
(1984) 09 P&H CK 0053

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 4416-M of 1984

Mukandi Lal and ors.

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

Date of Decision : 18-09-1984

Acts Referred:

Citation : (1984) 09 P&H CK 0053

Hon'ble Judges : Pritpal Singh, J

Advocate : V.K. Jain, Sudhir Sardana, S.K. Jain, Advocates for appearing Parties

Judgement

Pritpal Singh, J.—This is a petition under section 482, Code of Criminal Procedure (hereinafter referred to as the Code) for quashing the order dated 14th of July, 1984, of the Executive Magistrate, Kurukshetra, by which on a police report under section 107 of the Code, the learned Magistrate ordered as follows :

"Today, this Kalandra was produced. The papers were perused. I am satisfied that the applicant has danger from the respondents. The respondents be summoned for 28.7.84 through summons and action U/S 111, Cr.P.C. be taken and bond for a sum of Rs. 5,000/ be produced."

2. The learned petitioners' counsel has contended that the mandatory provisions of sections 107 and 111 of the Code have not been complied with by the learned Magistrate while passing the impugned order. In order to appreciate this contention, it is necessary to understand the import of sections 107 and 111 of the Code, which are reproduced as under :

"107. Security for keeping the peace in other cases :

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause

why he should not be ordered to execute a bond, with or without sureties for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2)

111. JUDGMENT to be made : When a Magistrate acting under section 107, Section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required".

A perusal of these two sections would clearly show that for taking action under section 107 of the Code, the Executive Magistrate has to form an opinion that sufficient ground for proceeding under this section is made out for maintaining peace and public tranquillity. After forming this opinion, the Magistrate has to make an order under section 111 of the Code in which he has to set forth the substance of the information received and the amount of the bond to be executed.

3. A reading of the impugned order reproduced above shows that Executive Magistrate has not set forth in the order the substance of the information received on which he had formed the opinion. Manifestly, therefore, the impugned order has violated the mandatory provisions quoted above. I am supported in this view by a Single Bench judgment of this Court in *Joginder Singh and others v. The State Haryana and another*, 1979 PLR 573.

4. An order similar to the impugned order in the present case was considered by the Delhi High Court in *Dhani Ram v. State*, 1973 PLR (D) 187 and while setting aside the order it was observed that in order to assume the jurisdiction to act in the manner provided by the provisions that follow section 107(1) of the Code, the Magistrate is to state in his order the grounds sufficient for his forming the opinion that any person was likely to commit a breach of the peace or was likely to disturb the public tranquility or that any such person was likely to do any wrongful act which may occasion breach of the peace or which may disturb public tranquility. If the order passed under section 107 of the Code does not specify the grounds leading to the formation of the opinion by the Magistrate then the order will not only suffer from arbitrariness and from being a mere colourable use of the statute but will also be such which the superior Court will not be able to scrutinize for judging its validity".

5. In another judgment of the Delhi High Court in *Gurbachan Singh Mehta, & another v. State*, 1974 C.L.R. 571, it was ruled that an obligation is imposed on the Magistrate acting within the ambit of section 107 of the Code that he must record sufficient grounds on account of which he may have formed the opinion for initiating the proceedings under the provision.

6. Thus it is clear that in initiating proceedings under section 107 of the Code, the Magistrate should not only be satisfied that there is need of such proceedings but he also should record reasons for his satisfaction and then issue the notice contemplated under section 111 of the Code to the person sought to be bound by it. In the impugned order this mandatory requirement is lacking as the Magistrate has failed to set forth the substance of the information received and has not recorded his reasons for his satisfaction that proceedings under section 107 of the Code should necessarily be taken against the present petitioners.

7. No meaningful argument was raised either by the counsel appearing for the respondent State or for the complainants. Mr. V.K. Jain, Advocate appearing for the complainants cited *Municipal Corporation of Delhi v. Ram Krishan Rohtagi & Ors.*, 1983(2) C L R. 79 and *Shamsher Singh v. Shri H.K.S. Malik*, Additional District & Sessions Judge, 1985(1) R.C.R.(Criminal) 529 : 1983(2) CLR 407, which are totally irrelevant for the decision of the present petition. These judgments do not relate to the proceedings u/s 107 of the Code.

8. For these reasons, I allow this petition and quash the impugned order of the Executive Magistrate dated 14th July, 1984.