



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: January 29, 2025

Pronounced on: April 30, 2025

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W.P.(CRL) 1146/2016

1. **RAM AVTAR**
S/o Shri Babu Ram
R/o 4, Lal Bahadur Shastri Marg,
Karawal Nagar,
Delhi-110094.
2. **DEVENDRA**
S/o Shri Babu Ram
R/o 4, Lal Bahadur Shastri Marg,
Karawal Nagar,
Delhi-110094.

.....Petitioners

Through: Mr. Pankaj Kumar, Mr. Sandeep
Kumar Singh, Mr.
ShubhenduSazena and Mr. Anuvrat
Singh, Advocates.

Versus

1. **THE STATE**
2. **COMMISSIONER OF POLICE**
I.P. Estate,
New Delhi
3. **ASSISTANTCOMMISSIONER OF POLICE**
Police Station, Khajuri Khas
Delhi
4. **S.H.O.**
Police Station, Khajuri Khas



Delhi

5. **CHANDRAVIR SINGH**
Investigation Officer
Police Station, Khajuri Khas
Delhi

.....Respondents

Through: Mr. Amol Sinha, Additional
Standing Counsel (Crl.) for the State
with Mr.Kshitiz Garg, Mr. Ashvini
Kumar, Ms. Chavi Lazarus & Ms.
SanskritiNimbekar, Advocates

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Writ Petition has been filed under Article 226 / 227 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure 1973 (*hereinafter referred to as "CrPC"*) for setting aside proceedings in relation to *Kalandra* under Section 107/151 Cr.P.C., arising out of DD No. 11-A dated 24.12.2015, registered at Police Station Khajuri Khas, Delhi and consequential Order dated 17.02.2016 of the Special Executive Magistrate ('SEM').

2. The case of the Petitioners is that they were wrongfully arrested on the basis of a false and fabricated *Kalandra*, initiated by one Mr. Bhim Sen with malicious intent, who sought to forcibly dispossess Petitioner No.1 from the subject plot. It is submitted that Respondent Nos. 2 and 3, the Commissioner of Police and the Assistant Commissioner of Police, acted



in collusion with Bhim Sen and by abusing their official position, facilitated his illegal actions by wrongly arresting the Petitioners and initiating the proceedings under Sections 107/151 Cr.P.C.

3. **To understand the assertions of the Petitioners, a brief reference be made to the factual background which has led to the registration of Kalandra. Briefly stated,** the subject plot admeasuring 1000 square yards, was originally owned by Pat Ram and his mother Banno Devi, who sold it to one Mr. Yashpal (s/o Bala Singh, r/o Jheel Karanja, Delhi) vide Receipt dated 12.11.1981. Mr. Yashpal, in turn, sold the plot to Jaswant Singh Dilawar and Sudarshan Kaur vide Receipt dated 12.04.1982. Thereafter, through an Agreement to Sell and General Power of Attorney (GPA), vacant possession was handed over to Rajbir Singh and Naval Singh on 16.06.1983, who in turn sold the Plot to Petitioner No. 1, Ram Avtar vide registered Sale Deed dated 21.05.1999, and also handed over the exclusive possession of the suit land which remained with him till 24.12.2015, when he was allegedly illegally disposed by Sh. Bhim Sen.

4. One *Ran Singh*, brother of Bhumidhar/ original owner Pat Ram, claiming ownership of the subject plot on the basis of revenue records, *filed a Suit for Injunction* against Ram Avtar and Bhim Sen, **who projected his ownership on the basis of an Sale Deed dated 08.02.2005 and General Power of Attorney dated 09.01.2006, executed in his favour by Ran Singh and Legal heirs of Pat Ram.**

5. The Petitioner **asserted** that Bhim Sen filed an FIR No. 1349/2015 under Sections 420/467/468/471/506/34 IPC Police Station Khajuri Khas, Delhi dated 11.12.2015 which was registered by the police officials under



extraneous circumstances. Sh. Babu Ram, Petitioner's father filed an Application informing the SHO about his rightful claim and wrong registration of the FIR.

6. The Petitioners claim that Police Officials i.e. Respondents No. 4-SHO, Respondent No.5- Investigating Officer, Police Station Khajuri Khas in collusion with Bhim Sen, prepared a false *Kalandra* under Sections 107/151 Cr.P.C. and arrested the Petitioners with *mala fide* intention to facilitate grabbing of plot of land by Bhim Sen, who succeeded in taking possession of the plot in question. The false arrest of Petitioners and falsity of the contents of the *Kalandra*, is well reflected in five PCR Calls that were made by the Petitioners.

7. The Petitioners were produced before the SEM, North East District, on 24.12.2015, who refused to take the Bail Bonds and Surety Bonds and without complying with the mandatory requirements of Sections 111, 112 and 116 Cr.P.C., remanded the Petitioners to Judicial Custody.

8. The Bail Bonds and Surety Bonds were again furnished to the SEM by counsel for the Petitioners, on 26.12.2015 which were accepted and Petitioner was released. On 17.02.2016, Final Order was passed against the Petitioner for furnishing a Bond of Peace in the sum of Rs 20,000 for six months, under Section 117 of Cr.P.C.

9. The *Kalandra* and the consequent submission of *Bond for Peace* has been **challenged by the Petitioner on the ground** that the *Kalandra* was prepared maliciously to facilitate Bhim Sen to forcibly and illegally capture the plot of land. In fact, no quarrel took place between the parties. Rather, it was Bhim Sen who tried to illegally and forcibly take possession



of the plot and with the same intention, had dropped the dust. It is submitted that at best, the Police could have prepared a *Kalandra* under Section 145 Cr.P.C. and not under Sections 107/151 Cr.P.C. Reliance has been placed on Purshottam Ramnani Vs. Government of NCT of Delhi & Ors. 2008 (4) JCC 2978 wherein it was held that if the apprehension of breach of peace is stemming out of any property dispute, the police should resort to Section 145 Cr.P.C. and not Section 151 Cr.P.C.

10. Furthermore, the SEM while dealing with the *Kalandra* has not complied with the mandatory procedures as mandated under Section 107, 111, 112, 116 Cr.P.C. which require that pending the inquiry, SEM should ask for the Bond of Surety and if party fails to execute the Bond, then only they can be remanded to judicial custody, if it is deemed fit. Further, SEM while remanding the Petitioners to judicial custody, did not fix any period for which they were sent to judicial custody which was in conflict with Section 167 Cr.P.C. which says that none can be sent to judicial custody for more than 15 days.

11. The Petitioners were sent to judicial custody in extremely casual manner, unmindful of the fundamental right of liberty of the Petitioners guaranteed under Section 21 of the Constitution of India.

12. Further, no case under Section 151 Cr.P.C. is made out as it presupposes a design to commit cognizable offence. No such design to commit a cognizable offence was neither alleged nor discernible from the contents of *Kalandra*.



13. The procedure adopted by the SEM is against the law as succinctly explained by the Coordinate Bench of this Court in Balraj Madhok Vs. Union of India AIR 1967 Delhi 31.

14. It is therefore submitted that the Order dated 17.02.2016 of the Special Executive Magistrate in *Kalandra* under Sections 107/151 Cr.P.C. be quashed and directions be given to the Respondents to compensate the Petitioner with a sum of Rs. 5 Lakhs for malicious and false implication under Sections 107/151 Cr.P.C. Further, directions be issued to the SEM to strictly comply with the provisions of Cr.P.C. while holding an Enquiry under Section 107/151 Cr.P.C.

15. ***An Affidavit dated 31.10.2018 was filed on behalf of the Station House Officer (SHO) Pawan Kumar, Police Station Khajuri Khas, Delhi*** wherein it is stated that the contents of the present Writ Petition are not in accordance to the record and are completely denied. It is submitted that on 24.12.2015 four persons, namely, Surender, Ram Avtar, Devender and Vinod Kumar were threatening and grappling with each other. Despite Inspector Chandravir Singh trying to pacify and advise them not to quarrel, they did not pay any heed and continued to grapple with each other. It was learnt that the dispute *inter se* the parties was in respect of the plot of land in regard to which FIR No. 1349/2015 dated 11.12.2015 had already been registered. It is asserted that there was imminent danger of commission of an offence for which all the four persons were arrested under Sections 107/151 Cr.P.C. and were produced before SEM on 24.12.2015. They were remanded to judicial custody as they failed to produce the Surety Bonds; however, later in the day they produced their Sureties which were



accepted and the accused persons were released subsequently *vide* Order dated 24.12.2015.

16. An Additional Affidavit dated 24.12.2019 was filed to clarify that the Petitioners were released on 26.12.2015. It is submitted that the *Kalandra* stands finally culminated *vide* Order dated 17.02.2016 when all the accused had been bound to maintain *Peace and Good Behaviour* for a period of six months.

17. A technical objection has also been taken that the Petitioners have an alternate and efficacious remedy of filing an Appeal against the Order dated 17.02.2016 and the Petition is not maintainable.

18. ***Learned Counsel for the Petitioner has submitted that*** the Petitioners had been wrongfully confined as Sureties furnished by him on 24.12.2015 had been wrongly rejected for no reason, in contravention of provisions of Cr.P.C. In fact, they were detained illegally for two days and were eventually released on 26.12.2015.

19. It is further contended that the Cr.P.C. provides a detailed procedure to be followed for adjudication of the *Kalandra*. Neither any Show Cause Notice has been issued nor are there any independent observations of the SEM. No evidence whatsoever has been taken and the contents of *Kalandra* have been accepted without any independent application of mind and the Petitioners have been asked to furnish the Bonds of Peace and Good Behaviour for a period of six months, on 17.02.2016. It is submitted that the entire procedure followed by the SEM in connivance with the Police, is grossly violative of their Fundamental Rights under Article 21 of



Constitution of India and tantamount to illegal detention for which they are entitled to be compensated.

20. ***Learned Additional Standing Counsel submitted*** that due procedure has been followed and there is no merit in the present Petition and it is liable to be dismissed.

21. **Submission heard and record perused.**

22. *Apreliminary objection* has been taken that the Petitioners had an alternative efficacious remedy by way of Appeal before the learned Additional Session Judge under Cr.P.C., which they had chosen not to avail and have approached this Court by way of present Writ Petition.

23. While it is correct that there was a remedy available to the Petitioners to Appeal against the Order of SEM 17.02.2016 before the learned ASJ, but the challenge to the impugned Order before this Court is not only confined to merits but also on violation of the fundamental rights of the Petitioners and patent illegality of the procedure followed in registration as well as conduct of the proceedings. There is nothing under the law which excludes the jurisdiction of this Court under Article 226 and 227 of the Constitution of India especially where patent illegality is pleaded. Such hyper technical objection is neither warranted nor merited in the present case, as is borne out from the discussion below.

24. The proceedings in the *Kalandra* under Sections 107/151 Cr.P.C. had been initiated on the averments that the two Petitioners, Ram Avtar and Devender along with Surender and Vinod Kumar, were found grappling with each other, claiming to be owner of 1000 sq. yards of plot of land. While Petitioners were claiming to have purchased it in 1985, Surender and



Vinod Kumar were asserting that the plot belonged to them, as their paternal uncle had illegally sold it. It was further stated that despite the endeavour of the two Police Officials to stop them from fighting, they continued to abuse and threaten each other and left with no option, they were taken into custody and booked under Sections 107/151 Cr.P.C. and produced before the learned SEM.

25. Here it becomes essential to discuss the aforesaid provisions as prescribed under the Cr.P.C. Section 107 and 151 of Cr. P. C. reads 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) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.



151. Arrest to prevent the commission of cognizable offence-

(1) A police officer, knowing of a design to commit any cognisable offence may arrest, without orders from the Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

(2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force."

26. At the outset, it is pertinent to note that for the proceedings to be initiated under Section 107 Cr.P.C., the pre-requisite is that any person is likely to ***breach the peace*** or disturb the ***public tranquillity*** or to do any wrongful act which may lead to such disturbance.

27. The term '***Tranquillity***' as defined under **P Ramanatha Aiyar's: Advanced Law Lexicon 7th Edition**, means the quality or state of being free from agitation or disturbance, calm, placid, quiet (peaceful of things or actions).

28. In the case of ***Ram Manohar Lohia (Dr.) v. State of Bihar*** (1966) 1 SCR 709 : 1966 Cri LJ 608, it was held that "***Public order***" is synonymous with public safety and tranquillity. It was observed:

"it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State". Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead



to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum, which includes at one end small disturbances and at the other the most serious and cataclysmic happenings.

29. The Apex Court in the case of **Kanu Biswas v. State of W.B.** 1973 SCC (Cri) 16 considered what amounts to *Public Order*. It observed as under:-

*“8. “Public order” is what the French call “ordre publique” and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, is : **does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?**”*

30. The distinction between “law and order” and “public order” has been pointed out succinctly in **Arun Ghosh v. State of West Bengal** [(1970) 1 SCC 98]. It has been explained that the true distinction between the areas of “law and order” and “public order” is one of degree and extent of the reach of the act in question upon society. It was explained thus:

*“The true distinction between the areas of **law and order** and **public order** lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different*



contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore, touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different.”

31. The Apex Court in the case of ***Commr. of Police v. C. Anita***, (2004) 7 SCC 467 endorsed the observations made in afore stated judgements.

32. Similar observations have been made in the cases of *Kishori Mohan Bera v. State of W.B.* 1973 SCC (Cri) 30 , *Pushkar Mukherjee v. State of W.B.* (1969) 1 SCC 10 and *Nagendra Nath Mondal v. State of W.B.*(1972) 1 SCC 498.

33. Thus, for initiating proceedings under S.107/151 Cr. P. C. it is mandatory that **there must be apprehension of breach of peace or tranquillity which would necessarily lead to public disorder.**

34. In the *Kalandra*, the only averment made is that the Petitioners and two other persons were grappling on the issue of a plot of land, which both sides were claiming to be belonging to them. There was not a whisper about any apprehension of breach of Public Order. The PCR report received at 10:19:35 PM on 24.12.2024 also does not indicate any actual quarrel or imminent breach of peace.

35. As noted in the case of ***Arun Ghosh case (supra)***, in a case of fight between individuals claiming right over a plot of land which affected those specific individuals only and touched the problem of ***law and order*** only,



and essentially lacked the potentiality to impact the society and *Public Order*.

36. Likewise, in the case of ***Ram Manohar Lohia (Dr.)***(*supra*) it was noted that while two drunkards quarrel and fight, there is disorder **but not public disorder**.

37. Similarly, in the case of *Asha Pant v. State* 2008 (102) DRJ 216 it was observed that *where the dispute is essentially between the neighbours in a property, or between a landlord and tenant residing in the same premises, the notice under Section 107 Cr PC should not be issued only upon a perusal of the Kalandara prepared by the police.*

38. Consequently, there was complete absence of any apprehension of breach of public tranquillity, there existed no circumstance disclosing breach of **Public Disorder**; initiation of proceedings under S.107 Cr.P.C. was not warranted. Most appropriately, proceedings should have been initiated under Section 145 Cr.P.C. and not Section 107 Cr.P.C., as has been observed in the case of *Purshottam Ramnani (Supra)*.

39. **The second aspect of equal significance is the procedure to be followed while adjudicating the Kalandra** under S.107/151 Cr. P.C.

40. In the case of *Madhu Limaye Vs. Sub-Divisional Magistrate*, (1970) 3 SCC 746 the Apex Court has analysed Section 107 Cr.P.C. in the context of Article 22 of Constitution of India and it reads as under:-

“32. The gist of Section 107 may now be given. It enables certain specified classes of Magistrates to make an order calling upon a 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 to fix. The condition of taking action is that the Magistrate is informed and he is of opinion that there is sufficient ground for proceeding that a person is likely to commit a breach of the peace or disturb the public tranquilly or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. The Magistrate can proceed if the person is within his jurisdiction or the place of the apprehended breach of the peace or disturbance is within the local limits of his jurisdiction. The section goes on to empower even a Magistrate not empowered to take action, to record his reason for acting, and then to order the arrest of the person (if not already in custody or before the court) with a view to sending him before a Magistrate empowered to deal with the case, together with a copy of his reasons. The Magistrate before whom such a person is sent may in his discretion detain such person in custody pending further action by him.”

41. This Court in the case of Tavinder Kumar Vs. State 40 (1990) DLT 210 has held that on receipt of the information in the present case Kalandra given by the police, the Magistrate was bound to record his opinion as contemplated by Section 107 and thereafter, prepare the Notice under Section 111 which must contain the substance of the information so received and was bound to send such Notice along with the summons to the person concerned.

42. Section 107 Cr.P.C. contemplates that in case of therebeing any apprehension; the learned Magistrate must require such persons to *Show Cause* why they should not be ordered to execute a *Bond for Keeping Peace* for such period not exceeding one year.



43. Pertinently, the Order Sheet of the proceedings before the SEM shows that no such *Show Cause Notice or Order* was made on 24.12.2015, though there is a separate Order made on that date by which the Petitioners were remanded to Judicial custody.

44. Copy of Order dated 24.12.2015 has been annexed by the Respondents along with their Reply, which reads as under:----

“.....

U/s107/151 Cr.P.C.

Dated 24.12.2015

Order

S.H.O. K. Khas, Delhi, has sent up the kalandra U/s 107/151 Cr.P.C. against the above respondents who are present in police custody before me. I have gone through the police report and heard the respondents and come to the conclusions that there are sufficient grounds to proceed against the respondents. I, therefore order that notice U/s 111 Cr.P.C. be given to the respondents asking them to show cause why they should not be ordered to execute a personal bond in the sum of Rs. 20000/- with one surety in the like amount for keeping peace for the period till enquiry is completed. Notices have been read over the respondents in vernacular. They did not admit the contents of the same and claimed to be trial.

After going through the police report, hearing the respondents and considering the statement of the witness I.O. Shri I am satisfied that immediate measures are necessary for the prevention of breach of peace/discharge of public property or the commission of any offence, till the pendency of the proceedings.

I, therefore, order the respondents U/s 116(.3) Cr.P.C. to execute a personal bond in the sum of Rs. 20000/- with one surety in the like amount for keeping peace until the completion of the enquiry. They shall be detained in the



*judicial custody till such bonds are executed. **Hand Written:** All respondents are present in police custody with Adv. Sh. Sushil Sharma. All respondents are aggressive. Further could not produced any surety. Hence all respondents are being sent to JC till 31.12.15. Case to come upon dated 31.12.15.”*

45. A bare perusal of the above Order reveals that the learned SEM accepted the police Report in a mechanical manner and proceeded to send the Petitioners to judicial custody without conducting any preliminary inquiry or forming an independent opinion.

46. While the powers of arrest has been recognized, but it has to be exercised with circumspection and if the circumstances so justify. This court in Balraj Modak (supra) has held in terms of Section 151 Cr. PC, a police officer can arrest a person without a warrant, if he has a knowledge of a design to commit a cognizable offence and such arrest is necessary to prevent commission of such offence. However, mere apprehension that a person may commit an offence is not sufficient. Mere knowledge that the person concerned would endanger peace or tranquillity would also not suffice. Every disturbance of peace and tranquillity need not result in a cognizable offence. Lastly, it has to be seen by the police officer concerned, that the commission of the offence could not have been otherwise, prevented.

47. The language of the Order, which appears to be a cyclostyled form with blanks filled in, raises serious concerns about non-application of judicial mind. There is nothing on record to indicate that the learned SDM satisfied himself as to the veracity of the information received by making



an inquiry about the matter from the four persons or issued any Show Cause as mandated under Section 107 Cr.P.C. to ensure that the Petitioners were heard in accordance with law before remanding them to Judicial Custody. This is a blatant case where the SEM has not even made an endeavour to pretend to act in accordance with the law and violated fundamental right to life and liberty of the present Petitioners.

48. It has also been contended that the Bail Bonds were furnished by the Petitioners on 24.12.2015 itself, but were rejected by SEM without any basis. Interestingly, those furnished Bonds, are not on record and no explanation is forthcoming for their rejection by the SEM. *The contention of the Petitioners that they had produced the Surety as directed by learned SEM, which were wrongfully rejected, is evident from the record.*

49. In *Madhu Limaye (Supra)* it has been observed that Section 107 proves that action is to be taken 'in the manner hereinafter provided' and this clearly indicates that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is salutary because the liberty of the person is involved and the law is rightly solicitous, that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned. The Order is also capable of being questioned in superior courts. For this reason, at every step the law requires the Magistrate to state his reasons in writing. It would make his action purely administrative if he were to pass the Order for an interim Bond without entering upon the inquiry and at least, *prima facie* inquiring into the truth of the information on which the Order calling upon the person to show cause is based. Neither the scheme



of the Chapter nor the scheme of Section 107 can bear such an interpretation.

50. The next Order made was two days later, i.e. on 26.12.2015 which recorded that Surety Bonds produced on behalf of the four persons - Ram Avtar, Devender, Surender and Vinod, who were in Judicial custody, were examined and accepted and placed on file. Release warrants were sent to Superintendent Tihar Jail, New Delhi, as the case was already fixed for 31.12.2015.

51. The SEM had then conducted the proceedings on 31.12.2015 wherein the Petitioners were not present and summons were directed to be issued for 15.01.2016, but again the Petitioners failed to appear and the summons were directed to be issued for 02.02.2016. Except Ram Avtar, other persons appeared and Ram Avtar was exempted and fresh summons for his service were issued on 17.02.2016.

52. The final Order was passed on 17.02.2016, whereby the Petitioner was bound down for six months for a personal bond of Rs. 20,000 under Section 117 Cr.P.C.

53. Section 111 Cr.P.C. mandates the procedure to be followed by the Magistrate. It states that the Magistrate shall make a written Order to issue “*Show Cause Notice*” which must include specific details, when acting under Sections 107/108/109/110 Cr.P.C. The Apex Court in the case of Sunil Batra Vs. Commissioner of Police (1985) ILR 1 Delhi 694 has held that when a person is produced before the Magistrate, he should be supplied the reasons why the Magistrate wants a bond to be executed.



54. Pertinently, the Record of SEM does not contain any *Show Cause Notice* was issued to the Petitioners. This in itself vitiates the entire proceedings before the SEM.

55. Further, Section 116 Cr.P.C. provides that the Magistrate shall conduct an inquiry into the truthfulness of the information and shall further take evidence as may appear necessary to him, and during this inquiry, the procedure of summons trial shall follow, to reach a conclusion of truthfulness of the allegations. Upon such inquiry, an Order under Section 117 of the Code requiring execution of the Bond may be passed against the accused person if the inquiry so necessitates. If the inquiry suggests otherwise, the Magistrate shall discharge the person from the proceedings. Then comes the stage of an enquiry under Section 111 Cr.P.C., after which if it is determined that it is necessary to give security, the Magistrate under Section 117 Cr.P.C. may Order a person to give security for keeping peace and good behaviour.

56. The Indore Bench of the Madhya Pradesh High Court in Arunsingh v. State of MP 1984 Cr1 LJ 1616 (MP) issued the following directions to be followed by all the Magistrates while dealing with cases under the above provisions:

“(A) The Magistrate should stress upon the recording of statements to the investigation officer/witness before initiating any proceedings u/s 107/116/151 CrPC.

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



(C) The Magistrate should not send the detune 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.:

57. This Court in Asha Pant v. State 2008 (102) DRJ 216 also dealt with misuse of the powers under Section 107 Cr.P.C and held as under:-

“18. The sum total of the above discussion is that in every case, it would be incumbent upon the SEM to follow the steps envisaged in Section 107 strictly in accordance with the procedure outlined in the provisions of the Cr PC set out thereafter. Such steps should be preceded by the formation of an opinion in writing by an Magistrate which should be discernable when the decision is challenged in the Court. Such formation of the opinion should, normally, be based on some preliminary enquiry that should be made by an SEM to justify the formation of an opinion. Of course this cannot be straitjacketed since there may be cases where an SEM may to form an opinion right away to prevent the breach of peace or public tranquillity. However, that should be the exception and not the rule...Such a mechanical exercise without the SEM forming an independent opinion on the basis of some sort of a preliminary enquiry would render the exercise of the power vulnerable to being invalidated.”

58. In this case, no witness has been examined by the Ld. SEM nor even an opportunity has been afforded to the Petitioners to examine their witnesses, which was mandatory. There is no noting in the *Order Sheets* having any reference to an opportunity having been granted to the



Petitioners to establish the genuineness of the averments made in the Kalandra, before passing the Final Order on 17.02.2016. Infact, the final Order of SEM dated 17.02.2016 is a completely non-speaking Order wherein no satisfaction of breach of *Public Tranquillity* has been recorded. The record reflects not only blatant deviation in not following the prescribed procedure but also complete non application of judicious mind.

59. To conclude, the averments contained in the Kalandra did not prima facie make out a case of breach of public Order. Moreover, there was practically no procedure followed while adjudicating the Kalandra. No basic principles of giving an opportunity to the Petitioners was given to establish their innocence. The SEM also failed to record his independent assessment before seeking Bonds of Peace from the Petitioners.

60. In view of the aforesaid discussion, the proceedings conducted in Kalandra under Section 107/151 Cr.P.C., arising out of DD No. 11-A dated 24.12.2015, registered at Police Station Khajuri Khas, Delhi and consequential Order dated 17.02.2016 of the Special Executive Magistrate ('SEM') are hereby, set aside.

61. The present Petition is therefore, allowed.

62. The pending Application(s) if pending are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 30, 2025

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