

CRIMINAL REVISIONAL

*Before Bhopinder Singh Dhillon, J.*SUNDER SINGH,—*Petitioner.**Versus*GURDIT SINGH,—*Respondent.***Criminal Revision No. 71 of 1969**

February 13, 1970.

Criminal Procedure Code (V of 1898)—Sections 107, 112 and 117—Initiation of proceedings under section 107—Preliminary order under section 112 passed—Magistrate—Whether can drop such proceedings thereafter—Section 117(2)—Whether mandatory.

Held, that the provisions of sub-section (2) of section 117 of the Code of Criminal Procedure, are not mandatory. The Magistrate has power to drop proceedings initiated under section 107 Criminal Procedure Code at any stage as soon as he is satisfied that there is no danger of breach of the peace. Initiation of a case under section 107 depends on the subjective satisfaction of the Magistrate concerned. If the Magistrate sees reason to change his mind and on reconsideration comes to the conclusion that there is after all no 'sufficient ground for proceeding', he should be at liberty to drop the case even after he has passed an order under section 112. (Paras 5 and 7)

Case reported under section 439 of the Criminal Procedure Code, by Shri Gurdarshan Singh District Magistrate Ropar, with his order dated 29th March, 1969 for revision of the order of Shri Rajan Kashyap Sub Divisional Magistrate Ropar, dated 27th January, 1969 terminating the proceedings under section 107 Criminal Procedure Code.

MISS S. K. TANQUE, ADVOCATE, for the petitioner.

H. S. TOOR, ADVOCATE, AND J. S. REKHI, FOR ADVOCATE-GENERAL (PUNJAB), for the respondents.

ORDER

DHILLON, J.—This is a reference made by the District Magistrate, Ropar, with the recommendation that the order of the learned Sub-Divisional Magistrate, Ropar, dated the 27th of January, 1969, be set aside and the Magistrate be directed to record the entire evidence in the case and then decide the case.

(2) The facts giving rise to this case are that the petitioner Sunder Singh complained to the police that he apprehended danger to his life from the respondent, Gurdit Singh. On the said complaint, the police put up a challan in the Court of Sub-Divisional

Magistrate, Rupar, against the respondent Gurdit Singh with the prayer that he should be bound down under section 107 of the Code of Criminal Procedure. Along with the challan, a list of witnesses was given by the police and in all four witnesses were mentioned which the police wanted to examine in support of the prosecution case. The learned Magistrate after having recorded the statement of Sunder Singh and Hari Singh, the two witnesses, came to the conclusion that the story as put forth by the petitioner was highly unlikely and there was no threat to the life of the complainant. Therefore, proceedings under section 107 of the Code of Criminal Procedure were terminated.

(3) The learned District Magistrate, Rupar, has made a reference on the ground that since the two witnesses mentioned in the list had not been examined by the learned Magistrate, it was not proper for him to discharge the respondent without having recorded the entire evidence which was to be led by the prosecution.

(4) I have heard the learned counsel for the respondent, Shri H. S. Toor, as well as Miss Surjit Kaur Tanque, learned counsel for the petitioner. Mr. Toor has argued that the proceedings under section 107 of the Code of Criminal Procedure, can be dropped by the Magistrate at any stage because it is the subjective satisfaction of the Magistrate trying the case which is to prevail. He submits that the moment the learned Magistrate is satisfied that there is no danger of breach of peace, the proceedings can be dropped by him. In support of this proposition, he has relied on *Asghar Khan v. State and others* (1) *Chatha Ittaman v. State*, (2), and *Sheokaran v. Dulla and others*, (3).

(5) In *Asghar Khan's case* (1) (*supra*), it has been laid down that :—

“A Magistrate has power to drop proceedings initiated under section 107 Criminal Procedure Code at any stage, as soon as he is satisfied that there is no danger of a breach of the peace. Initiation of a case under section 107 depends on the subjective satisfaction of the Magistrate concerned. If

(1) A.I.R. 1964 All. 391.

(2) A.I.R. 1953 Tra. Coch. 24.

(3) A.I.R. 1958 Raj. 180.

Sunder Singh v. Gurdit Singh (Dhillon, J.)

the Magistrate sees reason to change his mind and on re-consideration comes to the conclusion that there is after all no 'sufficient ground for proceeding' he should be at liberty to drop the case even after he has passed an order under section 112. Although there is no provision in sections 107, 112 and 117 specifically empowering a Magistrate to drop the proceedings once they have been started; such power may legitimately be inferred."

The other two authorities also initiate the same proposition of law. On the other hand, the learned counsel for the complainant has relied on *Tejaram v. Bhairon*, (4), wherein it has been laid down that the procedure to be followed in cases under section 107 of the Code of Criminal Procedure is the same as the procedure for conducting trials and recording evidence in summon cases, and it has been held that under section 244 of the Code of Criminal Procedure, a Magistrate in summon cases, is bound to take all such evidence as may be produced in support of the prosecution. This is a Single Bench ruling of the Jaipur Bench of the Rajasthan High Court.

(6) Sub-section (2) of section 117 of the Code of Criminal Procedure, prescribes that enquiry in cases under section 107 of the Code shall be made as nearly as may be practicable in the manner hereinafter prescribed for conducting trials and recording evidence in summon cases. Section 244 of the Code of Criminal Procedure prescribes the procedure for trial of summon cases. It has been vehemently argued by Miss Surjit Kaur Tanque that the authorities cited by the opposite side, have not taken notice of the provisions of sub-section (2) of section 117 of the Code of Criminal Procedure which was substituted by Act No. 26 of 1925. This contention of the learned counsel is not correct, because the authority reported in *Asghar Khan's case* (1) has taken note of the provisions contained in sub-section (1) of section 117 and also sub-section (2) of that section. The language of sub-section (1), which is relevant, is as follows :—

" the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary."

(4) A.I.R. 1955 N.U.C. (Raj.) 5030.

Sub-section (2) of this section reads thus :—

“Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases.”

(7) From the reading of both these sub-sections, I am clearly of the opinion that the provisions of sub-section (2) of section 117 of the Code of Criminal Procedure, are not mandatory and I am inclined to agree with the view taken by the Allahabad High Court in *Asghar Khan's case* (1). To the similar effect is the case relied upon by Shri Toor. I am not inclined to agree with the view taken in *Tejaram's case* (4). The said authority has not taken note of the provisions of section 117(1) and has also not considered whether the provisions of sub-section (2) of section 117 of the Code are mandatory or directory. Keeping in view the scheme of the Code of Criminal Procedure concerning the trial of the cases under section 107 of the Code, I am of the opinion that the provisions of sub-section (2) of section 117 of the Code are not, mandatory but are directory.

(8) Having come to the conclusion as above, I am clearly of the opinion that the learned Magistrate, after having recorded the evidence of two witnesses, had come to the finding that there was no threat to the life of the complainant and he was justified in terminating the proceedings under section 107 of the Code of Criminal Procedure.

(9) In this view of the matter, the reference made by the learned District Magistrate, Rupar, is declined and the revision petition is dismissed.

R.N.M.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

RAJ PAUL,—Petitioner.

versus

THE ADMINISTRATOR, MUNICIPAL COMMITTEE, MANDI

DABWALI AND OTHERS,—Respondents.

Civil Writ No. 1317 of 1967

February 18, 1970.

Punjab Municipal Act (III of 1911)—Section 39—Municipal employees drawing salary of more than Rs. 40 per mensem—Municipal President—Whether can take proceedings for dismissing or terminating services of such