

**Keshav Kumar Vs. State and ors.**

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**Court :** Delhi

**Decided On :** Feb-25-2008

**Reported in :** 2008CriLJ2333

**Judge :** Shiv Narayan Dhingra, J.

**Acts :** Code of Criminal Procedure (CrPC) , 1974 - Sections 107, 108, 109, 151 and 482; [Constitution of India](#) - Articles 14, 21, 22 and 226

**Appeal No. :** W.P. (Cri.) No. 2448 of 2006

**Appellant :** Keshav Kumar

**Respondent :** State and ors.

**Advocate for Def. :** Rajat Katyal, Adv.

**Advocate for Pet/Ap. :** Sunil Goel, Adv

**Judgement :**

ORDER

**Shiv Narayan Dhingra, J.**

1. This writ petition under Article 226 and Articles 14, 21 and 22 of the [Constitution of India](#) read with Section 482, Cr.P.C. for appropriate directions of enquiry into the acts of the police officials in illegally detaining the petitioner and sending him to

Tihar Jail invoking Section 107/151, Cr.P.C. on a false complaint of one Ashok Kumar Munna (respondent No. 5), a bad character of the area and for quashing the proceedings.

2. Petitioner has stated that he was a businessman and living at Flat No. C-48, Karampura, Moti Nagar, New Delhi at first floor. Respondent No. 5, Ashok Kumar Munna was a known bad character of the area of Police Station Moti Nagar. He contested the elections for the area Councilor and MLA. He was agent of local leaders and local police in illegal recovery of money from the traders and innocent people. He flourished under the patronage of local leaders and police and also was indulging in grabbing and encroaching public land. He alleged that respondent No. 5 made unauthorised encroachment covering open public place towards rear portion of the flat and raised a construction up to the second floor, in this process, he closed the window/ventilation of petitioner's only toilet-cum-bathroom. Against this illegal action, petitioner had made complaints to MCD and also filed a Civil Suit No. 471/04 seeking demolition of the unauthorised construction and his right to ventilation. The civil suit was still pending. He submitted that on 16th July, 2006 at the instance of respondent No. 5 he was taken to Police Station and put behind bars. He was threatened by respondent No. 2, Sub-Inspector, Sudesh Ranga that unless he withdraws his complaints against Ashok Kumar Munna and expresses sorry to him and also withdraws his Court case, he would not be let off and would be harassed like that. On 16th July, 2006 he was not allowed to go home and kept illegally in Police Station. On 17th July, 2006, when respectable persons of the area went to the Police Station to give surety for the petitioner, they were threatened by SI Sudesh Ranga and Ashok Kumar Munna, who told that he would ensure that the petitioner was not bailed out for a week. Petitioner was produced before ACP (SEM) and was sent to Tihar Jail on 17th July, 2006. The ACP did not listen to the requests and pleas of the petitioner or his Advocate or other persons of the locality, who had come to stand surety to him. His surety was not accepted and he was sent to judicial custody. He was released from the Tihar Jail in the evening of 18th July, 2006. It is stated that later on petitioner obtained certified copies of the Kalandra proceedings against him, he found that proceedings under Section 107/151, Cr.P.C. were initiated against him at the instance of Ashok Kumar Munna, who had been threatening him earlier and the petitioner had made

complaints against him to police several times.

3. According to the status report filed by the police, the stand of the police is that on 16th July, 2006, a complaint was lodged at the Police Station by Ashok Kumar Munna. On receiving this complaint, Sudesh Ranga, SI (respondent No. 2) went to the house of petitioner and on seeing police, petitioner started abusing respondent No. 5 and stated in the fit of rage that he would not get the toilet repaired and started shouting. As there was every apprehension of commission of some cognizable offence, petitioner was arrested Under Section 107/151, Cr.P.C. It would be worthwhile to reproduce the complaint of Ashok Kumar Munna (respondent No. 5) on the basis of which proceedings were initiated against the petitioner. The complaint is without date. There is no stamp of receipt of it at Police Station. The complaint is addressed to SHO PS. Moti Nagar and reads as under:

It is prayed that I, Ashok Kumar Munna s/o Late Shri Har Sahai, I am resident of C-43 Karam Pura. My neighbour is Keshav Kumar s/o Shri Narayan Singh from whose toilet water always seeps into our house. Due to this, the entire wall has become damp and we get foul smell into our entire room. I had tried to make him understand about this problem but no solution has been found. Today when I again wanted to talk to him over this topic, he refused to talk and told that he would not get this repaired whatever I may do. He quarreled with me and did 'maarpeet,' therefore I have come to Police Station for registration of report. Appropriate proceedings be initiated against him.

4. A perusal of above complaint would show that the complaint disclosed no cognizable offence, no medical of Ashok Kumar Munna was got done by police? A civil case was already going on between the parties. As per petitioner, Ashok Kumar Munna himself had made unauthorised construction abutting toilet of the house of the petitioner thus closing all ventilation of the toilet. A civil case in respect of removal of this unauthorised construction was also going on. It is very surprising that on the basis of this complaint which does not disclose any cognizable offence and only disclosed a civil dispute, police officials went to the house of petitioner, arrested him and thereafter registered proceedings under Section 107/151, Cr.P.C. alleging petitioner's shouting and collection of people

there. Sections 107, 108 and 109 are to maintain public tranquillity and to prevent a wrongful act that may occasion a breach of peace or disturb public tranquillity. The section cannot be invoked when there is a civil dispute between the two neighbours in respect of unauthorised construction. Police cannot act as an agent of those, who do unauthorised construction and cannot be an accomplice of those, who try to swallow their neighbours' rights. The proceedings initiated against the petitioner at the instance of Ashok Kumar Munna only reconfirm the league between the criminals and the police and also shows how the life and liberty of innocent persons is at stake at the hands of such police officials. It is apparent that petitioner was taken into custody by police on 16th July, 2006 itself without any rhyme and reason. The undated complaint was obtained later on to justify the action and high handedness. He was produced before ACP (SEM) on next day, who sent him to Tihar Jail without application of mind and without seeing if there was a case worth proceeding under Section 107 or 151, Cr.P.C. ACP while acting under Section 107/151, Cr.P.C. acts as a Special Executive Magistrate and performs quasi-judicial functions. He is supposed to apply his mind which GOD has given to him and not to act blindly on the report of his subordinates and Juniors. No reason has been given in the status report as to why the sureties produced by the petitioner on 17-7-2006 were not taken on record and accepted on the same day and why he was sent to Tihar Jail.

5. It is apparent that the proceedings against the petitioner were unlawful and illegal. The petitioner was detained by police illegally from 16th July, 2006 to 18th July, 2006 when he was released after his surety bond was accepted by the ACP on 18th July, 2006. The petition of the petitioner is allowed. The proceedings under Section 107/151, Cr.P.C. are quashed. Respondent No. 1 is directed to pay a token compensation of Rs. 50,000/- to the petitioner for illegally detaining him in custody for two days. The Commissioner of Police is also directed to initiate departmental proceedings against the erring police officials being respondents No. 2 to 4, who acted in gross contravention of law and who were in league with the area criminals.

6. The petitioner would be at liberty to claim appropriate compensation under law. A copy of this judgment be sent to the Police Commissioner.

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