

---

**(2009) 10 DEL CK 0140**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 6046 of 2008**

|                  |    |            |
|------------------|----|------------|
| Moinuddin        | Vs | APPELLANT  |
| State and Others |    | RESPONDENT |

---

**Date of Decision :** 27-10-2009

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116, 151  
Delhi Police Act, 1978 — Section 70

**Citation :** (2010) 2 Crimes 114 : (2010) 6 RCR(Criminal) 1891

**Hon'ble Judges :** Veena Birbal, J;Badar Durrez Ahmed, J

**Bench :** Division Bench

**Advocate :** Vijay Aggarwal and Rakesh Mukhija, for the Appellant; Ehtesham Hashmi, for Saleem Ahmed, for the Respondent

---

## Judgement

Badar Durrez Ahmed, J.—When this matter was taken up for hearing on the first occasion, i.e. on 20.08.2008, the counsel for the petitioner submitted that he does not press the challenge to the vires of Section 70 of the Delhi Police Act. He, however, prayed for framing of proper guidelines with regard to dealing with matters under Sections 107/151 of the Code of Criminal Procedure, 1973 and for strict compliance with the same. We find that this aspect of the matter has been adequately addressed by the Standing Order No. 189/2008 issued by the Commissioner of Police, Delhi, a copy whereof is at pages 175 to 178 of the paper book. The relevant portions of the said Standing Order are as under:

XXXXX XXXXX XXXXX XXXXX Since these provisions relate to the liberty to a human being, the Special Executive Magistrate (SEM) is under obligation to hold an inquiry to satisfy himself regarding the existence of material justifying action under this section. Various Courts have issued guidelines regarding the exercise of powers under the above mentioned action. The Hon'ble High Court of Madhya Pradesh (Indore Bench) in Arun Singh Vs. State of Madhya Pradesh and Others, has given the following directions to be followed by all the Magistrates while dealing with cases u/s 107/116/151 Cr.P.C. The above mentioned case has been

endorsed by the Hon''ble High Court of Delhi in Crl. Ref. No. 1/2007 - Court on its Own Motion v. State and Ors.

(A) The Magistrate should stress upon the recording of statements of the investigating officer/witnesses before initiating any proceedings u/s 107/116/151 Cr.P.C.

(B) The Magistrate should not order furnishing of surety in the absence of statements of IO/witnesses.

(C) The Magistrate should not send the detenu to jail for failure to furnish surety as directed by him, in case statements of IO/witnesses have not been recorded.

(D) The Magistrate should not sign the order in a mechanical manner on a cyclostyled paper but it should be well reasoned and detailed one.

XXXXX XXXXX XXXXX XXXXX All the police officers while dealing with cases u/s 107/151 Cr.P.C. should keep in the mind the above mentioned guidelines/directions mentioned above before initiating any action. They must have the prior concurrence from the concerned ACsP I/C subdivisions before effecting any arrest u/s 151 Cr.P.C. This must be meticulously observed. The ACsP should not give their approval in mechanical manner but must act strictly as per the law/directions given by various courts to ensure that there is no misuse of these provisions of the law. The SEMs must realise the onerous responsibility they carry and act in a fair and transparent manner in accordance with guidelines laid down by the courts and summarized in this S.O.

2. From the above, it is clear that the directions which have been issued by the High Court of Madhya Pradesh and which have been endorsed by this Court in the case of Court on its Own Motion v. The State and Ors. (Crl. Ref. No. 1/2007) have been reiterated in the Standing Order. Since those directions of the Courts have already been incorporated in the Standing Order itself, we need not issue any further directions. The grievances of the petitioner are adequately addressed by the Standing Order.

3. The writ petition stands disposed of.