

(1988) 06 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 2869-M of 1988

Ajmer Singh

APPELLANT

Vs

The State of Haryana and another

RESPONDENT

Date of Decision : 09-06-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1988) 06 P&H CK 0045

Hon'ble Judges : Amrit Lal Bahri, J

Bench : Single Bench

Advocate : Nav Kiran Singh for Mr. A.S. Chahal, for the Appellant; K.K. Gupta, for the Respondent

Final Decision : Allowed

Judgement

A.L. Bahri, J.—In this petition filed u/s 482 of the Code of Criminal Procedure. Ajmer Singh petitioner prays for quashing of 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 the 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 11-12-1987.

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. Section 107 and 111 read together leaves 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 tranquility or do any wrongful act which would occasion breach of peace or public tranquility. 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 u/s 111 of the Code of Criminal Procedure. The kind of the 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, sub-section (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* 1985 (1) Ch. L.R. 555, it was held that provisions of sections 107 and 111 of the Code of Criminal Procedure were mandatory and non compliance 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 1987 (1) C.L.R. 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 u/s 107 and 150 of the Code of Criminal Procedure are quashed.