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**Jagdish Chander Bhatia Vs. State**

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**Court** : Delhi

**Decided On :** May-27-1983

**Reported in** : 1983(2)Crimes256; 1983(5)DRJ147; 1983RLR547

**Judge** : N.N. Goswami, J.

**Acts** : Code of Criminal Procedure (CrPC) , 1973 - Sections 111

**Appeal No.** : Criminal Revision Appeal No. 245 of 1982

**Appellant** : Jagdish Chander Bhatia

**Respondent** : State

**Advocate for Pet/Ap.** : Kapil Sibal,; U.K. Sharma and; B.T. Singh, Advs

**Judgement** :

**N.N. Goswamy, J.**

(1) The prayer in this petitioner under Section 397/482 of the Code of Criminal Procedure is for quashing the proceedings pending against the petitioner before the Assistant Commissioner of Police, Patel Nagar, New Delhi including the notice dated 22-7-82 issued under Section 111 of the said code and for declaring the arrest of the petitioner as illegal and void.

(2) It is alleged that the petitioner is running an eatable house under the name and style of M/s Hari om Corner, 18 Double Storey, New Rajinder Nagar, New Delhi and is also a licensee to stock kerosene oil for distribution to the customers registered with him. The petitioner is assisted oy his son, namely, Bharat Bhushan aged about 21 years. The petitioner has a brother by the name of Shri Lachman Dass with whom he had a long standing dispute over the moveable and immoveable properties worth Rs. 15 lacs and because of his influence he had wooed the Rajinder Nagar police in harassing and pressurising the petitioner in coming to a compromise with him. The police particularly Shri Ashok Kumar, S.I., had been making out false cases against the petitioner and he was involved in a large number of cases under various sections of the Indian Penal Code as also under Sections 107/151 of the Code of Criminal Procedure. However, all these cases ended in fiasco. The petitioner because of these cases passed an uneventful period from December, 1977 to the middle of July, 1982. On 17-7-82 the petitioner's son Bharat Bhushan went to Dera Ismailkhan School for the purpose of receiving payment from the creditors. He was waylaid and assaulted by three persons, namely, Shila, Kirti and Dolloo. Those three persons by the use of force deprived him of a sum of Rs. 380'- which was in his pocket at that time. He want to the police station to register the case. The police, however, did not register it and the petitioner followed it up by a further complaint dated 18-7-82. No action was taken in spite further complaint to the higher officers on 18-7-82. The petitioner was watching his television on 21-7-82 at his house. It was about 8.30 p.m. when the police personnel swarmed into the residence of the petitioner without any notice and wanted the petitioner to accompany them to the police station. The petitioner who is a law abiding citizen, readily agreed and went to the police station. The respondent No. 3 used abusive and filthy language in the presence of the ladies in the house of the petitioner.the petitioner told the respondents that whatever they wanted to do, they should do so in accordance with law and should not resort to abusing. Thereupon the petitioner was slapped by respondent No. 2 who asked his sub-ordinates to set the petitioner right. The petitioner was led to the police station. In the police station he heard the cries of some person who was being mercilessly beaten at about 9.00 p.m. Shri Ashok Hari Si, cams to the petitioner in the room where he was lodged and desired him

to speak in the presence of the relatives of that man that he was creating nuisance on the roadside. The petitioner expressed his inability to do so far the reason that he had not seen any such thing. Thereafter the respondent No. 3 looked the peticioner.in a cell. The relatives of the petitioner offered bail but the same was refused. The petitioner was not even allowed to takethe assistance of a lawyer. The grounds of arrest were also not supplied to the petitioner and he had to face abuses and filthy languages of the respondents.

(3) Next morning the petitioner was produced before an executive magistrate-cum-assistant commissioner of police, Patel Nagar, New Delhi. The petitioner wanted to engage taxi but he was handcuffed and was duly paraded and taken to Patel Nagar police station where he was produced at about 12.30 p.m. The matter was kept in abeyance till the evening and the executive magistrate refused to pass the order on bail application on the ground that the jail authorities could not entertain the order of release of the petitioner on the hour. The executive magistrate, however, told the relatives of the petitioner that he would be bailed out on next morning. In spite of that the petitioner was not released till 24-7-82. After having been released, the petitioner's counsel inspected the record and discovered that the petitioner had been proceeded against under Sections 107/151 of the Code of Criminal Procedure for having allegedly interfered in the performanc.; of the official duty of the police officers who where to arrest one subhash Vij, who was allegedly creating nuisance on the roadside. The said Vij was released on bail on the same night while the petitioner wa-: detaine..l in police c.istody till 24-7-82. The proceedings under Sections 107/151, Code of Criminal Procedure have been challenged on various grounds. The main grounds being that there being sio allegation that the petitioner was likely to commit any cognizable offece, he could not be detained under Sections 151. It is alleged that the whole proceedings are mala fide, concocted and have been initiated only to harass the petitioner. It is also stated that the police had no power to arrest under Section 107/151 and the Assistant Commissioner of Police does not have any power to grant bail to the petitioner when arrested under Section 151. The petitioner should have been produced before the metropolitan magistrate who was competent to try the cognizable offence which the petitioner was designing to commit and was prevented from committing the offence.

(4) Notice of the petition was issued to the respondents. The respondents have filed a reply and the said reply is supported by the affidavit of Shri Vijay Pal Singh, S.H.O. Police Station Rajinder Nagar. New Delhi. According to the reply the petitioner is a person of doubtful antecedents and there have been various cases in which he was involved. It has not been disputed that in none of those cases the petitioner was convicted. It is alleged that while on patrol duty on 21-7-82, Si Pishori Lal observed that one Subhash Vij was creating nuisance in a drunken state outside the eating place run by the petitioner. When the police was causing the arrest of the said Subhash Vij, the petitioner obstructed the police officials. His behavior and averment that he would not allow any man to be arrested and taken to the police station from outside his shop was absolutely abnormal and the situation created could have at any time escalated into breach of peace. The petitioner alleged that in case anybody was arrested from outside his premises, his public image would be lowered. When persuation failed and the petitioner persisted to obstruct and create a situation which could ultimately result in breach of peace, the police officials on duty had no option but to arrest him under Section 151, Code of Criminal Procedure in order to prevent him from committing any o:feiice which may lead to breach of peace or public tranquility. Having arrested at the spot at about 9.00 p.m. he was produced before the concerned A.C.P. on 22nd morning itself. On 22nd morning whithout any loss of time the information was made available to the A.C.P. On the basis of the information and on appearance of the petitioner on 22 7-82 the A.C.P. passed a detailed order which is to the following effect :

'Respondent Jagdish Chander is present before me in police custody. I have gone through the Kalandra and other material before me. Heard the respondent at length and from the enquiries I am satisfied that immediate measures are necessary for the prevention of breach of peace and public tranquility. The statement of the 1.O.S.I. Pishori Lal recorded Notice under Section 111 Criminal Procedure Code . served on him as show cause as to why he should not execute a personal bond in the sum of Rs. 2000.00 for keeping peace till the decision of the case. The respondent is further directed under Sec 88 read with Section 293 Criminal Procedure Code . to furnish a personal bond in the sum of Rs. 2000.00 with one surety in the like amount for making himself present on the date of

hearing. If he failed to do so then he should go to jail. He failed to produce surety and sent to judicial custody up to 3-8-82. Jail warrant issues and sent to Superintendent, Tihar Jail. The next date of hearing is fixed for 3-8-82 for recording statement of the witnesses. Issue summons to the witnesses'.

(5) In reply various other contentions regarding the antecedents of the petitioners had been raised with which I am not concerned in this petition. The only point for consideration before me is whether the petitioner could be arrested under Section 151 of the Code of Criminal Procedure and the proceedings taken against him under Section 111 of the said Code are valid. This points stands decided by this Court in Balraj Madhok v- The Union of India, Air 1967 Delhi 31. The facts of that case are that some ugly incidents took place in Delhi and as a result the petitioners were detained in prison under Section 197 read with Section 151 of the Code. Thereafter they were produced before one or the other magistrates in Delhi who had ordered them to be released on bail. but as they failed to give the security ordered, they have been ordered to be kept in judicial custody. The learned Chief Justice (K.S. Hegds) as his lordship then was after analysing the provisions of the Code particularly Section 107/111 and 151 came to the conclusion that Section 107 does not provide for any punishment. A person proceeded against under that provision cannot be said to be prosecuted for any offence. Nor any action taken under that provision can be considered as a punishment. What is required under Section 151 of the Code is that the officer concerned must know that the person to be arrested is designing to commit a cognizable offence. An apprehension that he may commit an offence is not sufficient under that provision. Apprehension is not the something as knowledge. The former is a mere feeling. Later is a definite conclusion. Further, even mere knowledge that the person concerned would endanger peace or tranquility need not resort to any cognizable offence. Again the possibility of the commission of a cognizable offence does not mean that he is designing to commit such an offence. Lastly, it is not said that it appeared to the officer concerned that the commission of the offence could not be otherwise prevent- ed. From the facts proved, it is clear that there was enough time to seek orders from the magistrate. From each and every angle it is seen, it is clear that the arrest of the petitioner was not in accordance with law.

(6) While dealing with the action under Section Iii the learned Chief Justice observed as under :-

'From a reading of these provisions, it is clear that when a person is proceeded against under Section 107 of the Code, and he appears or is produced before a Magistrate, the first thing that a Magistrate has to do is, when he deems it necessary to require the person to show cause under that sect on. to 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. This is a condition precedent for taking further steps under Chapter Viii of the Code. An order under Section 111 is the very basis of a proceeding under that Chapter. Without such an order the Magistrate is incompetent to take further action. There is no question of granting bail in a proceeding under Section 107 of the Code'.

(7) Applying the law laid down by the learned Chief Justice it is to be seen whether the arrest in the present case could be said to be legal. Taking the Kalandra as it is on its face value the offence, if any, made out against the petitioner is one either under Section 186 or 189 of the Indian Penal Code. Both these offences are non-cognizable offence. Under Section 151 of the Code the police officer can only arrest a person if he knows his design to commit any cognizable offence without the orders of the magistrate or a warrant. There is no allegation in the kalandra or in reply that the police officer had any such belief. In these circumstances, the learned counsel for the State frankly conceded that the arrest under Section 151 of the Code could not be made. He, however, contended that the petitioner could be arrested under Section 93 read with Section 59(2)(f) of the Delhi Police Act. In order to appreciate this contention it is necessary to reproduce the said provision:

'93.Misbehavior with intent to provide a breach of the peace- No person shall use in any street or public place any threatening abusive or insulting words or behavior with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned.'

'59(2)(F).Commits in his presence in any street or public place any non-cognizable offence punishable under this Act or any rule or regulation made there under if

such person- (i) after being warned by the police officer persists in committing such offence; or (ii) refuses to accompany he police officer to a police station on being required so to do.'

(8) Section 93 makes 'Misbehavior with intent to provoke a breach of the peace' an offence. Under Section 59 it is a duty of a police officer to ensure compliance with the provisions of the Act and Section 59(1)(c) permits the police officer to arrest any person contravening any provisions of the Act or any rule, regulation or order made there under where such contravention is an offence punishable under this Act subject to provisions of Sub-sections 2 and 3. According to Sub-section 2 of Section 59 a police officer shall not arrest any person under Sub-clause (c) of Sub-section 1 without a warrant issued by a metropolitan magistrate unless such person commits in his presence in any street or public place any non-cognizable offence punishable under this Act or any rule or regulations made there under, if such person after being warned by the police officer persists in commiting such offence or refuses to accompany the police officer to a police station of being required so to do. There is not even any allegation in the kalandra or in reply to the petition that any of the two clauses of Sub-section 2(f) of Section 59 were available in this case. It is not the case of the respondents that the petitioner in spite of being warned by the police persisted in commiting any offence or that he refused to accompany the police officer to police station on being required so to do. In these circumstances, the provisions of Delhi Police Act also do not cover the present case.

(9) The arrest itself being illegal the further proceedings taken under Section 111 of the Code of Criminal Procedure cannot possibly be sustained. The notice to show cause under Section 111 was issued and simultaneously the petitioner was directed not to be released, as held by this Court in the case mentioned above : such a procedure is illegal and void.

(10) For the reasons recorded above this petition is allowed. The proceedings taken against the petitioner under Section 111 of the Code of Criminal Procedure starting from the notice dated 22-7-82 are hereby quashed. It is further declared that the arrest of the petitioner on 21-7-82 was illegal and void.

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