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**(1970) 02 P&H CK 0005**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Reported Criminal Revision No. 71 of 1969

Sunder Singh

APPELLANT

Vs

Gurdit Singh

RESPONDENT

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**Date of Decision:** Feb. 13, 1970

**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 107

**Citation:** (1972) 1 ILR (P&H) 237

**Hon'ble Judges:** Bhupinder Singh Dhillon, J

**Bench:** Single Bench

**Advocate:** S.K. Tanque, for the Appellant; H.S. Toor and Mr. J.S. Rikhi, for Advocate General (Punjab), for the Respondent

**Final Decision:** Dismissed

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**Judgement**

B.S. Dhillon, J.

This is reference made by the District Magistrate, supar, with the recommendation that the order of the learned Sub-Divisional Magistrate, Rupar, dated the 27th of January, 1969, be set aside and the Magistrate be directed to record the entire evidence in the case and then decide the case.

3. The facts giving rise to this case are that the Petitioner Sunder Singh complained to the police that he apprehended danger to his life from the Respondent, Gurdit Singh. On the said complaint, the police put up a challan in the Court of Sub-Divisional Magistrate, Pupar, against the Respondent Gurdit Singh with the prayer that he should be bound down u/s 107 of the Code of Criminal Procedure. Along with the challan, a list of witnesses was given by the police and in all four witnesses were mentioned which the police wanted to examine in support of the prosecution case. The learned Magistrate after having recorded the statement of Sunder Singh and Hari Singh, the two witnesses, came to the conclusion that the story as put forth by the Petitioner was highly unlikely and there was no threat to

the life of the complainant. Therefore, proceedings u/s 107 of the Code of Criminal Procedure were terminated.

The learned District Magistrate Ropar, has made a reference on the ground that since the two witnesses mentioned in the list had not been examined by the learned Magistrate, it was not proper for him to discharge the Respondent without having recorded the entire evidence which was to be led by the prosecution.

I have heard the learned Counsel for the Respondent, Shri H. S. Toor as well as Miss Surjit Kaur Tanque, learned Counsel for the Petitioner. Mr. Toor has argued that the proceedings u/s 107 of the Code of Criminal Procedure, can be dropped by the Magistrate at any stage because it is the subjective satisfaction of the Magistrate trying the case which is to prevail. He submits that the moment the learned Magistrate is satisfied that there is no danger of breach of peace, the proceedings can be dropped by him. In support of this proposition, he has relied on [Asghar Khan Vs. State and Others](#), Chatha Ittaman v. State AIR 1953 T.C. 24 and [Sheokaran Vs. Dulla and Others](#),

A. In Asghar Khan's case (supra), it has been laid down that:- "A Magistrate has power to drop proceedings initiated u/s 107 Code of Criminal Procedure at any stage, as soon as he is satisfied that there is no danger of a breach of the peace. Initiation of a case u/s 107 depends on the subjective satisfaction of the Magistrate concerned. If the Magistrate sees reason to change his mind and on reconsideration comes to the conclusion that there is after all no "sufficient ground for proceeding", he should be at liberty to drop the case even after he has passed an order u/s 112. Although there is no provision in Sections 107, 112 and 117 specifically empowering a Magistrate to drop the proceedings once they have been started; such power may legitimately be inferred.

The other two authorities also initiate the same proposition of law. On the other hand, the learned Counsel for the complainant has relied on Tejaram v. Bhairon AIR 1955 N.U.C. 5030 wherein it has been laid down that the procedure to be followed in cases u/s 107 of the Code of Criminal Procedure is the same as the procedure for conducting trials and recording evidence in summons cases, and it has been held that u/s "244 of the Code of Criminal Procedure, a Magistrate in summon cases, is bound to take all such evidence as may be produced in support of the prosecution. This is a Singal Bench ruling of Jaipur Bench of the Rajasthan High Court.

Sub-section (2) of Section 117 of the Code of Criminal Procedure, prescribes that enquiry in cases u/s 107 of the Code shall be made as nearly as may be practicable in the manner hereinafter prescribed for conducting trials and recording evidence in summon cases. Section 244 of the Code of Criminal Procedure prescribes the procedure for trial of summon cases. It has been vehemently argued by Miss Surjit Kaur Tanque that the authorities cited by the opposite side, have not taken notice of

the provisions of Sub-section (2) of Section 117 of the Code of Criminal Procedure which was substituted by Act No 26 of 1925. This contention of the learned Counsel is not correct, because the authority reported in Asghar Khan's case has taken note of the provisions contained in Sub-section (1) of Section 117 and also Sub-section (2) of that section. The language of Sub-section (1), which is relevant, is as follows:-

...the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary." Sub-section (2) of this section reads thus:-

Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases.

From the reading of both these Sub-sections, I am clearly of the opinion that the provisions of Sub-section (2) of Section 117 of the Code of Criminal Procedure, are not mandatory and I am inclined to agree with the view taken by the Allahabad High Court in Asghar Khan's case. To the similar effect is the case relied upon by Shri Toor. I am not inclined to agree with the view taken in Tejaram's case. The said authority has not taken note of the provisions of Section 119(1) and has also not considered whether the provisions of Sub-section (2) of Section 117 of the Code are mandatory or directory. Keeping in view the scheme of the Code of Criminal Procedure concerning the trial of the cases u/s 107 of the Code, I am of the opinion that the provisions of Sub-section (2) of Section 117 of the Code are not mandatory but are directory.

5. Having come to the conclusion as above, I am clearly of the opinion that the learned Magistrate, after having recorded the evidence of two witnesses, had come to the finding that there was no threat to the life of the complainant and he was justified in terminating the proceedings u/s 107 of the Code of Criminal Procedure.

In this view of the matter, the reference made by the Learned District Magistrate, Rupa, is declined and the revision petition is dismissed.