





the purview of Section 427 IPC, which is cognisable in nature. Pertinently, the parties are already involved in litigation stemming from FIR, bearing No.129 dated 23.08.2016 under Sections 452, 323, 427, 34 of IPC (Section 313 of IPC added later on), registered at Police Station Division No.3, District Jalandhar City.

CONTENTIONS

3. Learned counsel for the petitioners, *inter alia*, contended that the impugned *kalendra* has been registered as a counter-blast to the FIR (supra), which was lodged on the basis of the statement of the wife of petitioner No.1. It is an attempt to browbeat and pressurize the petitioners to not pursue the criminal proceedings originating from the FIR (supra) and depose as witnesses. It was further averred that the jurisdictional police authorities cannot initiate proceedings under Section 107, 150 of Cr.P.C. on the *ipse dixit* of respondent No.2 without identifying sufficient ground for the same. Moreover, no independent assessment with regard to any apprehension of breach of peace was conducted by the police before registering the impugned *Kalendra*.

4. Learned State counsel argued that the complaint was filed by respondent No.2 before the SHO of Police Station, Station Division No.8, District Jalandhar. Subsequently, the complaint was forwarded by the SHO to ASI Kishore Kumar, who visited the place of occurrence and found the version put forth by the complainant to be correct. Further, it was found that the petitioners were residing in nearby places and were asked to come to the police station, however, they did not appear. Upon discovering that petitioner No. 1 and respondent No.2 have litigations pending between them, and that the situation could escalate as despite being warned multiple times, the petitioners



chose to act aggressively, preventive action was taken vide DDR No.20 dated 17.04.2024 under Sections 107 and 150 of Cr.P.C.

OBSERVATIONS AND ANALYSIS

5. Having heard the learned counsel for the parties and after perusing the record with their able assistance, this Court is of the opinion that for just adjudication of the matter at hand, a study of Sections 107, 150 and 151 of Cr.P.C. is warranted. The same are reproduced below:

Section 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 tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity 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 tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

Section 150. Information of design to commit cognizable offences.

Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Section 151. Arrest to prevent the commission of cognizable offences.

(1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a 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 authorised under any other provisions of this Code or of any other law for the time being in force.



6. When the Constitution of India was drafted, the Constituent Assembly consciously decided to separate the judiciary from the executive. After extensive debate, Article 50 of the Constitution of India, was introduced, which reads as follows:

Article 50.- The State shall take steps to separate the judiciary from the executive in the public services of the State.

Article 50 is placed in Part IV of the Constitution of India, which is titled as '*Directive Principles of State Policy*.' Subsequently, the Law Commission of India was called upon to provide recommendations in order to align the Code of Criminal Procedure, 1898 with the mandate of Article 50 of the Constitution of India and effectively realise the separation of the judicial branch from the executive. Taking into account the recommendations made by the earlier reports, the Law Commission, in its 41st Report, suggested changes that paved the way for replacement of the Code of Criminal Procedure, 1898 with the Code of Criminal Procedure, 1973. The statement of objects and reasons of the Cr.P.C., is as follows:

"One of the main recommendations of the Commission is to provide for the separation of the Judiciary from the Executive on an all-India basis in order to achieve uniformity in this matter. To secure this, the Bill seeks to provide for a new set up of criminal courts. In addition to ensuring fair deal to the accused, separation as provided for in the Bill would ensure improvement in the quality and speed of disposal, as all Judicial Magistrates would be legally qualified and trained persons working under close supervision of the High Court."

Resultantly, the Code of Criminal Procedure, 1973 (Cr.P.C), divested the Executive Magistrate of the power to try any offence, confining their powers to decide the cases as referred to in Chapter VIII of the Cr.P.C. and fulfilling other functions of an administrative or executive nature.

7. By means of Section 107 of Cr.P.C., the jurisdiction qua preventive detention in cases pertaining to likelihood of committing a breach of



peace or disturbing public tranquility or commission of any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility, was vested with the Executive Magistrate. Section 107(1) of Cr.P.C. was amended in 1978 and the words 'with or without surety' were added after the phrase 'order to execute the bond'.

8. While it is a settled position that the proceedings under Section 107 to 110 of Cr.P.C. are judicial in nature, the Executive Magistrate still wields the authority to curtail the personal liberty of any person likely to disturb public peace and tranquility. The Full Bench of this Court, analyzing the relevant provisions of the Cr.P.C., 1973 in ***Sukhdev Singh Dhindsa vs. State of Punjab*** **1985 CrL L.J. 1739**, observed as follows:

"24 ...After the enactment of the 1973 Code, there is no offence which is triable by an Executive Magistrate. The only power given to the Executive Magistrates is to try the cases referred to in Chapters VIII and X of the Code. It may be interesting to note that the Law Commission in its report even did not favour the trial of cases falling under sections 108, 109 and 110 of the Code of Criminal Procedure, 1973. The relevant portion of the report reads as under:

8.10. Sections 108, 109 and 110 provide for taking security for good behaviour from persons disseminating seditious matters or matters amounting to intimidation or defamation of a Judge, from vagrants and suspected persons, and from habitual offenders, respectively. The question arises whether this power which is now vested in all senior Magistrates, judicial and executive should be vested only in Judicial Magistrate or in Executive Magistrates or concurrently in both. The present position in the States where separation of the judicial from the executive has been effected to some extent, is not uniform. In the earlier Report, emphasis was laid on the prevention nature of these security proceedings and on their vital impact on the maintenance of law and order and the recommendation was to the effect that the powers under all the three sections should be vested exclusively in Executive Magistrates.

*8.11. This matter was again discussed in detail before us. We are of the view that, **having regard to the fact that the final order to be passed in these proceedings affects the liberty of the person against whom the proceedings are instituted and that sifting of evidence in a judicial manner is required before an order demanding security can justifiably be passed, it is desirable to vest these powers exclusively in Judicial Magistrate. Inquiry under any of these three sections partakes of the character of a***



trial, though technically the person against whom the proceedings are taken is not an accused person, there is no offence to be inquired into or tried and the ordinary rules of evidence are relaxed to some extent. All Magistrates of the first class may, in our opinion, be given powers under these three sections. At the same time, we do not think that the powers under these sections need be vested concurrently in both Judicial and Executive Magistrates although this is the position in some States at present. Under a statutory scheme of separation, such a system is likely to create confusion and even otherwise has nothing to commend it.” (emphasis added)

9. A two Judge Bench of the Hon’ble Supreme Court in ***Rajender Singh Pathania vs. State (2011) 13 SCC 329***, speaking through Justice Dr. B.S.

Chauhan, observed as under:

"14. The object of the Sections 107/151 Code of Criminal Procedure are of preventive justice and not punitive. Section 151 should only be invoked when there is imminent danger to peace or likelihood of breach of peace under section 107 Code of Criminal Procedure, 1973. An arrest under Section 151 can be supported when the person to be arrested designs to commit a cognizable offence. If a proceeding under Sections 107/151 appears to be absolutely necessary to deal with the threatened apprehension of breach of peace, it is incumbent upon the authority concerned to take prompt action. **The jurisdiction vested in a Magistrate to act under Section 107 is to be exercised in emergent situation.**

15. A mere perusal of section 151 of the Code of Criminal Procedure, 1973 makes it clear that the conditions under which a police officer may arrest a person without an order from a Magistrate and without a warrant have been laid down in Section 151. He can do so only if he has come to know of a design of the person concerned to commit any cognizable offence. A further condition for the exercise of such power, which must also be fulfilled, is that the arrest should be made only if it appears to the police officer concerned that the commission of the offence cannot be otherwise prevented. The Section, therefore, expressly lays down the requirements for exercise of the power to arrest without an order from a Magistrate and without warrant. **If these conditions are not fulfilled and, a person is arrested under section 151 Code of Criminal Procedure, 1973 the arresting authority may be exposed to proceedings under the law for violating the fundamental rights inherent in Articles 21 and 22 of Constitution.** (Vide: *Ahmed Noormohmed Bhatti v. State of Gujarat and Ors.*, 2005(2) RCR (Criminal) 321). (See also: *Joginder Kumar v. State of U.P. and Ors.*, 1994(2) RCR (Criminal) 601, *D.K. Basu v. State of West Bengal*, 1997(1) RCR (Criminal) 372)."



10. While proceedings under Section 107 of Cr.P.C. do not envisage any role of the police *per se*, however, in reality, it appears that the Executive Magistrate usually initiates action under the said provision on receipt of information recorded by the police in a *Kalendra*. According to the said provision, on receipt of information regarding disturbance of peace or public tranquility, the Magistrate is bound to record his opinion and if convinced, issue a show cause notice under Section 111 of Cr.P.C. to the offending party as to why they should not be asked to execute a personal bond with or without surety to keep peace for a period of one year. After hearing the parties, if the Magistrate is of the opinion that there is a genuine apprehension of breach of peace or public tranquility, he shall ask the offender to execute the bond under Section 116 of Cr.P.C., failing which, the offender shall be detained in judicial custody till such bond is executed or in default of execution until the inquiry is concluded. The detention is governed by Section 151 of Cr.P.C. The new Code of Criminal Procedure as enacted in 1973, brought Section 151 in tune with Article 22(1) of the Constitution inasmuch as it now requires the person arrested under Section 151(1) of Cr.P.C. to not be detained for a period exceeding 24 hours from the time of his arrest unless further detention is required or authorized under any other provisions of Cr.P.C. or any other law in force at that time.

11. A number of High Courts have expressed their concern about the misuse of the provisions under Section 107, 116 and 151 of Cr.P.C. by the Executive Magistrates (*See: Pravin Vijaykumar Taware vs. The Special Executive Magistrate, 2009 (111) Bom LR 3166; Aldanish Rein vs. State of NCT of Delhi and another, 2018 (10) AD (Delhi) 496, Medha Patkar vs. State of Madhya Pradesh 2008 Crl LJ 47; Devi vs. Executive Magistrate (Mad HC)*



2020 SCC OnLine Mad 2706, etc.,). This Court has also noticed a growing trend where the police registers a *Kalendra* under Section 107 of Cr.P.C. in a mechanical manner, actuated at the behest of an interested party or due to pending disputes, without recording any real reasons for the same. Unfortunately, once the *Kalendra* is forwarded to the Executive Magistrate, a cyclostyled proforma is filled by him. The notice under Section 111 of Cr.P.C., sent to the person concerned along with the summons, must contain the information received by the Magistrate in categorical terms. However, in most cases no reasons are supplied by the Magistrate for initiating the process of execution of the bond in the first place, which is in clear violation of Section 107 of Cr.P.C. The Magistrates simply act on the information provided in the *Kalendra* in a cursory manner, without holding an enquiry for themselves. The proceedings under Section 107 of Cr.P.C. have serious repercussions on the liberty of the citizens and as such, lax and casual approach adopted by the executive in this regard cannot be appreciated. Taking note of the same, the Madhya Pradesh High Court in ***Arursingh vs. State of MP 1984 Crl LJ 1616 (MP)*** issued the following directions to the Magistrates:

"(A) The Magistrate should stress upon the recording of statements to the investigation officer/witness before initiating any proceedings under section 107/116/151 CrPC.

(B) The Magistrate should not order furnishing of surety in the absence of statements of IO/witnesses.

(C) The Magistrate should not send the detune to jail for failure to furnish surety as directed by him, in case statements of IO/witnesses have not been recorded.

(D) The Magistrate should not sign the order in a mechanical manner on a cyclostyled paper but it should be well reasoned and detailed one."

12. Reverting to the facts of the present case, it appears that the police authorities decided to register the *Kalendra* against the petitioners, simply upon the complaint made by respondent No.2, who clearly has a vested interest in the matter. It is evident that the *Kalendra* was registered merely to harass the



petitioners as respondent No.2 and the petitioners have other cases pending against each other. Further, as per the affidavit of the Assistant Commissioner of Police(North), Police Commissionerate, Jalandhar, the *Kalendra* was registered as the petitioners chose to act aggressively in spite of being warned multiple times, however, no such instance was brought to the attention of this Court. Given that the petitioners are supposed to depose as prosecution witnesses in the trial originating from the FIR (supra), this action of the police suggests malice initiated to satisfy ulterior motives.

CONCLUSION

13. Accordingly, the present petition is allowed and the *kalendra* registered vide DDR No.20 dated 17.04.2024 under Sections 107 and 150 of Cr.P.C. at Police Station Division No.8, District Jalandhar, is hereby quashed.

14. Pending miscellaneous application(s) if any, shall also stand disposed of.

15. However, in view of the discussion above, in order to prevent rampant misuse of the provisions of Section 107 and 151 of Cr.P.C. and to curtail the liberty of the purported accused, this Court deems it proper to issue the following directions:

A. To Executive Magistrates

1. The Magistrate shall not mechanically accept a *Kalendra* under Section 107/151 of Cr.P.C. The Magistrate must record his satisfaction with respect to the existence of sufficient grounds in order to initiate proceedings under Section 107/151 of CrPC and must assign reasons indicating how the material available would constitute sufficient grounds.



2. The Magistrate must record statements of the Investigating Officer as well as witness(s) before initiating any proceedings under Sections 107/ 151 of Cr.P.C.

3. The Magistrate shall direct the person arrested to be released on furnishing his personal bond till such time the verification of surety bonds is complete instead of sending him to judicial custody.

B. To the Police

4. The police must not act merely on the *ipse dixit* of an interested party. It must assess the information independently and dispassionately in order to determine if public tranquility is in fact likely to be disturbed. These provisions should not be invoked in purely private disputes where there is no threat to public peace and tranquility. The police must not be swayed by the parties interested in an ongoing dispute as that would transform this preventive measure into a weapon of harassment.

5. Prior to the presentation of a *kalendera* under Section 107/150/151 of Cr.P.C. before the Executive Magistrate, approval of the Supervisory Officer for the concerned sub-division, not below the rank of DSP or an equivalent rank, shall be sought.

16. Since the Cr.P.C. has now been repealed and replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter BNSS) w.e.f. 1st July, 2024, this Court deems it appropriate to extend the directions given above to proceedings initiated under Sections 126, 169 and 170 of BNSS as they correspond to Sections 107, 150 and 151 of Cr.P.C. respectively.

17. The Registry is directed to circulate a copy of this order to Principal Secretary/Secretary, Department of Home Affairs for the States of



Punjab, Haryana and Home Secretary for the Union Territory of Chandigarh,
for information and immediate compliance.

(HARPREET SINGH BRAR)
JUDGE

04.10.2024
Neha

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