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**(2007) 08 DEL CK 0054**

**In the Delhi High Court**

**Case No : Writ Petition (Criminal) No. 1052 of 2005**

Smt. Jagwanti

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

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**Date of Decision : 30-08-2007**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 107, 151  
Penal Code, 1860 (IPC) — Section 365, 376

**Citation : (2007) 08 DEL CK 0054**

**Hon'ble Judges : S.N. Dhingra, J**

**Bench : Single Bench**

**Advocate : N.S. Dalal, Adv Mukta Gupta, for the Appellant;**

**Final Decision : Dismissed**

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## **Judgement**

Shiv Narayan Dhingra, J.—This writ petition has been filed by the petitioner alleging that on 5th May, 2005 petitioner was called to police station and was taken to the office of A.C.P. at Najafgarh after sunset and produced before Special Executive Magistrate, who ordered for furnishing of bail bond. The surety bond was produced by petitioner along with an FDR showing solvency of the surety but the surety bond was sent for verification and the petitioner was sent to jail. It is submitted that there was no need for verification of the surety. She was arrested only under preventive provisions of Sections 107/151 of Cr.P.C. She being a lady could not have been arrested after sunset. She gave a call to the PCR when one Smt. Savitri and her family members started damaging her property. Instead of taking action against the culprits, she was arrested under Sections 107/151 of Cr.P.C. There were about 20 cases against Smt. Savitri and her family members. Daughter of Smt. Savitri was used as a tool for implicating the family members of the petitioner in a false case u/s 365/376 IPC and the entire family of the petitioner was suffering. Thereafter, she narrated how a TV channel AAJ TAK had conducted a sting operation in which certain police officials were seen accepting bribe. She further submitted that on 06th May, 2005 her

lawyer appeared before the Special Executive Magistrate and requested for her release but she was not released on the ground that her surety bond had not come after verification. Although, petitioner is a woman but no regard was shown for law in respect of arrest of a person as laid down in D.K. Basu v. State of West Bengal case.

2. State has filed status report in this case giving facts that on 04th May, 2005 an information was received from the PCR regarding a quarrel at Gali No. 8, Dabri Extension, New Delhi. This information was noted vide DD No. 27A and S.I. Randhir Singh reached at the spot on being entrusted with the DD. He found a large number of people gathered there and petitioner and one Smt. Savitri were found quarreling having stones and bricks in their hands. On his enquiry, Savitri stated that she was getting her house repaired but her neighbour Jagwanti (petitioner) objected to the repairs. Smt. Jagwanti claimed that Smt. Savitri was damaging her property. S.I. Randhir Singh tried to pacify the quarrel but both the ladies were determined to quarrel and were adamant to cause harm to each other. He was left no option but to arrest them under Sections 107/151 Cr.P.C. If, he had not arrested them, there was every likelihood that a cognizable offence would have been committed. On the next day, both the ladies were produced before Special Executive Magistrate, South West, who remanded them to judicial custody. Petitioner had submitted her surety bond and the same was sent to the SHO Dabri for verification on the same day. Verification of the surety bond was marked to S.I. Randhir Singh and surety bond was handed over to Head Constable Ashok Kumar with directions to hand over the same to S.I. Randhir Singh. Head Constable, Ashok Kumar handed over the same to S.I. Randhir Singh only on 10th May, 2005. There was a negligence and dereliction of duty on the part of Head Constable, Ashok Kumar and a disciplinary action has been recommended against him.

3. Prayer has been made in the writ petition to this Court directing registration of a case against respondent nos. 4 to 6 for illegal confinement of the petitioner and for her illegal arrest after sunset. Counsel for the petitioner also sought an enquiry about her being in custody till 11.05.2005 and sought a mandamus to the respondents for paying her compensation of Rs. 5 lacs. The other prayer is that Sections 107/151 of Cr.P.C. should be declared unconstitutional.

4. As far as registration of FIR is concerned, I consider the petitioner should approach the court concerned and lodged a complaint against the accused persons against whom she has made allegations and lead evidence before the Metropolitan Magistrate, who after considering the evidence has power to take action as per law. In view of judgment of Supreme Court reported in Aleque Padamsee and Others Vs. Union of India (UOI) and Others, , this Court cannot issue directions for registration of FIR. Similarly, an enquiry into her alleged wrongful confinement can be done by the Magistrate concerned.

5. As far as sending surety bond produced for her release for verification is concerned, I consider that this Court cannot interfere into such an action. There

have been instances in various cases in courts where bogus sureties have been produced with fake identity cards, ration cards and fake documents of solvency. Criminal cases have been registered against such fake sureties, who appeared for certain accused persons and cases are pending before the Trial Courts. When such is the situation that fake sureties are produced in the court, no fault can be found if the courts give an order for verification of the surety bonds. The State Counsel also stated that no FDR but only an election card was produced in this case. It has been denied by the State Counsel that the petitioner was arrested after sunset or there was any violation of guidelines laid by Hon"ble Supreme Court in D.K. Basu v. State of West Bengal case.

6. This Court in exercise of writ jurisdiction cannot adjudicate the disputed facts. The petitioner would have to approach the appropriate forum for adjudication of dispute in facts, whether or not police complied with the directions given in D.K. Basu v. State of West Bengal case, whether surety bond was produced by solvent person or not. All issues of disputed facts can be decided only during trial. This Court has discretion not to entertain such writ petitions where alternate remedy is available to the petitioner. The petitioner has liberty to approach the court of learned Metropolitan Magistrate and file a complaint about her grievance, if, she so desires. The present writ petition is not maintainable and is hereby dismissed.