

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1774 of 2013**

Hari Shankar Patel, S/o. Late Dayaram Patel, Aged About 53 Years, R/o. Village Mokhaphutka, Police Station & Tahsil Saraipali, Civil & Revenue Distt. Mahasamund, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Revenue Department, Mahanadi Bhawan, New Raipur, Police Station New Raipur, Tahsil Raipur, Civil And Revenue Distt. Raipur, Chhattisgarh
2. Collector Mahasamund, Police Station Saraipali, Civil And Revenue Distt. Mahasamund, Chhattisgarh
3. Deepak Kumar Soni, (Trainee IAS) Sub Divisional Magistrate, Saraipali, Police Station Saraipali, Civil And Revenue Distt. Mahasamund, Chhattisgarh
4. Smt. F.N. Dwivedi, W/o. Dr. L.K. Dwivedi, Assistant Food Officer, Saraipali, Police Station Saraipali, Civil And Revenue Distt. Mahasamund, Chhattisgarh
5. Budhram Nishad, Panchayat Inspector, Block Tahsil & Police Station Saraipali, Civil And Revenue Distt. Mahasamund, Chhattisgarh
6. Station House Officer, Police Station Saraipali, Civil & Revenue Distt. Mahasamund, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Manoj Paranjpe, Advocate
For State/Respondents	:	Mr. Alok Bakshi, Addl. A.G.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

02.09.2019

Heard.

1. The present petition has been filed on th ground that the petitioner who is Sarpanch of Village Mokhophutka was summoned by the respondent No.4 & 5, the Assistant Food Officer & Budhram Nishad, Panchayat Inspector on the ground that some complaint has been made against him in respect of distribution of ration card and illegal demand of money was made from the beneficiaries.
2. It is submitted that when the petitioner approached to the respondent No.4 & 5, he denied the allegation and stated that no illegal distribution of ration

card has been made, however, the respondent No.4 & 5 instead made a demand of Rs.10000/- from petitioner. Subsequently, a threat was extended that if the petitioner do not pay the amount the petitioner would be implicated in the false case. In retaliation to it, the petitioner made a complaint to the Police of Police Station Saraipali on 31.08.2013; however, no action was taken against the respondent No.4 & 5. It is further contended that the petitioner thereafter on 13.09.2013 during the camp of "*Jan Samasya Nivaran*", he was informed by the Kotwar and other persons of the village that the petitioner have been summoned by the Collector at Gram Panchayat Kena. When he reached there, he was forced to sit till evening near about 5-6 p.m. Subsequently, he was taken to the Police Station on the instructions of the respondent No.3, the Divisional Magistrate. The respondent No.4, the Assistant Food Inspector had lodged a report against the petitioner and Instgasa was recorded under Section 151 of I.P.C. read with Section 107 and 116 of Cr.P.C. and the petitioner was arrested by the Police Station Saraipali in Crime No.33/2013. Subsequently, he was produced before the respondent No.3, Divisional Magistrate and when the application was moved under Section 437 of Cr.P.C. to release him on bail, the bail was granted to him and the petitioner was directed to furnish the bail bond of Rs.5000/- with one surety of like amount. In compliance of such order, the bond & surety was furnished. However, when the surety was produced that of the uncle of the petitioner, the same was refused on the ground that he is related to the petitioner being uncle and surety having been refused, the petitioner was sent to jail till 23.09.2013. Subsequently on 16.09.2013 a separate surety application was filed to furnish the surety but the respondent No.3 instead of releasing the petitioner on bail fixed the hearing on 19.09.2013 and at that time the petitioner was asked to furnish the surety, however, the surety could not be furnished and eventually on 20.09.2013 the petitioner was released on bail. It is contended on behalf of the petitioner that he was retained in jail for the illegal act of the

respondents.

3. In reply to the petition, the State has contended that the petitioner being the Sarpanch of the village Mokhaphutka was called on 31.08.2013 on a complaint regarding illegal distribution of ration card. It is stated that the distribution of ration card was the scheme of the State Government and the procedure were laid down and the complaint was received that the petitioner was issuing the ration card in exchange of money, therefore, it was illegal. Subsequent to complaint received, on 14.09.2013 the case was presented to S.D.M. Saraipali wherein the statements were taken by the Inspector Saraipali and Istagasa bearing No.275/2013 was prepared. It was stated that the complaint against the petitioner was that he was illegally distributing the ration card in lieu of money of Rs.500 to 2000 and when the issue was being enquired, the petitioner started creating a scene and misbehaved with everyone and did not cooperate with the investigation. It is also the case that during the *Jan Samasya Shivir*, which was held on 13.09.2013, the petitioner misbehaved with the Food Inspector in the public and started creating a scene which could not be controlled without interference of the Police. Therefore, the Police was called to convince the petitioner. The petitioner though was advised to behave properly, however, he did not do so. Considering the statement of the witnesses and the respondent No.4, the notice was issued to the petitioner under Section 111 and enquiry under Section 116(3) was directed to be commenced. Subsequently the offer to grant bail was given to the petitioner and though the bail bond was furnished that of the uncle of the petitioner that was not accepted. It is stated that all the action which was taken by the State on 13.09.2013 was to take control under the public unrest, which was created by the petitioner and without interference of the Police it could not have been controlled.
4. Heard learned counsel appearing for the parties and perused the different order sheets and documents.

5. The order sheet dated 14.09.2013 is on record of the Divisional Magistrate Saraipali, which is under Section 151, 107, 116(3) of Cr.P.C. The order sheet dated 14.09.2013 shows that Smt. Munmun Dwivedi, the Assistant Food Officer had stated that while on 31.08.2013 when the enquiry was made in respect of issuance of ration card, the complaint was received against Harishankar Patel that in lieu of money, the ration card was being distributed. The said act was done by the petitioner in capacity of the Sarpanch; therefore, the enquiry while was being made on 31.08.2013, during the enquiry, it was found that the petitioner after receiving Rs.500 to 2000/- has issued the ration card. Consequently, when the petitioner was asked, he started creating a scene and the persons who had made complaint against him were made to run away, therefore, the situation being going out of control, the Collector was informed to send the police support. Subsequent also one person who claimed to be son of the petitioner further tried to intervene and disturbed the enquiry and abused, therefore, the Police who was present to intervene, considering the situation since was going out of control, the petitioner was taken into custody and he was served a notice under Section 111 of Cr.P.C. The order sheet shows that subsequent enquiry under Section 116(3) of Cr.P.C. was made.
6. Section 111 of Cr.P.C. purports that when the Magistrate acting under Section 107, Section 108, Section 109 or Section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.
7. Sub section 3 of Section 116 purports that after the commencement, and before the completion of the inquiry under sub-section (1), the Magistrate, if considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquility or the

commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under Section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded.

8. In this case, the complaint when was being enquired against the petitioner, he reached to the scene and tried to assault the enquiry officer. The enquiry was being made against the illegal distribution of ration card and the allegation was made that the petitioner in lieu of money has distributed the ration card, as such, the order which is passed by the Executive Magistrate would show that the Police took the petitioner into custody to prevent him to do the breach of peace or disturbance of public tranquility and for the safety of the officer; thereafter, the enquiry was proceeded and petitioner was taken into custody under Section 111 read with Section 116(3) of Cr.P.C.
9. Therefore, the order sheet would show that the action of the respondents was well within the Act of Cr.P.C. With respect to the acceptance of surety, it is the discretion of the Court of Judicial Magistrate, there cannot be straitjacket formula can be given in respect of whether to accept particular surety or not. It is in the given situation and the particulars and credentials of the surety so furnished the acceptance or refusal can be made. The Court of Judicial Magistrate may accept the same or deny the same. Therefore, non-acceptance of the surety which was furnished subsequently cannot be said to be illegal.
10. In view of the aforesaid discussion, the petition is liable to be and hereby dismissed.