

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

CRM-M-42253-2021

Date of Decision: 02.06.2023

PARMOD KUMAR

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Rakesh Bhatia, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab
for respondent No.1-State.

Mr. Akashdeep Miglani, Advocate
for respondents No.2 and 3.

HARSH BUNGER, J.

Petitioner (Parmod Kumar) has filed the present petition under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.'), for quashing of *kalandra* filed under Sections 107/151 of the Cr.P.C. on the basis of DDR No.29 dated 06.03.2021 (Annexure P-3), registered at Police Station Division No.6, Ludhiana along with all subsequent proceedings arising therefrom.

2. Briefly, one complaint/application No.138-5D dated 06.03.2021 was filed by Pritpal Singh (respondent No.2) before the Station House Officer, Police Station Division No.6, Ludhiana, alleging therein that his neighbours namely, Manik Ram Tiwari, Parmod Kumar and Vinod Kumar had attempted to damage the windows fitted in the common wall and also tried to take forcible possession over the same, in his absence; however, when he arrived at the spot then despite making requests, the

aforesaid persons did not stop, rather they started giving threats and also asked their masons to finish the job quickly. The said incident was stated to have been taken place at about 5:00 p.m., whereupon Pritpal Singh is stated to have made a call to the Police Station Division No.6, Ludhiana, on which Assistant Sub Inspector Major Singh (respondent No.4) arrived at the spot, who asked the aforesaid persons to stop the construction work and further asked all of them to come to the Police Station. Assistant Sub Inspector Major Singh is also stated to have clicked photographs. As per Pritpal Singh, the moment Assistant Sub Inspector Major Singh went away, the aforesaid persons again resumed the construction work; whereupon, Assistant Sub Inspector Major Singh again arrived at the spot and asked the persons to stop the construction work and also asked the parties to come to the Police Station. Thereafter, both the parties appeared at the Police Station and enquiry was commenced. During the discussion, Parmod Kumar (petitioner) is stated to have got annoyed and started quarrelling with Pritpal Singh (respondent No.2), whereupon the Assistant Sub Inspector Major Singh tried to pacify both the parties but Parmod Kumar started manhandling Pritpal Singh despite being persuaded by the Assistant Sub Inspector Major Singh, and accordingly, keeping in view the threat to law and order due to the clash between both the parties, proceedings under Sections 107/151 of the Cr.P.C were initiated and *kalandra* was got prepared and produced before the concerned Court.

3. In the backdrop of the afore-stated facts, the petitioner has filed the present petition seeking quashing of *kalandra* filed under Sections 107/151 of the Cr.P.C.

4. Learned counsel for the petitioner submits that the petitioner has been wrongly involved in a frivolous case at the instance of respondent

No.2 (Pritpal Singh). It is submitted that the petitioner is running a small factory in the name and style of 'Tiwari Industries for Electroplating', situated at 6-R, Industrial Area-B, Ludhiana, for the last fifteen years with his father Manik Ram Tiwari and there is one Electroplating Factory just opposite to the said factory in the same shed owned by respondent No.2 (Pritpal Singh) in the name and style of 'Swaran Industries', also situated at 6-R, Industrial Area-B, Ludhiana. It is claimed that there is a common passage between both the factories, which is in existence for the last forty years. It is next submitted that father of petitioner and respondent No.2 were tenants of one Narinder Singh, from whom they purchased the part of respective properties, in which they were tenants. It is stated that petitioner along with his brother Vinod Kumar had also purchased one shed, in which respondent No.2 (Pritpal Singh) was a tenant, and this property was adjacent to the property of the petitioner and opposite to the property of respondent No.2. Respondent no.2 is stated to have got a sale deed executed in favour of his wife Baljit Kaur on 16.11.2018 in respect of 229.50 square yards. Learned counsel has further submitted that the petitioner along with his brother Vinod Kumar also got the sale deed executed for the property wherein respondent No.2 was a tenant, i.e. one shed, vide Sale Deed dated 21.01.2019, which was executed by Narender Singh in favour of the petitioner and his brother Vinod Kumar and respondent No.2 (Pritpal Singh) is stated to be one of the witnesses to the said Sale Deed.

5. Learned counsel for the petitioner contends that since respondent No.2 (Pritpal Singh) was interfering in the possession over the property purchased vide Sale Deed dated 21.01.2019 as well as regarding usage of the passage; accordingly father of the petitioner namely,

Manik Ram Tiwari, filed a Civil Suit bearing No.1621 of 2020 before the Court of Civil Judge (Junior Division), Ludhiana along with an application under Order 39 Rules 1 and 2 of the Civil Procedure Code, which was allowed by the Court vide order dated 10.02.2021 and respondent No.2 (Pritpal Singh) and Narender Singh (defendant in the said Suit) were restrained from interfering in the possession of the plaintiff (Manik Ram Tiwari) and they were further restrained from interfering in the usage of passage, except in due course of law. Learned counsel for the petitioner further submits that even respondent No.2 (Pritpal Singh) had also filed a Civil Suit for injunction against the present petitioner along with his father and brother claiming ownership over the same passage; however, the same was dismissed by the Court of Civil Judge (Junior Division), Ludhiana vide order dated 20.10.2020.

6. Learned counsel for the petitioner contends that once there is a civil dispute pending between the parties, then the proceedings under Sections 107/151 of the Cr.P.C., could not have been invoked. It is further submitted that the petitioner was maliciously arrested in this case, although, it was mentioned that the concerned police officer (ASI Major Singh) had arrested the private respondent No.2 (Pritpal Singh). It is further contended by learned counsel for the petitioner that the proceedings under Sections 107/151 of the Cr.P.C. are required to be concluded within a period of six months; whereas, in the instant case, the same has not been done. It is also contended that the proceedings under Sections 107/151 Cr.P.C. in the instant case are based on the alleged solitary incident, which incident is also disputed by the petitioner. However, there has been no subsequent dispute/conflict between the parties and a long period has elapsed; thus, the

kalandra (Annexure P-3) and all subsequent proceedings are liable to be quashed.

7. Per contra, learned State counsel as well as learned counsel for respondent No.2 (Pritpal Singh) have opposed the prayer of quashing of *kalandra* and consequential proceedings. Learned State counsel, while referring to the reply filed on behalf of the State, submits that respondent No.2 (Pritpal Singh) had filed a complaint dated 06.03.2021 before the Station House Officer, Police Station Division No.6, Ludhiana and its enquiry was entrusted to respondent No.4-ASI Major Singh; whereupon, he summoned both the parties at the Police Station on 06.03.2021, itself. However, during the course of hearing, the petitioner got annoyed and started quarreling with respondent No.2; whereupon, the ASI tried to convince the parties but the petitioner did not refrain and accordingly, apprehending breach of peace from the petitioner, respondent No.4 launched proceedings under Sections 107/151 of the Cr.P.C. vide DDR No.29 dated 06.03.2021. It is further submitted by learned State counsel that the instant proceedings under Sections 107/151 Cr.P.C. have no concern with the injunction granted in favour of the petitioner's father by the Civil Court as the preventive action was taken apprehending breach of peace; accordingly, prayer for dismissal of the petition has been made.

8. I have heard learned counsel for the parties and have gone through the paper-book as well as reply placed on record, with their able assistance.

9. Here, it would be relevant to extract the provisions of Sections 107, 111, 116(6) of the Cr.P.C. falling under Chapter VIII of Cr.P.C. and Section 151 of the Cr.P.C., which falls under Chapter XI; which read as

under :-

“107. Security for keeping the peace in other cases.

(1) *When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, [with or without sureties] for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.*

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.”

“111. Order to be made. When a 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”.

“116(6). Enquiry as to truth of information.

(1) to (5) xxx xxx xxx

(6) The enquiry under this section shall be completed within a period of six months from the date of its commencement, and if such enquiry 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:

Provided that where any person has been kept in detention pending such enquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.”

“151. Arrest to prevent the commission of cognizable offence. (1) *A police officer, knowing of a design to commit any cognizable offence may arrest, without orders from the Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.*
(2) *No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorized under any other provisions of this Code or of any other law for the time being in force.”*

10. Coming to the case in hand, concededly, the Civil Suit was pending between the father of the petitioner namely, Manik Ram and respondent No.2-Pritpal Singh regarding the use of open area/passage and also the property, which was stated to be in possession of Manik Ram (father of the petitioner); wherein, an injunction order was passed by the learned Civil Judge (Junior Division), Ludhiana, vide order dated 10.02.2021 (Annexure P-1). It is also not disputed that on the basis of a complaint submitted by respondent No.2-Pritpal Singh, ASI Major Singh, had called the parties i.e. the petitioner and respondent No.2 to the police station where it is alleged that the petitioner became annoyed and started quarelling with respondent No.2-Pritpal Singh; whereupon, ASI Major Singh tried to pacify both the parties. However, the petitioner is stated to have manhandled respondent No.2-Pritpal Singh; accordingly, keeping in

view the threat to law and order, it is mentioned in the *kalandra* (Annexure P-3) that Pritpal (respondent No.2) was arrested in due course. The petitioner claims that in fact, respondent No.2 was never arrested and it is the petitioner, who was arrested maliciously. The said fact has been admitted in the reply filed on behalf of the State that it is the petitioner who was arrested and the name of Pritpal Singh was mentioned due to typographical mistake. It is mentioned in the reply that the petitioner was arrested on 06.03.2021 and thereafter, he was produced before the Court of learned Executive Magistrate on 07.03.2021, when he was bailed out by the said Court.

11. The afore-stated facts would manifest that in the *kalandra*, it is mentioned that respondent No.2 was arrested; however, a perusal of the reply filed on behalf of the State indicates that respondent No.2 was never arrested and it was only the petitioner, who was arrested. The said fact itself raises a doubt qua the alleged occurrence which is stated to have taken place in the police station and also the manner in which *kalandra* was prepared.

12. Furthermore, a perusal of the paper-book reveals that the petitioner was arrested on 06.03.2021 and the *kalandra* (Annexure P-3) was prepared on 07.03.2021 and the instant petition was filed before this Court in October-2021 and vide order dated 12.10.2021, the further proceedings arising out of the *kalandra* (Annexure P-3) were ordered to be stayed. Apparently, the said order was passed beyond the period of six months. In terms of the provisions contained in Section 116(6) of the Cr.P.C., the enquiry in the proceedings initiated under Section 107 of Chapter VIII of the Cr.P.C. was liable to be concluded within six months. However, it appears that the said enquiry has not completed within six months nor any

order of the Magistrate has been shown/placed on the record; whereby, the proceedings were ordered to continue for any special reason beyond the period of six months. In the absence of any order of the Magistrate extending the proceedings beyond the period of six months then the proceedings under Chapter VIII of the Cr.P.C. would stand terminated on the expiry of the period of six months from the date of its commencement.

Be that as it may, even if there was any such incident, it was a solitary one and by now a long period has elapsed; however, nothing untoward has occurred between the parties and neither any such occurrence/incident has been shown before this Court that the petitioner has done anything as may cause apprehension of breach of peace. Thus, the inference can be drawn that the danger of breach of peace has vanished. In this regard, reference can be made to the judgment rendered in ***Ramnarain Singh and others vs State of Bihar, 1972 AIR (Supreme Court) 2225.***

13. In view of the afore-mentioned facts and circumstances, the *kalandra* (Annexure P-3) and all subsequent proceedings arising therefrom are hereby quashed and the petition stands disposed of accordingly.

14. All pending application/s, if any, stand disposed of.

June 2nd, 2023
Apurva/gurpreet

(HARSH BUNGER)
JUDGE

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