

(2025) 04 DEL CK 0946

In the Delhi High Court

Case No : Writ Petition(Crl) 1568 Of 2016, Criminal Miscellaneous Application No. 8124 Of 2016 (Stay), Criminal Miscellaneous Application No. 2159 Of 2017 (Direction)

Anuj Suhag

APPELLANT

Vs

State Nct Of Delhi

RESPONDENT

Date of Decision : 04-04-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Code of Criminal Procedure, 1973 — Section 107, 151, 482
Indian Penal Code , 1860 — Section 34, 323, 348, 506

Citation : (2025) 04 DEL CK 0946

Hon'ble Judges : Neena Bansal Krishna, J

Bench : Single Bench

Advocate : Ravi Sikri, Deepank Yadav, Kanka Grover, Nishant Goyal, Amol Sinha

Final Decision : Disposed Of

Judgement

Neena Bansal Krishna, J.

1. Writ Petition under Article 226/227 of the Constitution of India, 1950 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') for quashing of the Kalandra under Section 107/151 of CrPC, registered at Police Station Vasant Kunj (North) Delhi along with the proceedings emanating therefrom and to set aside the Order dated 15.04.2016, of the learned Special Executive Magistrate, South District, Vasant Vihar, Delhi.

2. It is submitted in the Petition that the Petitioner, Mr. Anuj Suhag got married to the Respondent No. 4, Ms. Seenu Suhag on 22.04.2015. Thereafter, matrimonial differences developed between them. By the end of June, 2015, the Respondent No. 4 informed the Petitioner that she was pregnant, hearing which the Petitioner was overjoyed and took her to a doctor and her pregnancy was confirmed. However, on 30.06.2015, the Respondent No. 4 informed that she did not want the child so soon and wanted to wait for a period of six months to one

year before thinking about the child. Despite all his persuasions, she did not change her mind and many incidents happened between 10th to 18.07.2016, which widened the differences between the Petitioner and the Respondent No. 4 and were brought to the knowledge of the parents.

3. Eventually, a meeting was scheduled between the family on 18.07.2015 wherein the matters were discussed at length. The Respondent No. 4 along with her brother, Mr. Deepak @ Sunny, left the Petitioner's house at Vasant Kunj asserting that she would return after a few days but she did not return till 14.04.2016. In the interim, various meetings were held amongst the family members though, there was no resolution of the differences. On 20.01.2016, son was born to the Respondent No. 4 but the differences did not get sorted out.

4. On 14.04.2016, the Respondent No. 4 came back to the matrimonial home in Vasant Kunj after about nine months, but she had no intention to live in peace or to take care of the family. She misbehaved with the Petitioner's parents and also threatened to commit suicide and to implicate the Petitioner and his family members in a false case. She even ran into the kitchen and fidgeted with the gas pipeline. The Petitioner was compelled to call the brother of the Respondent No. 4, to take her back but he totally disagreed to take her back and did not want to listen to anything further. The Petitioner then lodged a Complaint at about 07:45 p.m. at Police Station Vasant Kunj (North) and informed the Police about the conduct of the Respondent No. 4. However, the Police chose not to take any action on the Petitioner's Complaint. He on returning back home at about 08:30 p.m., informed the Respondent No. 4 about having made a Complaint in the Police Station.

5. At about 12:30 a.m. on the same night, the Respondent No. 4 decided to leave and go back to her parental home. Petitioner volunteered to drop her to her parental home to which she agreed amicably. At about 01:00 a.m., they left in two cars, one of which was driven by the Petitioner's father and the Petitioner in which they went to the Police Station Vasant Kunj (North) to inform that the matter has been amicably resolved; while in the other car, mother and sister of the Petitioner, dropped the Respondent No. 4 to her parental home safely about which they informed the Petitioner at about 01:10 a.m.

6. Thereafter, the Petitioner and his father on reaching the Police Station, came to know that a Counter-Complaint has been filed by Mr. Deepak @ Sunny, brother of the Respondent No. 4 as a counter-blast to the Complaint filed by the Petitioner at 07:45 p.m. He was totally shocked and they confronted the Respondent No. 2, ASI Hukam Singh as to how the Petitioner and his family members could be held liable for something which happened at the parental home of the Respondent No. 4. However, Respondent No. 2 left no opportunity to insult and harass the Petitioner's father in the Police Station.

7. In between all this, the Respondent No. 4 spoke to someone on the phone and within second, they started abused the Petitioner and his father and made false

charges of assaulting the Respondent No. 4 and the baby and for having left her near her parental home. Till about 04:00 a.m., the Petitioner tried to convince the Respondent Nos. 2 and 4 that he would try to arrange a separate rented accommodation for himself and the Respondent No. 4 if separation was all that she wanted and requested his parents and sister to be kept out of it. However, all the efforts went in vain and the Respondent Nos. 2 and 3 conspired with the Respondent No. 4 and her family, to harass the Petitioner.

8. At about 04:00 a.m., the Petitioner was arrested on the basis of the Complaint filed by the Respondent No. 4 and was sent for medical examination to Safdarjung Hospital.

9. He further alleged that he overheard Respondent No. 2 having conversations with the Respondent No. 3, Constable Balwant and thereafter, he was put in the lockup in the Police Station. The Respondent No. 2 abused him and Respondent No. 4's cousin, Mr. Vikram also joined him and extended threats. He was beaten mercilessly and dragged on the stairs back to the Cell. Because of the injury to his head, he felt giddy and vomited and requested for water of which was refused and was told that it was no picnic. Eventually, the Respondent No. 2 also threatened to get the Petitioner kill with the help of the inmates in jail.

10. The Petitioner was produced before the Special Executive Magistrate ('SEM'), South District, Delhi on 15.04.2016 and thereafter, Kalandra under Section 107/151 of CrPC was submitted before the SEM.

11. It is further stated that the statement of the Respondent No. 2 as well as that of Respondent No. 4, was recorded but no opportunity was given to the Petitioner, to present his side of the story. The procedure prescribed under Section 107/151 of CrPC was not even followed. So much so, he was not even granted the Bail.

12. Then the Petitioner's father hired two lawyers. His second MLC was conducted at Safdarjung Hospital. Eventually, he was granted Bail on 16.04.2016 and was released on Bail at around 04:30 p.m.

13. The Petitioner has sought the quashing of the Kalandra proceedings on the grounds that the impugned Order dated 15.04.2016 was totally against the law made in complete denial of principles of natural justice. No Notice was served upon the Petitioner, though mandated. Prior service of Notice of Preliminary Enquiry is required to be given and only thereafter, Show Cause Notice is required to be served in the prescribed manner. However, no preliminary enquiry was done and no Notice was issued to the Petitioner, before sending him to judicial custody despite the presence of surety.

14. Reliance has been placed on *Asha Pant vs. State*, 2008 (102) DRJ 216 wherein Co-ordinate Bench of this Court observed that before proceedings under Section 107 of CrPC, the Magistrate must form an opinion in writing, which should be discernible in case the Order is challenged in the Court. Such opinion

be based on some preliminary inquiry to ascertain if such action is required to prevent breach of peace or public tranquillity. However, when the dispute is essentially between the neighbours in a property, or between a landlord and tenant, Notice should be issued only upon the perusal of the Kalandra. Such a mechanical exercise without the SEM forming an independent opinion would render the exercise of the power vulnerable to invalidated.

15. It is submitted that there was no Preliminary Inquiry conducted by learned SEM. Learned SEM mechanically relied upon the fabricated Kalandra without even ascertaining the veracity of whether there was any apprehension of breach of peace and disturbance of public tranquillity.

16. Furthermore, the SEM did not provide any reasons as to how he had satisfied himself that the offence under Section 151 of CrPC was made out for which the Petitioner was required to execute the bond. Learned SEM has abused his powers under Section 107 and acted arbitrarily in sending the Petitioner to judicial custody.

17. The Reliance has placed on *Madhu Limaye vs. Ved Murti*, AIR 1971 SC 2481; *Tavinder Kumar vs. State*, 40 (1990) DLT 210 and *Sunil Batra vs. Commissioner of Police*, 1984(3) Crimes 771.

18. The prayers have, therefore, been made that the Kalandra under Section 107/151 CrPC be quashed and the investigation be taken against the erring police officials. The relief was subsequently modified to also Declare that the Kalandra is illegal, void ab initio and the arrest and detention of the Petitioner in Tihar Jail, as illegal and to further expedite the Departmental enquiry against the Respondent Nos. 2 and 3, which be submitted in the Court.

19. Submissions Heard and record perused.

20. This Court in Order dated 21.02.2018 observed that all the prayers have been answered. The proceedings under Section 107/Section 151 CrPC, Police Station Vasant Kunj, have been dropped. There was no objection to setting-aside the Order of detention dated 15.04.2016, passed by the Executive Magistrate whereby he was sent to Tihar Jail and there was no objection if the Order was held to be illegal.

21. Additionally, Departmental enquiry has been initiated against the Respondent Nos. 2 and 3, which is in progress. Further, FIR No. 35/2018 under Section 323/348/506/34 of the IPC, 1860, has been initiated against the ASI Hukam Singh and Constable Balwant, the Respondent Nos. 2 and 3 respectively.

22. Also, Order dated 02.02.2023 reflects that an Affidavit has been filed on behalf of the learned Additional Standing Counsel wherein all these aspects have been reaffirmed about initiation of Departmental enquiry against the Respondent Nos. 2 and 3 and the proceedings under Kalandra, having been dropped against the Petitioner.

23. Fundamentally, the perusal of the Kalandra shows that though, it had been stated that the Respondent No. 4 and her family members had created a rucous in the colony leading to breach of peace and tranquillity, but there was no such statement given by the Respondent No. 4, which was recorded subsequently during the proceedings.

24. It has already been concluded that the proceedings in the Kalandra, have been dropped and there is no objection to holding the Order dated 15.04.2016 as illegal as it fails to satisfy the basic ingredients of the Kalandra under Section 107/151 CrPC. Further action has already been initiated against the Respondent Nos. 2 and 3 and the FIR has also been registered. All the prayers of the Petitioner are, therefore, satisfied and the Petition is accordingly disposed of.

25. Pending Application(s), if any, also stand disposed of.