

(2009) 03 P&amp;H CK 0289

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Criminal Miscellaneous No. M-5260 of 2009

Jarnail Singh

APPELLANT

Vs

Khushbakht Rai Kora and Others

RESPONDENT

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**Date of Decision:** March 9, 2009**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 107, 151

**Citation:** (2009) 3 RCR(Criminal) 260**Hon'ble Judges:** Kanwaljit Singh Ahluwalia, J**Bench:** Single Bench**Advocate:** Harpreet S. Rakhra, for the Appellant;

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**Judgement**

Kanwaljit Singh Ahluwalia, J.

The petitioner was employed as Functional Manager at District Industrial Center, Mansa. Respondent No. 1 was posted as Executive Magistrate, Sardulgarh. Petitioner was produced before respondent No. 1 u/s 107/151 Cr.P.C. His counsel was present along with bail bonds but the same were not accepted and petitioner was sent to jail on 18.4.2003 for a period of four days till 21.4.2003. Khushbakht Rai Kora, Sub-Divisional Magistrate, Sardulgarh observed that in case petitioner is released, he can do some big misdeed. The order passed by respondent No. 1 is annexed as Annexure P1 and the same read as under :

**ORDER**

Today, one Kalandra was produced by Sardar Trilochan Singh ASI, P.S. Sardulgarh. The Investigating Officer got recorded his statement that the opposite party who has been produced in the Court today, if he is released then he can do some big mis-deed. In spite of the fact, that the opposite party has submitted the Jamanatnama through his counsel Sh. Sant Ram but the Investigation Officer has mentioned about the breach of peace, so, keeping in view this fact, the bail of the opposite party is declined. The opposite party/respondent be sent to Central Jail,

Bathinda till 21.4.2003. On 21.4.2003, the respondent be produced before Sub Divisional Magistrate, Sardulgarh for further orders.

2. Present petitioner had filed a complaint (Annexure P2) to prosecute Sub Divisional Magistrate Khushbakht Rai Kora respondent No. 1 under Sections 219, 343, 120-B & 34 IPC. In the complaint preferred, respondent No. 1 was summoned by Judicial Magistrate 1st Class, Mansa to stand trial on 6.4.2005 under Sections 219, 343, 120-B & 34 IPC. The Sub Divisional Judicial Magistrate, Sardulgarh, on 8.6.2007, on an application filed u/s 245 Cr.P.C. held that respondent No. 1 cannot be proceeded against in view of the bar of Section 197 Cr.P.C. Aggrieved against the same, petitioner had filed a vision petition which was decided by the Court of Additional Sessions Judge, Mansa, who upheld the discharge of respondent No. 1.

3. This Court has to examine whether the act of Executive Magistrate, Sardulgarh, respondent No. 1 in remanding the petitioner to Central Jail, Bathinda, for a period of four days is justifiable under law or not ? Apparently, the Executive Magistrate, Sardulgarh, had not followed the procedure prescribed under Sections 107, 111 & 116 Cr.P.C. It become necessary to notice provisions of law before any observations are made regarding the conduct of respondent No. 1 Executive Magistrate, Sardulgarh.

4. In case u/s 107 Cr.P.C., the procedure laid down in Chapter VIII of the Code of Criminal Procedure as prescribed in Sections 111 to 118 of the Chapter is to be followed.

5. A bare reading of Section 107 Cr.P.C. make it crystal clear that Magistrate has to call upon the person concerned to execute a bond with or without sureties for keeping the peace for such period. It is only when person fail to execute the bond with sureties, the Magistrate has to consider any other option. Before any person is called upon to furnish a bond with or without sureties, the Magistrate has to pass a requisite order u/s 111 Cr.P.C. Section 111 Cr. P.C. commands that the Magistrate should make an order in writing setting forth the substance of the information received, the amount of bond to be executed, the term for which it has to remain in force and the number, character and class of sureties required.

6. After the necessary order u/s 111 Cr.P.C. is passed and order has been read or explained u/s 112 Cr.P.C. to a person present in the Court, thereafter, the Magistrate has to proceed to inquire into the truth of information upon which action is to be taken or Magistrate shall take such further evidence as may appear necessary. Cases where immediate measures are required to be taken, the Magistrate can take recourse to Section 116(3) Cr.P.C. Right from the day Section 107 Cr.P.C. was enacted, the Courts have held that provision u/s 107 Cr.P.C. is not punitive. The object is not to punish the person but to prevent breach of peace.

7. Therefore, the law require that the Magistrate should enter upon the enquiry and satisfy himself, atleast prima facie about the truth of information and then pass an

order for interim bond as envisaged u/s 116(3) Cr.P.C. Without making any inquiry, the Magistrate cannot order for interim bond and in default to order the detention of a person in custody.

8. In the present case, nowhere the petitioner was called upon to furnish interim bond u/s 116(3) Cr.P.C. A perusal of order (Annexure P1) reveal that even petitioner was willing and ready to furnish bail bonds through his Counsel. The Magistrate had refused to accept the bail bonds. The petitioner was deprived of his liberty and without any legal sanction, he was remanded to Central Jail for a period of four days. The order passed by the Magistrate (Annexure P1) cannot be sustained in the eyes of law. Order (Annexure P1) was either the result of malafide or due to ignorance of law on the part of the Maistrate. Whether such a person can be allowed to act as a Magistrate ? Whether powers of Magistrate can be vested in him in future ? are concerns which require to be probed.

9. This Court in D.S. Gill, Chairman, Pb. Human Rights Organisation v. State of Punjab 1996 (3) RCR 397, examined the legal position and in that case had awarded compensation. In D.S. Gill's case (supra), this Court had held as under :

7. The purpose of enacting Section 107 Cr.P.C. is well known. This is to prevent breach of peace. The provision is preventive and not punitive. By enacting such a provision it is intended that persons who are desperate characters and habitually disturb the public peace should be prevented from disturbing the same. The object of the Section is not to punish the persons for anything which they might have done in past but to prevent them in doing something which is likely to occasion a breach of peace and disturb the public tranquillity in the near future.

8. u/s 107 Cr.P.C. when an Executive Magistrate receives information that any person is likely to commit a breach of peace or disturb the public tranquillity and he is of the opinion that there are sufficient grounds for proceeding, he may in the manner prescribed 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 a period not exceeding one year. u/s 108 of the Code of Criminal Procedure when information is received by an Executive Magistrate that any person, orally or in writing or in any other manner disseminates or attempts to disseminate any matter, the publication of which is punishable u/s 124-A or Section 153-A or Section 153-B or Section 295-A of the Indian Penal Code or concerning any Judge acting or purporting to act in discharge of his duties, the Magistrate after formulation of opinion that there is sufficient ground for proceeding, may require such person to show cause in terms of Section 107(1) of the Code mentioned above. In the same context Section 111 of the Code provides that when a Magistrate acting under Sections 107 to 110 Cr.P.C. deems it necessary to require any person to show cause, he shall make an order in writing, setting forth the substance of the information received or the amount of bond to be executed. Section 112 Cr.P.C. refers to the procedure in respect of persons present in Couty which u/s 117 of the said Code if

on enquiry it is proved that it is necessary for keeping the peace that person against whom enquiry has been made should be directed to execute the bond in the manner prescribed.

9. The leading case on the subject is that of *Madhu Limaye and another v. Ved Murti and others*, AIR 1971 SC 2481. The Supreme Court was concerned with similar provisions under the Code of Criminal Procedure, 1898. While discussing the relevant provisions and the elaborate procedure, the Supreme Court held that the procedure must be followed because "Since the liberty of the person is involved, not because of anything he has done but because of the likelihood of breach of the peace or disturbance of the public tranquillity by reason of some act on his part, the provisions must obviously be strictly followed. Since the action is taken on the mere opinion of the Magistrate, the provisions of the Chapter naturally ensure that no case of harassment arises." It was further observed that the power is used if Magistrate considers that immediate measures are necessary for prevention of a breach of the peace or disturbance of public tranquillity. The Supreme Court also observed that before Magistrate took action in the facts of the case, he did not make any offer to enquire into the truth of the information. No sworn statement of any kind was obtained, as such.

10. What has happened in the present case can well be relisted. Admittedly Shri S. Gill had been detained under the provisions of Sections 107/151 of the Code of Criminal Procedure i.e., to prevent breach of peace or public tranquillity. He was produced before the Executive Magistrate who remanded him to judicial custody for 10 days. No attempt was made to enquire into the truth of the information required under sub-section (3) of Section 117 of the Code of Criminal Procedure. No attempt even was made to call for interim bonds. There were no bonds asked to be furnished for appearance of the said person. After 10.4.1992 there were some holidays but even when the Courts re-opened, the matter was put off. After 10 days the proceedings were dropped. In this process there was no subjective satisfaction of the person incharge and petitioner continued to be detained without due procedure of law.

10. In *D.S. Gill's case* (supra), compensation of Rs. 5,000/- was awarded to the petitioner of that case. In the present case, petitioner has not prayed for compensation. He had initiated legal proceedings and had filed a complaint and had sought prosecution of respondent No. 1 under Sections 219, 343, 120-B & 34 IPC.

11. In view of the legal position noticed in order dated 25.2.2009 passed by the Court which is reproduced below, prosecution of the petitioner is not justifiable.

On 25.2.2009, this Court had passed the following order :

Petitioner is a Class-I officer. The police had produced him before the Court of Naib Tehsildar, Exercising the powers of Executive Magistrate, u/s 107/151 Cr.P.C. It is noticed in order (Annexure P1) that counsel with requisite bail bonds was present

but they were not accepted and the petitioner was made to undergo four days in District Jail, Bathinda. Action of the Executive Magistrate may not be in consonance with the provisions of law or may be malafide as stated by counsel for the petitioner but action of the respondents is protected under Judges Protection Act, 1985 and Judicial Officers Protection Act, 1850. This Court has taken a view in Smt. Gayatri Jain v. State of Punjab, 2005 (2) RCR 535, and the High Court of Madhya Pradesh in Balram Har Prasad Choubey v. Aswani Kumar Yadav, 2002 (1) RCR 31, that officer cannot be proceeded against for any offence.

Counsel for the petitioner seeks time to state and distinguish this position of law.

Adjourned to 9.3.2009.

12. Today, counsel for the petitioner has drawn my attention to Section 3 of the Judges Protection Act, 1985 (hereinafter referred to as "the Act"). Section 3(2) of the Act read as under :

Nothing in sub-section (1) shall debar or act in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge.

13. In the present case, Sub Divisional Judicial Magistrate, Sardulgarh, u/s 245 Cr.P.C., had discharged respondent No. 1. A revision petition filed against that order was also dismissed. The ground for discharge taken into consideration by the trial Court in Annexure P4 primarily was that no sanction u/s 197 C r P.C. has been obtained by the complainant.

14. Even otherwise, as noticed in order dated February 25, 2009 action of the petitioner is protected under the Judges Protection Act, 1985 and Judicial Officers Protection Act, 1850. The view taken in Smt. Gayatri Jain's case (supra) and Balram Har Prasad Choubey's case (supra) also extend immunity to respondent No. 1 so far penal action is concerned, therefore, order of discharge as prayed for cannot be set aside especially when the same has been affirmed by the revisional Court. However, Section 3(2) of the Act give powers to the Government to initiate departmental proceedings.

15. Since the Executive Magistrate discharged judicial functions, learned Registrar General of this Court is directed to hold an enquiry and examine as to how respondent No. 1 can be proceeded departmentally, if need be, matter can be taken up by Registrar General with the Chief Secretary of the State.

With the observations made above, the present petition is disposed off.