

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: May 02, 2011
Judgment delivered on: May 05, 2011

+ **CRL.M.C. 2210/2009 & CRL.M.A.7980/2009**

RASHID HUSSAIN

....PETITIONER

Through: Mr. Rajiv Bajaj, Advocate.

Versus

STATE & ORS.

....RESPONDENTS

Through: Ms. Fizani Husain, APP for R-1.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.

1. The short point raised by learned counsel for the petitioner in this case is whether the proceedings under Section 107/150 Cr.P.C. which are preventive in nature meant to preserve the peace and public tranquillity can continue for an inordinate period even beyond the six months from the date on which show cause under Section 111 of the Code of Criminal Procedure was served on the person against whom the proceedings under Section 107 is initiated?

2. Relevant facts for the disposal of this petition are that the proceedings under Section 107/150 Cr.P.C. were initiated against the petitioner Rashid Hussain pursuant to the Kalandara dated 4.11.2009 filed against the petitioner and others before the Special Executive Magistrate(North). On being satisfied that there was a reasonable apprehension of breach of peace and disturbance of public tranquillity, the Executive Magistrate concerned issued notices under Section 107/111 Cr.P.C. to both the parties including the petitioner. The proceedings could not be completed within the requisite period of six months as provided under Section 116(6) of the Code of Criminal Procedure, the learned Special Executive Magistrate vide order dated 10.06.2009 extended the period of inquiry pursuant to the show cause under Section 111 Cr.P.C. beyond six months. Feeling aggrieved of the aforesaid order, the petitioner has preferred instant petition under Section 482 Cr.P.C. seeking quashing of the Kalandara pursuant to DD No.39B dated 4.11.2008 P.S. Bara Hindu Rao and the proceedings initiated against him under Section 107/150 Cr.P.C.

3. Learned counsel for the petitioner has strongly contended that the proceedings under Section 107/150 Cr.P.C. were initiated against the petitioner in November, 2008 and had been allowed to continue by learned Special Executive Magistrate for a period beyond six months in utter disregard and violation of mandate of Section 116(6) Cr.P.C. as there was no special reasons for extending the period of inquiry pursuant to the show cause under Section 111 Cr.P.C. beyond six

months. Thus, he has urged for quashing of the proceedings under Section 107/150 Cr.P.C.

4. Learned APP, on the contrary, has canvassed in favour of the order dated 10.06.2009 of learned Special Executive Magistrate(North District) and submitted that the learned Special Executive Magistrate was right in extending the period of inquiry because the inquiry proceedings got delayed because of dilatory tactics adopted by the petitioner as well as the other parties.

5. I have considered the rival contentions. In order to appreciate the contention of rival parties, it would be useful to have a look on the scheme of Cr.P.C. in relation to the proceedings under Section 107/150 Cr.P.C.

6. Section 107 confers powers on the Executive Magistrate to require a person to show cause as to why he should not be ordered to execute a bond with or without surety for keeping peace for such period not exceeding one year if the Magistrate on the basis of information received is convinced that such person is likely to commit an act that may occasion a breach of peace or disturb the public tranquillity.

7. Section 111 Cr.P.C. provides when a Magistrate acting under Section 107 Cr.P.C. deems it necessary, he may require any person to show cause under Section 107 Cr.P.C. as to why he should not be called upon to furnish the bond for maintaining peace and public

tranquillity for a stipulated period. Section 116 of the Code of Criminal Procedure provides for inquiry into the truth of information and Section 116(6) provides that such an inquiry 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 on the expiry of six months shall stand terminated unless for the special reasons to be recorded in writing the Magistrate otherwise directs.

8. In the instant case, the Magistrate has extended the period of inquiry vide order dated 10.06.2009, which is reproduced thus:

“ORDER DATED 10.6.2009

Respondents and both the parties present along with Defence counsel. Heard argument. The proceedings could not be concluded as Shauaibuddin and others as respondent, Party No. 2 was absent on two occasion and both the parties took time in filing their replies. The proceedings will become more than over 6 month today. From the perusal of statement and cross-examination of IO/ASI Mawajiz Raja. Both the parties delayed the proceedings as they could not given their statement. From the fact and record place on file. The dispute still persists which may result in breach of peace and disturb public tranquillity. Defence counsel of Shuaikbuddin etc. moved an application for extensions as the statement and cross-examination of both parties to be recorded/conducted. The proceedings will be continue beyond six months as per provision of Section 116 (6) of Criminal Procedure Code. To come up on 6.7.2009.”

9. On perusal of the aforesaid order, it transpires that the reasons which weighed with the Special Executive Magistrate to extend the period of inquiry beyond six months were : that both the parties delayed the proceedings as they could not give their statements and that the dispute still persisted between the parties on the date of order. There is nothing in the order which may suggest as to what was the

basis for learned Special Executive Magistrate to conclude that the dispute between the parties still persisted as on 10.06.2009. Further on perusal of the order, it transpires that delay has been caused because the second party i.e. Shuaikbuddin and others absented in the proceedings on two occasions and the parties took time for filing their replies. For non-appearance of second party in the proceedings before Special Executive Magistrate, the petitioner cannot be blamed and for the delay caused by them, the petitioner cannot be made to suffer an inquiry under Section 107/150 Cr.P.C. for inordinate delay. Therefore, I find no justification in the order of learned Special Executive Magistrate dated 10.06.2009 extending the period of inquiry under Section 107 Cr.P.C. It may further be noted that Section 107 also provides a ceiling on the powers of the Executive Magistrate for seeking bond for maintaining peace and public tranquillity beyond a period of one year. Therefore, the proceedings initiated under Section 107 Cr.P.C., in my considered view, by no means can go beyond the period of one year from the date on which the notice under Section 111 Cr.P.C. is served on the party, particularly when there is no allegation from the side of State or the rival party about any act committed subsequent to issue of notice under Section 111 Cr.P.C. which may give rise to a reasonable apprehension for breach of peace and public tranquillity. Thus, considering the fact that almost three years have gone by after the service of notice under Section 111 Cr.P.C., the proceedings under Section 107/150 Cr.P.C. are bound to be quashed.

10. In view of the discussion above, the proceedings against the petitioner under Section 107/150 Cr.P.C. are quashed.

11. Petition is allowed.

(AJIT BHARIHOKE)
JUDGE

MAY 05, 2011

pst