

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.917 of 2018

Prahlad Patel, S/o Tegnu Patel, aged about 42 years, Occupation
Agriculturist, R/o Village Kedar, P.S. Sarangarh, District Raigarh (C.G.)
---- Petitioner

Versus

State of Chhattisgarh, Through District Magistrate, Raigarh, District Raigarh
(C.G.)
----- Respondent

For Petitioner:	Mr. U.R. Koshaley, Advocate.
For Respondent / State:	Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate and Mr. Aakash Pandey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

30/04/2019

1. On receiving the report of the Station House Officer, Police Station Sarangarh, under Section 110 of the CrPC in the Court of Sub Divisional Magistrate, Sarangarh, the special Court took cognizance of the matter and passed a preliminary order dated 21-2-2017 that preventive proceeding under Section 110 read with Section 116(3) of the CrPC deserves to be initiated against the petitioner requiring him to show cause under Section 111 of the CrPC as to why bond should not be executed by him for a period of one year, which the petitioner questioned unsuccessfully before the revisional court in revision leading to filing of this petition under Section 482 of the CrPC.
2. Mr. Koshaley, learned counsel for the petitioner, submits that the petitioner is only said to have committed offence under the Excise Act in the years 2001, 2010 and 2016, it would not attract Section 110 of the CrPC and the petitioner was unnecessarily arrested, therefore proceeding initiated under Section 111 of the CrPC and the

subsequent proceeding deserves to be quashed.

3. Mr. Bhagat, learned State counsel, would support the revisional order.
4. I have heard learned counsel for the parties and perused the impugned order and also went through the record with utmost circumspection.
5. It is true that as stated herein-above, on the istegasha filed by the Station House Officer under Section 110 of the CrPC, proceeding under Sections 110 & 116(3) of the CrPC has been initiated against the petitioner requiring him to furnish a bond for a period of one year.

The preliminary order passed on 21-2-2017 states as under: -

21/02/2017 थाना प्रभारी, सारंगढ़ द्वारा ईशतगासा क्रमांक 11/2016 धारा 110 दण्ड प्रक्रिया संहिता, 1973 के तहत प्रहलाद पटेल आ० टेंगनू पटले उम्र 42 वर्ष साकिन केड़ार थाना सारंगढ़ जिला-रायगढ़ (छ०ग०) के विरुद्ध इस न्यायालय में प्रस्तुत किया गया है ।

2- थाना प्रभारी, सारंगढ़ द्वारा प्रस्तुत ईशतगासा में बताया गया है कि अनावेदक घटना दिनांक को घटना स्थल थाना सारंगढ़ क्षेत्र में वर्ष 16.12.2013 के पूर्व से लगातार अपराध घटित करते आ रहे हैं, जिसके विरुद्ध वर्ष 2001 में भा.दं.वि. का प्रकरण घटित किया है । वर्ष 2010 में आबकारी एक्ट का 02 प्रकरण पंजीबद्ध किया गया है। अनावेदक अवैध रूप से शराब बिक्री करने का काम कर रहा है। अनावेदक के कृत्य से जनक्रोध है । अनावेदक के आपराधिक कृत्य पर अंकुश लगाने के लिए तथा आम जनता के मध्य अमन चमन कायम रखने हेतु प्रतिबंधित करने के अलावा अन्य कोई विकल्प नहीं होने से धारा 110 जा.फौ. का ईशतगासा तैयार किया गया जो अधिक से अधिक राशि से प्रतिबंधित करने हेतु इस न्यायालय में पेश किया गया है ।

3- थाना प्रभारी द्वारा प्रस्तुत अभिलेखों से मुझे संतुष्टि होती है कि अनावेदक द्वारा ऐसा करना दुःसाहसिक और भयंकर है कि उसका प्रतिभूति कि बिना स्वच्छंद रहना समाज के लिए परिसंकटमय है तथा मेरे राय से अनावेदक के विरुद्ध कार्यवाही करने के लिए पर्याप्त आधार है । अतः अनावेदक के विरुद्ध 110, 116 (3) के तहत प्रतिबंधात्मक कार्यवाही किया जाना आवश्यक है ।

6. At this stage, it would be appropriate to notice Section 110 of the CrPC which states as under: -

“110. Security for good behaviour from habitual offenders.—When an Executive Magistrate receives

information that there is within his local jurisdiction a person who—

(a) is by habit a robber, house-breaker, thief, or forger, or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under section 489A, section 489B, section 489C or section 489D of that Code, or
(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets the commission of—

(i) any offence under one or more of the following Acts, namely:—

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);

(b) the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(c) the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952);

(d) the Prevention of Food Adulteration Act, 1954 (37 of 1954);

(e) the Essential Commodities Act, 1955 (10 of 1955);

(f) the Untouchability (Offences) Act, 1955 (22 of 1955);

(g) the Customs Act, 1962 or (52 of 1962);

(h) the Foreigners Act, 1946 (31 of 1946); or

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such Magistrate may, in the manner hereinafter provided,

require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.”

7. A careful perusal of the above-stated list enumerated in Section 110 of the CrPC would show that the offences, if any, committed under the Excise Act, has not been included in Section 110 of the CrPC, but the preliminary order has been passed under Section 110 of the CrPC that the petitioner is involved in the commission of offences under the Excise Act. In the considered opinion of this Court, the provisions of Section 110 of the CrPC have to be construed strictly and unless the petitioner is said to have committed the offences as enumerated in clauses (a) to (f) of Section 110 of the CrPC, no proceeding under Sections 110 and 116(3) of the CrPC can be initiated against him and he cannot be directed to furnish bail bonds under Section 111 of the CrPC. The learned Sub Divisional Magistrate passed preliminary order under Section 110 of the CrPC which is illegal and bad in law and the revisional court has perpetuated the illegality in according the affirmation of that order. In the considered opinion of this Court, the orders passed by the learned Sub Divisional Magistrate, Sarangarh and the learned Additional Sessions Judge, Sarangarh i.e. the revisional Court without holding that the alleged offence which the petitioner is said to have committed comes under Section 110 of the CrPC, are unsustainable and bad in law. Accordingly, the order dated 21-2-2017 as well as the order of the revisional Court are quashed.
8. Learned State counsel submits that the proceeding has already been closed.
9. The fact remains that the entire proceeding was without jurisdiction and without authority of law, therefore, subsequent closure of the

proceeding would have no effect.

10. With the aforesaid observation, the petition stands finally disposed of.

Sd/-
(Sanjay K. Agrawal)
Judge

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