., reported in 1993 (30) ACC page 146, Ranjeet Kumar and others v. State of U.P. and others, reported in 2002 (43) A.C.C. Page 627, Shiv Kant Tripathi v. State of U.P. and another, reported in 2005 (3) JIC 477 (All), Devendra Kumar v. State of U.P. reported in 2006 (1) JIC page 196 (All), Har Charan v. State of U.P. another, reported in 2008 (2) JIC page 418, Lola @ Manish Dhar Dubey @ Babloo v. State of U.P., reported in 2009 (1) JIC 629 (All) and Mahesh Prasad Kannaujia v. State of U.P. reported in 2009 (2) JIC 918 (All).

6. Chapter VIII of the Code of Criminal Procedure, 1973 under the heading "security for keeping peace and for good behaviour" authorizes the Magistrate to take appropriate steps for preventing a person from committing breach of public peace.

7. Sections 110 and 111 of the Code of Criminal Procedure, 1973 (Act No.2 of 1974) are reproduced as under :-

"110. Security for good behaviour from habitual offenders.- When (an Executive Magistrate) receives information that there is within his local jurisdiction a person who-

(a) is by habit a robber, house-breaker, thief, or forger, or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter II of the Indian Penal Code (45 of 1860), or under Section 489-A, Section 489-B, Section 489-C or Section 489-D of that Code, or

(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets the commission of-

(I) any offence under one or more of the following Act, namely :-

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);

(b) the Foreign Exchange Regulation Act, 1973 (46 of 1973) ;

(c) the Employees' Provident Fund (and Family Pension Fund) Act, 1952 (19 of 1952)

(d) the Prevention of Food Adulteration Act, 1954 (37 of 1954) ;

(e) the Essential Commodities Act, 1955 (10 of 1955) ;

(f) the Untouchability (Offences) Act, 1955 (22 of 1955);

(g) the Customs Act, 1962 (52 of 1962) ;

(h) the Foreigners Act, 1946 (3 of 1946) ; or

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community, Such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.

111. Order to be made.- When a Magistrate acting under Section 107, Section 108, Section 109 or Section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

8. A bare perusal of provisions of Section 110 Cr.P.C. would reveal that the proceedings under Section 110 are taken to prevent committing such acts, a person as mentioned therein. The object of Section 110 is to afford protection to the public against a repetition of crimes against their person or property ; not a punishment of the offender for his past offences but securing good behaviour for the future. The passing of preliminary order under section 111 Cr.P.C. is a condition precedent for taking further steps, no final order in proceeding can be passed without giving an opportunity to such

person to show cause.

9. In the case of Gopalanachari (Supra), it was observed by Hon'ble the Apex Court "Law is what the law does, even as freedom is what freedom does. Going by that test, Section 110 cannot be permitted in our free Republic to pick up the homeless and the have-nots as it did when under British subjection because today to be poor is not a crime in this country. George Bernard Shaw, though ignorant of Section 110, did sardonically comment that "the greatest of evils and the worst of crimes is poverty."

10. Since Section 110 Cr.P.C. confers drastic powers, bind down suspected persons, but not proved to have committed any of the offences specified in various clauses, the power should be used with extreme caution and judicial discretion and strictly according to procedure laid down, so that it may not be used as an engine of oppressions, black-mail or private vengeance and the Magistrate should not be influenced by vague rumour or gossip.

11. In the case of Gopalanachari (Supra), Hon'ble the Apex Court observed in para -6 of the judgment as under :-

"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."

12. The powers 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 testimony that the person is clear and present danger to the society. It is for the prevention, not the punishment of the crime. The Magistrate has to exercise his discretion in judicious manner.

13. The passing of preliminary order under Section 111 Cr.P.C. is obligatory. An order under section 111 Cr.P.C. is a condition precedent for taking further steps in any proceedings under sections 107 - 110 Cr.P.C. The first thing that the Magistrate must do after receipt of the information referred to in Sections 107 - 110 Cr.P.C. is to apply his mind to such information and, if he is satisfied that there is ground for proceeding under this 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 - 110 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 - 110 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 required, in cases under Section 110 Cr.P.C., and, if so required, under Sections 107 - 109 Cr.P.C. On the other hand, the order under section 111 Cr.P.C. need not give - (i) the source of the information received, or supply a copy of the Police report (ii) the list of witnesses in support of the information or the order, (iii) the definite acts which the person intends to commit where the substance of the information is communicated, (iv) a reference to Section 111 Cr.P.C. itself, if the substantive section (107-110 Cr.P.C. as the case may be) is mentioned in the order, (v) the period of imprisonment to be suffered in default of execution of the bond, (vi) any extraneous matter.

14. In the case of Madhu Limaye (Supra), Hon'ble the Apex Court observed "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."

15. From the perusal of the record, it transpires that the impugned notice under section 111 Cr.P.C. has been issued on a typed format in a cyclo styled manner and in the said typed format only the name, date and police station has been filled in the gaps and also the Pargana Magistrate did not set forth the substance of the information received by him in the impugned notice.

16. In the case of Madhu Limaye (Supra) it was held by Hon'ble the Apex 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.

17. The preliminary order contemplated under Section 111 Cr.P.C. is a judicial order 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 show cause. 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 will remain in confusion. The extent of information which must be set forth depends in each case upon the circumstances of that case. 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."

In the present case also the impugned order has been passed on the printed format without recording any reasons and this shows total non application of judicial mind. The impugned order in view of the aforesaid judgment is not in accordance with law. The notice under Section 111 Cr.P.C. contains allegations on printed/cyclostyle proforma which indicates per-conceived notions hence, the impugned notice under challenge is void and proceedings against the petitioner is nullity and without jurisdiction as substance of information received as required is incomplete and ambiguous which vitiates the entire proceedings. Such notice is apparently abuse of process of law and the Pragana Magistrate has failed to comply with the mandatory requirements of Section 111 Cr.P.C. which vitiates the preliminary order as well as the consequential proceedings. The procedure followed by learned Magistrate is not in accordance with law.

Considering the aforesaid facts and law laid down by this Court as well as the Apex Court in the aforesaid cases, it is a fit case to invoke the powers of this Court under Section 482 Cr.P.C.

Consequently, the petition under Section 482 Cr.P.C. is allowed and the entire proceedings relating to Case No. 55 of 2019 (State vs. Pradeep Singh) under Section 111 Cr.P.C. Village- Rasoolabad, Police Station Kaiserganj, District Bahraich pending in the Court of Pargana Magistrate, Kaiserganj,

District Bahraich and the notice issued are quashed. However, learned Magistrate shall be at liberty to draw the fresh proceedings against the petitioner in accordance with the provisions of law."

11. Perused the impugned notice issued under Section 130 of BNSS and also considered the judgements placed before this Court.

12. For coming to the conclusion, it would be appropriate to take note of relevant provisions of the Code of Criminal Procedure, 1973 (in short "Cr.P.C.") (now repealed) and BNSS.

13. Chapter VIII (Security for keeping the peace and for good behaviour) of Cr.P.C. deals with preventive actions and Chapter IX (Security for keeping the peace and for good behaviour) of BNSS also deals with preventive action.

14. The relevant provisions related to the present case of Chapter VIII of Cr.P.C. are extracted herein-under:

"106. Security for keeping the peace on conviction.-(1) When a Court of Session or Court of a Magistrate of the first class convicts a person of any of the offences specified in sub-section (2) or of abetting any such offence and is of opinion that it is necessary to take security from such person for keeping the peace, the Court may, at the time of passing sentence on such person, order him to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding three years, as it thinks fit.

(2) The offences referred to in sub-section (1) are-

(a) any offence punishable under Chapter VIII of the Indian Penal Code (45 of 1860), other than an offence punishable under Section 153-A of Section 153-B or Section 154 thereof;

(b) any offence which consists of, or includes, assault or using criminal force or committing mischief;

(c) any offence of criminal intimidation;

(d) any other offence which caused, or was intended or known to be likely to cause, a breach of the peace.

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(4) An order under this section may also be made by an appellate court or by a Court when exercising its powers of revision.

107. Security for keeping the peace in other cases.-(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, [with or without sureties] for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

108. Security for good behaviour from persons disseminating seditious matters.-(1) When [an Executive Magistrate] receives information that there is within his local jurisdiction any person who, within or without such jurisdiction,-

(i) either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate or abets the dissemination of,-

(a) any matter the publication of which is punishable under Section 124-A or Section 153-A or Section 153-B or Section 295-A of the Indian Penal Code (45 of 1860), or

(b) any matter concerning a Judge acting or purporting to act in the discharge of his official duties which amounts to criminal intimidation or defamation under the Indian Penal Code (45 of 1860),

(ii) makes, produces, publishes or keeps for sale, imports, exports, conveys, sells, lets to hire, distributes, publicly exhibits or in any other manner puts into circulation any obscene matter such as is referred to in Section 292 of the Indian Penal Code (45 of 1860), and the Magistrate is of opinion that there is sufficient ground for proceeding, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

(2) No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed and published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867 (25 of 1867), with reference to any matter contained in such publication except by the order or under the authority of the State by the State Government in this

109. Security for good behaviour from suspected persons.-When [an Executive Magistrate] receives information that there is within his local jurisdiction Executive to conceal his presence and there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be

ordered to execute a bond, with or without sureties for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

110. Security for good behaviour from habitual offenders. When an Executive Magistrate] receives information that there is within his local jurisdiction a person who-

(a) is by habit a robber, house-breaker, thief, or forger, or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under Section 489-A, Section 489-B, Section 489-C or Section 489-D of that Code, or

(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets the commission of-

(i) any offence under one or more of the following Acts, namely:-

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);

[(b) the Foreign Exchange Regulation Act, 1973 (46 of 1973)]:

(c) the Employees' Provident Fund 56 [and Family Pension Fund] Act, 1952 (19 of 1952);

(d) the Prevention of Food Adulteration Act, 1954 (37 of 1954);

(e) the Essential Commodities Act, 1955 (10 of 1955);

(f) the Untouchability (Offences) Act, 1955 (22 of 1955);

(g) the Customs Act, 1962 (52 of 1962); 57[*] [(h) the Foreigners Act, 1946; or]

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.

111. Order to be made. When a Magistrate acting under Section 107, Section 108, Section 109 or Section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

15. The relevant provisions related to the present case of Chapter IX of BNSS are extracted herein-under:

"125. Security for keeping peace on conviction.?(1) When a Court of Session or Court of a Magistrate of the first class convicts a person of any of the offences specified in sub-section (2) or of abetting any such offence and is of opinion that it is necessary to take security from such person for keeping the peace, the Court may, at the time of passing sentence on such person, order him to execute a bond or bail bond, for keeping the peace for such period, not exceeding three years, as it thinks fit.

(2) The offences referred to in sub-section (1) are?

(a) any offence punishable under Chapter XI of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023), other than an offence punishable under sub-section (1) of section 193 or section 196 or section 197 thereof;

(b) any offence which consists of, or includes, assault or using criminal force or committing mischief;

(c) any offence of criminal intimidation;

(d) any other offence which caused, or was intended or known to be likely to cause, a breach of the peace.

(3) If the conviction is set aside on appeal or otherwise, the bond or bail bond so executed shall become void.

(4) An order under this section may also be made by an Appellate Court or by a Court when exercising its powers of revision.

(See: Section 106 of Criminal Procedure Code 1973.)

126. Security for keeping peace in other cases.?(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond or bail bond for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

(See: Section 107 of Criminal Procedure Code 1973.)

127. Security for good behaviour from persons disseminating certain matters.?(1) When an Executive Magistrate receives information that there is within his local jurisdiction any person who, within or without such jurisdiction,?

(i) either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate or abets the dissemination of,?

(a) any matter the publication of which is punishable under section 152 or section 196 or section 197 or section 299 of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023); or

(b) any matter concerning a Judge acting or purporting to act in the discharge of his official duties which amounts to criminal intimidation or defamation under the Bharatiya Nyaya Sanhita, 2023;

(ii) makes, produces, publishes or keeps for sale, imports, exports, conveys, sells, lets to hire, distributes, publicly exhibits or in any other manner puts into circulation any obscene matter such as is referred to in section 294 of the Bharatiya Nyaya Sanhita, 2023, and the Magistrate is of opinion that there is sufficient ground for proceeding, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond or bail bond, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

(2) No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed and published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867 (25 of 1867) with reference to any matter contained in such publication except by the order or under the authority of the State Government or some officer empowered by the State Government in this behalf.

(This section corresponds to Section 108 of Criminal Procedure Code 1973.)

128. Security for good behaviour from suspected persons.?When an Executive Magistrate receives information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond or bail bond for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

(See: Section 109 of Criminal Procedure Code 1973.)

129. Security for good behaviour from habitual offenders.?When an Executive Magistrate receives information that there is within his local jurisdiction a person who?

(a) is by habit a robber, house-breaker, thief, or forger; or

(b) is by habit a receiver of stolen property knowing the same to have been stolen; or

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property; or

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter X of the Bharatiya Nyaya Sanhita, 2023, or under section 178, section 179, section 180 or section 181 of that Sanhita; or

(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace; or

(f) habitually commits, or attempts to commit, or abets the commission of?

(i) any offence under one or more of the following Acts, namely:?

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940.);

(b) the Foreigners Act, 1946 (31 of 1946);

(c) the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952);

(d) the Essential Commodities Act, 1955 (10 of 1955);

(e) the Protection of Civil Rights Act, 1955 (22 of 1955);

(f) the Customs Act, 1962 (52 of 1962);

(g) the Food Safety and Standards Act, 2006 (34 of 2006); or

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption; or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bail bond, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.

(This section corresponds to Section 110 of Criminal Procedure Code 1973.)

130. Order to be made.?When a Magistrate acting under section 126, section 127, section 128 or section 129, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number of sureties, after considering the sufficiency and fitness of sureties."

(See: Section 111 of Criminal Procedure Code 1973.)

16. From a conjoint reading of provision(s) of Cr.P.C. and BNSS, referred above, it is apparent that the same are similar/pari materia, except underlined portion(s) of the same. The underlined portion(s), in the aforesaid provision(s) have no bearing on the procedure to be followed while exercising the power under the said provision(s), which deals with preventive actions.

17. The rule of construction is well settled. A Court cannot construe a section of statute with reference to that of another unless the latter is in pari materia with the former.

18. Both the Acts, indicated above, are in pari materia i.e. statutes dealing with the same subject matter or forming part of the same system, except the underlined portion(s). These underlined portion(s) do not play any role in determining the exercise of power under the said provision(s), which deals with preventive actions.

19. Thus, in view of above, the principles settled in the judgments, referred above, would also apply in relation to the proceedings related to the above referred provision(s) of BNSS.

20. Hence, any deviation from the established principles is not required.

21. In the considered opinion of the Court, when the law requires the Magistrate to apply his mind, then there has to be a due application of mind. It is expected that the Authority concerned shall apply his mind as required in law before issuing notice/ order under Section 130 of BNSS for taking appropriate action under Section 126/135 of BNSS.

22. Upon a pointed query being made to the learned Additional Government Advocate, he could also not justify the notice.

23. Having considered the above including the observations made in the judgment(s) referred above, the impugned notice/ order under Section 130 of BNSS dated 29.08.2024 issued by theAssistant Commissioner of Police, Krishna Nagar, Police Commissionerate, Lucknow, is hereby quashed.

24. Accordingly, present application is allowed.

25. Magistrate/Authority concerned shall be at liberty to issue a fresh notice/order under Sections 126/135 BNSS in accordance of law.

26. Office is directed to communicate this order to the Magistrate/Authority concerned forthwith.

Order Date :- 18.9.2024 Arun/-