

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

258

CRM-M-13197-2018 (O&M)
Date of decision: 10.01.2023

SURINDER KUMAR

....Petitioner(s)

Versus

STATE OF PUNJAB AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Naveen Bawa, Advocate for the petitioner.

Mr. Kamalpreet Bawa, AAG Punjab.

Mr.PS Hundal, Advocate for respondent No.2-complainant.

AMAN CHAUDHARY. J.

Present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of Kalandra bearing No.25 dated 08.03.2018, under Sections 107/150 of Cr.P.C., registered at Police Station Division No. A, District Amritsar and notice dated 08.03.2018 under Sections 107/150 Cr.P.C., whereby petitioner has been summoned to appear before the Court of Deputy Commissioner of Police-cum-Executive Magistrate, Amritsar.

Learned counsel appearing on the petitioner makes a reference to Section 116 (6) of the CrPC, as per which the inquiry under the said section has to be completed within six months from the date of its commencement, which he submits has not been done in the present case. He thus, makes a submission that

the proceedings would stand terminated automatically as there is nothing on record to show that extension had been granted by the Magistrate.

Learned State counsel as also learned counsel for respondent No.2 are unable to controvert the aforesaid submission or produce any order granting extension of the period for conducting the enquiry.

Heard.

It is apposite to refer to Section 116(6) of CrPC, which reads thus:

“(6) The inquiry under this section 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 under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs...” (emphasis supplied)

Provision of Section 107 is preventive and not punitive and the reason for the legislative mandate is not far to seek. As are the other provisions, this is not intended for punishment of past offences. The sole reason for initiation of proceedings under this provision against an individual is to prevent him from committing breach of peace, when it is seemingly imminent. The proceedings affect the liberty of an individual, who has yet not been found guilty of an offence, thus essentially such power should be exercised both, strictly in accordance with law and within the stipulated time frame. For the object sought to be achieved and to prevent abuse of process of law, it has been provided that such proceedings must be completed within a period of six months from the date of commencement and that only in exceptional cases, should there be an extension beyond the prescribed period. The Magistrate cannot, at his own volition, extend the period of inquiry unless special reasons that may exist, are recorded in writing. The letter

and spirit of this salutary provision being that the sword of Damocles is not permitted to hang over indefinitely.

Bare perusal of the provision reveals two-fold mandate, viz., (1) span of life of the proceedings is determined as six months; and (2) the consequence of non-compliance of provisions is laid. The use of expression "shall, on the expiry of the said period, stand terminated" leaves no room for doubt that in the event of the inquiry not having been completed within the stipulated period, the proceedings automatically come to an end, as the Magistrate becomes functus officio as has no seisin of the case. By operation of law, the proceedings are automatically terminated for all intents and purposes and cannot be revived even in revisional jurisdiction, though Magistrate could have made them to continue but only before the elapsing of the period, that too after recording of special reasons in writing, which can also be scrutinized by the higher Court. Aforesaid is fortified from Sub-section (7) of Section 116 which empowers the Sessions Judge to vacate a direction made by the Magistrate under Sub-section (6) permitting the continuance of the proceedings, if he is satisfied that it was not based on any special reason or was perverse. Evidently, the legislature in its wisdom has not only circumscribed the power of the Magistrate to extend the life of inquiry, by mandating recording of special reasons in writing but has also put an embargo on the exercise of such power by subjecting it to scrutiny by a higher court. The power of a revisional Court to direct continuance of proceedings after it has automatically come to an end is also excluded, there being in existence no corresponding provision in the Code, empowering the Sessions Judge in that regard.

Since in the present case, the enquiry as contemplated by the provision has admittedly not been conducted within the requisite period and nothing has been shown that any order for continuation of the said proceedings was passed with the permissible period, which could have been by giving specific reasons, as is the mandate which is manifestly clear from the provision. Thus, as a natural corollary, the proceedings automatically came to an end, there being no necessity of passing of a specific order of termination, as was held in **Shrimati Vinod and others vs. Dr.Ram Parshad Chopra and another**, 1985(1) RCR (Crl.) 182(Del)

In view of the above discussion, no further orders are required to be passed in the present case and as such, the same is disposed of as such.

(AMAN CHAUDHARY)
JUDGE

January 10, 2023

M.Kamra/S.Sharma(syr)

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No