

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 5667 of 2016 (O&M)
Date of decision: 06.05.2016.**

Sarvadaman Singh Oberoi Petitioner.

Versus

State of Haryana and others Respondents.

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE GURMIT RAM**

Present: Mr. Amaninder Preet, Advocate, for the petitioner
with petitioner - Sarvadaman Singh Oberoi in person.

Mr. Sandeep Moudgil, Additional Advocate General, Haryana,
for the respondents.

S.S. SARON, J.

The petition has been filed by the petitioner for directing the Commissioner of Police, Gurgaon to ensure that concerned officials of the respondents place on the file of this Court a copy of his arrest order dated 02.09.2015.

Learned counsel for the State has submitted proceedings conducted by the Deputy Commissioner of Police-cum-Executive Magistrate, Gurgaon under Sections 107/151 of the Code of Criminal Procedure ('Cr.P.C.' – for short).

The petitioner was sent up for proceedings for execution of a bond for the maintenance of peace by way of a 'kalandra' (calendar of events) under Sections 107/151 Cr.P.C. The Deputy Commissioner of Police-cum-Executive Magistrate, Gurgaon in the proceedings recorded that he had carefully gone through the 'kalandra', the statement of the

investigating officer and come to the conclusion that there were sufficient grounds to proceed against him. Accordingly, a notice under Sections 107/151 Cr.P.C. was ordered to be given to the petitioner asking him to show cause as to why he should not be ordered to execute a personal bond in the sum of Rs.10,000/- with one surety in the like amount for keeping peace for one year.

The brief facts as recorded in the 'kalandra' are to the effect that MHC Raj Kumar had lodged a complaint against the petitioner and the petitioner was called on 29.08.2015. He created an unruly scene in the police station on 02.09.2015 for which proceedings under Sections 107/151 Cr.P.C. were lodged.

As already noticed, the grievance of the petitioner is for supplying him his arrest order issued by the police on 02.09.2015.

It may be noticed that a police officer does not pass any order of arrest. Only a memo of arrest is prepared at the time of arrest. The procedure as to how arrest is to be made is provided for in terms of Section 46 of the Cr.P.C. It is envisaged therein that in making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. In **State of Haryana versus Dinesh Kumar (2008) 3 SCC 222**, it was held that the expression "arrest" has neither been defined in Cr.P.C. nor in IPC or any other enactment dealing with criminal offence. However, from sub-sections (1) and (2) of Section 46 Cr.P.C., this is very much clear that in order to make an arrest, the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Similarly, the expression “custody” has also not been defined in Cr.P.C. Therefore, there being no provision for recording an order of arrest by a police officer, the order of arrest in respect of the petitioner on 02.09.2015, on the date on which he was arrested, does not arise. After arrest, the arrested person is to be produced before the concerned Magistrate within twenty-four hours of his arrest. Besides, other formalities like arrest memo etc. are to be completed. The order of further detention if necessary is to be passed by the Magistrate. Therefore, there being no arrest order passed by the police officer on 02.09.2015, it cannot be supplied.

In the proceedings under Sections 107/151 Cr.P.C., the petitioner appeared before the Deputy Commissioner of Police-cum-Executive Magistrate, Gurgaon on 02.09.2015. The case was adjourned to 28.10.2015. It was then adjourned to 07.12.2015 and then to 08.01.2016, on which date the petitioner did not appear although his advocate had appeared. The case was then adjourned to 04.02.2016. However, he did not appear on 03.02.2016. The case was then adjourned to 15.02.2016. On the said date, the DCP-cum-Executive Magistrate, Gurgaon directed him to submit surety bond on the next date of hearing and the case was fixed for 01.03.2016. On the said date, the petitioner did not appear before the DCP-cum-Executive Magistrate. In the circumstances of the case, it was observed that the case had been pending for about six months. The file was ordered to be consigned to the record-room.

Therefore, the petitioner did not furnish the surety bond for keeping peace but despite that the case was closed by the DCP-cum-Executive Magistrate, Gurgaon.

In the circumstances, learned counsel for the petitioner, who is present with the petitioner, on his instructions, submits that he may be allowed to withdraw the petition and avail other remedies in accordance with law.

Dismissed as withdrawn.

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE

06.05.2016
Ramesh