

**(2011) 05 DEL CK 0213**

**In the Delhi High Court**

**Case No :** Criminal M.C. 3037 of 2009 and Criminal M.A.10248 of 2009

Ashok Kumar Vijhania and Others

APPELLANT

Vs

State and Others

RESPONDENT

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**Date of Decision :** 09-05-2011

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 107, 111, 116(6), 151

**Citation :** (2011) 05 DEL CK 0213

**Hon'ble Judges :** Ajit Bharihoke, J

**Bench :** Single Bench

**Advocate :** Harish Gupta, for the Appellant; Fizani Husain, APP for R-1 to 3 and Party-in-Person, for the Respondent

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## **Judgement**

Ajit Bharihoke, J.—The short point involved in this case whether the proceedings u/s 107/151 Code of Criminal Procedure which are preventive in nature can allowed to be continued beyond a period of six months from the date on which show-cause notice u/s 111 of the Code of Criminal Procedure was served upon the person against whom the proceedings u/s 107 Code of Criminal Procedure is initiated?

2. Relevant facts for the disposal of this petition are that proceedings u/s 107/151 Code of Criminal Procedure were initiated against the Petitioners and Respondent No. 4 Shitij Kumar pursuant to "Kallandara" dated 15.02.2009 P.S. Model Town filed by the police before the Special Executive Magistrate (North-West). On being satisfied that there was a reasonable apprehension of breach of peace and disturbance of public tranquility, the Executive Magistrate concerned issued show cause notices u/s 107/111 Code of Criminal Procedure on the parties including the Petitioners and called upon them to execute bonds in the sum of Rs. 15,000/-with one surety in the like amount respectively for keeping peace during the course of proceedings. Proceedings are still pending.

3. Learned Counsel for the Petitioners has contended that the record would show that pursuant to the "Kallandara" u/s 107/151 Code of Criminal Procedure,

learned Special Executive Magistrate, North-west, Delhi served the Petitioners with the show-cause notice u/s 111 Code of Criminal Procedure and also ordered them to furnish an interim bond for maintaining peace and tranquility in the sum of Rs. 15,000/-with one surety. Undisputedly, aforesaid proceedings are pending till date. Learned Counsel has drawn my attention to Section 116(6) Code of Criminal Procedure wherein it is provided that the enquiry u/s 111 Code of Criminal Procedure shall be completed within a period of six months from the date of its commencement and if it is not so completed, the proceedings, on expiry of period shall stand terminated unless the period of enquiry is extended by the Magistrate concerned by recording special reasons for doing so. In the light of aforesaid mandatory provision of law, learned Counsel has pressed for the quashing of the proceedings u/s 107/151 Code of Criminal Procedure initiated against the Petitioners.

4. Learned APP as also the Respondent No. 4, on the contrary, have submitted that the Petitioners and Respondent No. 4 are at dispute in respect of the rights in property No. A2/6, Model Town, Delhi and for that reason, for quite some-time, they indulged in fighting with each other. The tension between them is still persisting, therefore, there is no merit in request to quash the proceedings against the Petitioners u/s 107/151 Code of Criminal Procedure.

5. I have considered the rival contentions and perused the record. Instant petition was filed on 02nd September, 2009 and the proceedings before Special Executive Magistrate were stayed vide order dated 03rd September, 2009. Admittedly, show cause notice u/s 111 Code of Criminal Procedure was served on the Petitioners on 16th February, 2009. As per the copies of the proceedings before Special Executive Magistrate placed on record, it is seen that the last proceedings were conducted on 25th August, 2009 i.e. after the expiry of six months from the date on which show cause notice u/s 111 Code of Criminal Procedure was served on the Petitioners. There is nothing on the record to suggest that learned Special Executive Magistrate has extended the period of enquiry beyond six months by recording special reasons in this regard. Therefore, it is obvious that the continuation of proceedings beyond six months of date of service of show cause notice i.e. 16th February, 2009 is in contravention of Section 116(6) Code of Criminal Procedure, which reads thus:

116. Inquiry as to truth of information.

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs:

Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.

6. Otherwise also, perusal of Section 107 Code of Criminal Procedure would show that under this provision, the Magistrate can bind a person with a bond for maintaining peace and public tranquility for the period not exceeding one year. Aforesaid one year period with effect from initiation of proceedings on 16.02.2009 when Petitioners were bound down by interim bond for maintaining peace has already expired. For this reason also, the proceedings u/s 107/151 Code of Criminal Procedure are liable to be quashed. Further, on perusal of the latest status report dated 06th May, 2011 under the signatures of SHO, P.S. Model Town placed on record, it transpires that as per the record of police station Model Town, no complaint has been filed by either of the parties against each other after the preparation of this "Kallandara". This circumstance also shows that now, there is no tension between the parties, which may lead to an apprehension of breach of peace or public tranquility by the conduct of the Petitioners.

7. In view of the circumstances discussed above, I do not find any justification in continuation of the proceedings u/s 107/151 Code of Criminal Procedure before the Special Executive Magistrate, particularly when, the enquiry proceedings have gone beyond the period of almost six months. Accordingly, the proceedings against the Petitioners u/s 107/151 Code of Criminal Procedure pending in the court of Special Executive Magistrate are hereby quashed.

8. Petition stands disposed of.