

(1988) 09 P&H CK 0104

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 2896-M of 1988

Ajmer Singh

APPELLANT

Vs

State of Haryana and anr.

RESPONDENT

Date of Decision : 06-09-1988

Acts Referred:

Citation : (1988) 2 RCR(Criminal) 341

Hon'ble Judges : A.L.Bahri, J

Advocate : K.K. Gupta, A. S. Chahal, Nav Kiran Singh, Advocates for appearing Parties

Judgement

A.L. Bahri, J.

1. In this petition filed under section 482 of the Code of Criminal Procedure, Ajmer Singh petitioner prays for quashing the report submitted under sections 107/150 of the Code of Criminal Procedure initiated on Daily Diary Report No. 19 dated October 14, 1987 relating to Police Station Chandimandir, District Ambala. Sub Divisional Magistrate, Kalka (respondent No. 2) on receipt of report as aforesaid passed order as under on December 1, 1987

"The papers have been presented today. The respondent be summoned for 11121987."

The petitioner put in appearance in response to the above order and he was asked to file bail bonds. The case was adjourned. Notice of the petition was given to the respondents. I have heard counsel for the petitioner and the counsel for the State.

2. Chapter VIII of the Code of Criminal Procedure deals with proceedings regarding security for keeping the peace and for good behaviour. The proceedings are initiated before the Executive Magistrate, who on receipt of the report submitted by the police (Kalendera), is supposed to proceed with it in accordance with the provisions contained in Chapter VIII. Sections 107 and 111 read together leave no manner of doubt that the Executive Magistrate is

supposed to act judiciously and pass appropriate orders as contemplated after applying judicial mind and coming to the conclusion that there was apprehension of breach of peace or the person was likely to disturb the public tranquillity or do any wrongful act which would occasion breach of peace or public tranquillity. A show cause notice on finding as above was required to be issued to the person concerned who could be ordered to execute the bond with or without sureties. Such an order was required to be passed in writing as contemplated under section 111 of the Code of Criminal Procedure. The kind of order passed by the Sub Divisional Magistrate, as reproduced above, does not fall under the provisions of sections 107 and 111 of the Code of Criminal Procedure. There is no indication from the order that the Executive Magistrate applied his mind to the facts of the case or the allegations contained in the report submitted by the Police. No finding was recorded therein that the present petitioner was likely to commit any wrongful act which would result in breach of peace. The aforesaid provisions are also to be read along with section 116, subsection (6) of the Code of Criminal Procedure which provides that such proceedings would lapse if not completed within a period of six months unless a specific order is passed by the Magistrate to continue the same. The argument that order dated December 1, 1987 passed by the Sub Divisional Magistrate, as reproduced above, was merely an order of summoning the petitioner and not calling upon him to furnish surety bonds does not fall under the provisions of sections 107 and 111 of the Code of Criminal Procedure. Such orders were required to be passed subsequently. This contention cannot be accepted taking into view the provisions of section 116 (6) of the Code of Criminal Procedure. Six months" period is to start when the proceedings are initiated and this provision cannot be circumvented by so moulding the initial order to give the appearance that it is only an order summoning the person concerned and not initiating proceedings. In *Mukandi Lal and others v. The State of Haryana and others*, 1984(2) Recent Criminal Reports 485 : 1985(1) Chandigarh Law Reporter 555, it was held that provisions of sections 107 and 111 of the Code of Criminal Procedure were mandatory and noncompliance thereof would be good ground for quashing the illegal order.

3. The learned counsel for the petitioner has further argued that on perusal of the report, copy of which is Annexure P. 1, as per allegations made therein, certain specific offences were alleged to have been committed and that being the position, resort to security proceedings could not be had. There is force in this contention also. Allegations in the report, Annexure P. 1. are briefly to the following effect :

"The complainant was returning from Panchkula when in the Chowk of Nadha Sahib, Fiat Car No. 2407 came there. Three persons came out and took him towards the Gurdwara Sahib. In the Gurdwara, they called boys of Federation (All India Sikh Students Federation). The complainant's hands were tied on the back and he was given beating. Those three persons threatened him to be killed. They raised slogans and fired 5/6 rounds. On alarm being raised, about 250 or 300 persons from the nearby villages collected and rescued him."

4. On the above facts, the offences of wrongful confinement and causing hurt were apparently made out. Appropriate report for commission of such offences should have been filed and not an action for security proceedings. It was so held by K. P. S. Sandhu J. in Dhanna Singh v. State of Punjab and another, 1986(2) Recent Criminal Reports 395 : 1987 (1) Chandigarh Law Reporter 27.

5. For the reasons recorded above, this petition is allowed and order of Sub Divisional Magistrate dated December 1, 1987 and the proceedings initiated thereupon under section 107 and 150 of the Code of Criminal Procedure are quashed.