

**2022 LiveLaw (SC) 1000**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
DINESH MAHESHWARI; J., SUDHANSHU DHULIA; J.**

November 11, 2022

**CRIMINAL APPEAL NO. 2034 of 2022 [Arising out of SLP(Crl.) No. 8586 of 2022]**

**ISTKAR *versus* THE STATE OF UTTAR PRADESH & ANR.**

**Code of Criminal Procedure, 1973; Chapter VIII; Section 107,117 - The provisions of Chapter VIII are merely preventive in nature and are not to be used as a vehicle for punishment - The object of furnishing security and/or executing a bond under Chapter VIII is not to augment the state exchequer but to avoid any possible breach of peace for maintaining public peace and tranquillity - The Magistrate while ordering security under Section 117 has to take into consideration the status and position of the person to decide the quantum of security/bond; and cannot alter the purpose of the provisions from preventive to punitive by imposing heavy quantum of security/bond, which a person might be unable to pay. The demand of excessive and arbitrary amount of security/bond stultifies the spirit of Chapter VIII of the Code, which remains impermissible. (Para 11-12)**

**Code of Criminal Procedure, 1973; Section 107 - The scope and nature of Section 107 CrPC is preventive and not punitive - It aims at ensuring that there be no breach of peace and that the public tranquillity be not disturbed by any wrongful or illegal act. The action being preventive in nature is not based on any overt act but is intended to forestall the potential danger to serve the interests of public at large. (Para 11)**

**Code of Criminal Procedure, 1973; Section 446 - Discretionary power to the Court to remit any portion of the penalty mentioned and enforce payment in part only, after recording its reasons for doing so - Even when a person fails to show sufficient cause as to forfeiture of the bond amount, the Court is not bound to direct payment or recovery of the entire bond amount. The Court can exercise its discretion and remit some portion of the bond owing to the nature of the offence, status and position of the person, and having regard to other facts and circumstances of the case or when the amount of bond is unduly excessive. (Para 13)**

(Arising out of impugned final judgment and order dated 1907-2022 in MUA227 No. 4882/2021 passed by the High Court of Judicature at Allahabad)

*For Petitioner(s) Mr. Bhuwan Raj, AOR Mr. Raghunath Pathak, Adv. Mr. Gaurav Bhatt, Adv. Mr. Anubhav Mehrotra, Adv. Ms. Manju Savita, Adv.*

*For Respondent(s) Mr. Vishwa Pal Singh, AOR*

**J U D G M E N T**

**Dinesh Maheshwari,J.**

Leave Granted.

2. Though a short question as regards forfeiture of the bond furnished by the appellant in terms of Section 107 of the Code of Criminal Procedure, 1973<sup>1</sup> and the amount payable

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<sup>1</sup> Hereinafter also referred to as 'CrPC' or 'the Code'.

thereunder is involved in this matter but, having regard to its implications, we deem it appropriate to dilate on the relevant aspects in necessary details.

3. The present appeal is directed against the order dated 19.07.2022, as passed by the High Court of Judicature at Allahabad<sup>2</sup> in a petition under Article 227 of the Constitution of India bearing No. 4882 of 2021. The appellant had preferred the said petition against the order dated 08.09.2021, as passed by the Additional Sessions Judge, Court No. 1, Muzaffarnagar<sup>3</sup> in Criminal Revision No. 145 of 2021, whereby the Revisional Court had declined to interfere with the order dated 23.07.2021, as passed by the Sub-Divisional Magistrate, Budhana<sup>4</sup> in Case No. 2836 of 2021 in exercise of powers under Section 122 CrPC, forfeiting the bond in the sum of Rs. 5,00,000/- that had been furnished by the appellant in terms of Section 107 CrPC for keeping the peace.

4. The background aspects relevant for the question at hands could be noticed in brief as follows: -

4.1. In the wake of 3-tier Panchayat Elections, the Sub-Inspector, Police Station Bhaura Kalan, Muzaffarnagar made a report on 11.01.2021 to the said Sub-Divisional Magistrate, Budhana, District Muzaffarnagar that 26 named persons, including the appellant, were likely to commit crime and there was a strong possibility of them affecting the elections due to which, the peace or order in village Shikarpur could be disturbed. Hence, it was prayed that the named persons be required to furnish heavy bonds under Section 107/116 CrPC. It appears that during the course of inquiry on the said report, the learned Magistrate put the appellant to the condition of furnishing bond and accordingly, in terms of Section 116(3) CrPC, the appellant furnished a personal bond in the sum of Rs. 5,00,000/- (Rupees Five Lakhs). Thereafter, on 30.03.2021, the appellant was bound down in terms of Section 117 CrPC.

4.2. On 02.07.2021, a report was made by the Revenue Inspector/Lekhpal to Magistrate while alleging that the appellant had undertaken illegal construction on 0.0187 hectares out of 0.5310 hectares of the land of public pond in khasra No. 1285/2; and that the said illegal construction was stopped and the proceedings in that regard were pending in the Court of Tehsildar, Budhana. It was further alleged that in spite of instructions, the appellant installed linter on the said illegal construction in the midnight of 01.07.2021; and that on 02.07.2021, when the authorities reached the site to carry out inspection and to conduct inquiry, the appellant quarrelled with them using indecent language and created obstruction in the official work. It was, thus, submitted that the appellant had violated the terms of bond executed by him under Section 107 CrPC.

4.3. On the report so made, a notice under Section 122 CrPC was issued by the Magistrate to the appellant. On behalf of the appellant, appearance was put before the Magistrate and twice over, adjournments were sought for filing reply. However, neither any reply/objection was filed on behalf of the appellant nor anyone appeared on his behalf on 20.07.2021. Hence, the learned Magistrate proceeded *ex parte* against the appellant. Taking note of the background facts and the report as made against the appellant, the learned Magistrate recorded his satisfaction to forfeit the amount of Rs. 5,00,000/- of the bond furnished by the appellant and directed as under: -

“On the basis of the above analysis, it is prima facie proved that the respondent/accused Istakar son of Sarwar, resident of village Shikarpur, pargana Shikarpur, tehsil Budhana, district

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<sup>2</sup> Hereinafter also referred to as ‘the High Court’.

<sup>3</sup> Hereinafter also referred to as ‘the Revisional Court’.

<sup>4</sup> Hereinafter also referred to as ‘the Magistrate’.

Muzaffarnagar, has violated/disturbed the bond order while being bound by the bond. Therefore, the amount of Rs. 5,00,000/-, (in words Rupees Five Lakhs) of the bond, is hereby forfeited from the accused/respondent Istakar son of Sarwar, resident of village Shikarpur, pargana Shikarpur, tehsil Budhana, district Muzaffarnagar, in favour of the state government. And the above accused is hereby directed that he should deposit the bond amount of Rs. 5,00,000/-, (in words Rupees Five Lakhs) within a week i.e. up to 30-07-2021. If the above amount is not deposited up to the prescribed date, the recovery certificate will be issued against the above respondents less (sic) accused for recovery of the above mentioned amount. The attested copy of the order should be sent to the inspector in charge, SHO, police station Bhaura Kalan and tehsildar, Budhana, for necessary action. The case file may be consigned to the record after taking necessary action in the matter.”

4.4. Aggrieved by the order so passed by the learned Magistrate, the appellant preferred the said revision petition bearing No. 145 of 2021 that was considered and dismissed by the Revisional Court by its order dated 08.09.2021. The Revisional Court, of course, initially took note of the fact that the appellant was ordered to execute the bond so as to maintain peace during Panchayat Elections 2021 and that the maximum period of one year for the bond as permissible under Section 117 was not as such mentioned in the order. However, the Revisional Court observed that there was no such ground on behalf of the appellant that the proceedings were undertaken after the expiry of the period of bond and then, observed that the appellant had indeed violated the condition of the bond furnished by him for maintaining peace, particularly when he had created obstruction during official work which was, apart from other aspects, punishable as an offence under Section 186 of the Indian Penal Code. Hence, the Revisional Court proceeded to dismiss the revision petition while observing as under:-

“...It is clear that the order was passed under section - 117 on 30-03-2021 and the proceedings in question were executed on 02-07-2021. In other words, this period comes to about 4 months. It is also clear that creating obstruction during the government and official work by the government/revenue employees and using indecent language with them, is a punishable offence under section - 186 Indian Penal Code. The provisions of section - 120 of the criminal procedure code, indicate the circumstances in which the act done by the bounded person will be considered as violation of the conditions of the bond, in which commission of any offence punishable with imprisonment or attempt to do the same or to commit abetment in this regard whether the same has been committed or not. It is also clear from the provisions of section - 120 that the commission of the act/attempt/abetment itself is sufficient. However, it is not necessary to register the same in the prescribed provisions of the criminal scissor code. Although it has been argued on behalf of the revisionist that the violation shown by the report of the lekhpal is not violation of the conditions imposed in the restriction. However, the subsequent activities have not been clearly explained, village under the above-mentioned section - 186. Read with section - 40 Indian Penal Code, it is an offence punishable with imprisonment. Therefore, the revisionist has committed such a criminal act of undertaking illegal construction on the government land and when the government machinery opposed the same, use of the indecent language with them and trying to quarrel with them and creating obstruction in the office work, which constitutes a violation of section 117 under the conditions imposed earlier within the meaning of section - 120 and the impugned order has been passed in accordance with the same. Therefore, the impugned order passed by the learned lower court is legally maintainable. Accordingly, the revision is liable to be dismissed for being without any force.”

4.5. Aggrieved by the order aforesaid, the appellant preferred the writ petition but the High Court refused to exercise its jurisdiction under Article 227 of the Constitution of India while observing that this jurisdiction was to be exercised sparingly and there was no illegality or material irregularity in the orders passed in the present case. The High Court further proceeded to direct the appellant to comply with the impugned order dated

23.07.2021 within three months. In the first two paragraphs of impugned short order dated 19.07.2022, the High Court took note of background facts relating to the subject-matter and then, proceeded to state its conclusion in the following terms: -

“The jurisdiction vested in High Court under Article 227 of the Constitution of India should be exercised sparingly and only in appropriate cases to keep the subordinate courts within the bounds of their authority. Impugned order has been confirmed by the revisional court. Detail order has been passed by the revisional court and trial court. There appears no illegality or material irregularity in the impugned order.

It is not a fit case in which jurisdiction vested under Article 227 should be exercised in favour of the petitioner.

Petitioner is directed to comply impugned order dated 23.07.2021 within three months.

This petition is hereby disposed of accordingly.”

5. On 26.09.2022, while examining this matter preliminarily, this Court issued notice, limited only to the question as to why the amount payable by the petitioner-appellant under the bond in question be not reduced. Thus, the matters relating to furnishing of bond by the appellant and its forfeiture are not as such arising for adjudication. However, the question is as to the reasonable amount payable by the appellant under the bond furnished by him and forfeited by the Magistrate.

6. For determination of the material points arising in this matter, a look at the relevant statutory provision shall be apposite. The proceedings have been adopted against the appellant in terms of the provisions contained in Chapter VIII of CrPC. This Chapter is essentially for taking security from a particular person for keeping peace or for maintaining good behaviour. It could at once be noticed that the provisions of this Chapter VIII are preventive in their scope; and their aim and objective is to provide for such measures which would prevent disturbance in public tranquillity or breach of peace.

6.1 Chapter VIII of CrPC ranges from Section 106 to Section 124. Section 106 provides for securing society from people who are a danger to the public by reason of commission of offence i.e., it applies to convicted offenders. Further, Section 107 to 110 are for cases other than those mentioned in Section 106. Of these, Section 107 is for taking security generally for keeping the peace; Section 108 is for security for good behaviour from persons disseminating seditious matters; Section 109 is for security for good behaviour from suspected persons; and Section 110 is for security for good behaviour from habitual offenders. Sections 111 to 124 lay down the procedure to be followed in these cases. The procedure when a bond is forfeited, is essentially provided in Section 446 CrPC.

7. For the questions at hand, we may usefully reproduce Sections 107, 111, 116, 117, 120, 122(1)(b) and 446 CrPC as follows: -

**“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.



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**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.

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**116. Inquiry as to truth of information.** — (1) When an order under section 111 has been read or explained under section 112 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 113, 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.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons- cases.

(3) After the commencement, and before the completion, of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:

Provided that-

(a) no person against whom proceedings are not being taken under section 108, section 109, or section 110 shall be directed to execute a bond for maintaining good behaviour;

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111.

(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry 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 inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.

(7) Where any direction is made under sub-section (6) permitting the continuance of proceedings, the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse.

**117. Order to give security.**—If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

Provided that—

- (a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 111;
- (b) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;
- (c) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

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**120. Contents of bond.**—The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

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**122. Imprisonment in default of security.**—

(1) \*\*\*\* \*\*

(b) If any person after having executed a bond, with or without sureties for keeping the peace in pursuance of an order of a Magistrate under section 117, is proved, to the satisfaction of such Magistrate or his successor-in-office, to have committed breach of the bond, such Magistrate or successor-in-office may, after recording the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of the bond and such order shall be without prejudice to any other punishment or forfeiture to which the said person may be liable in accordance with law.

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**446. Procedure when bond has been forfeited.**—(1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

*Explanation.*—A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code:

Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.

(3) The Court may, after recording its reasons for doing so, remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so

used, the Court shall presume that such offence was committed by him unless the contrary is proved.”

8. In challenge to the orders aforesaid, learned counsel for the appellant has submitted that the amount sought to be recovered from the appellant, a daily-wage earner is exceptionally high and is wholly unjustified. The learned counsel has further argued that the bond for keeping the peace was executed for the upcoming Panchayat Elections and after its successful completion, the same was rendered redundant. He has further contended that even if certain discretionary powers are vested with administrative authorities, the same cannot be exercised arbitrarily like in the present case, where a direction has been issued to the appellant to deposit a huge sum of Rs. 5,00,000/- by forfeiting the bond without even appreciating the facts and circumstances of the case and simply on the basis of an *ex parte* report submitted by the Revenue Inspector/ Lekhpal.

9. *Per contra*, learned counsel for the State has submitted that the impugned orders of the High Court, Revisional Court and the Magistrate are in accordance with law and are not required to be interfered with by this Court. He has further submitted that the appellant was duly served with notice under Section 122 CrPC and was granted sufficient time to file his reply before the Magistrate but, he neither filed any reply nor appeared before the Magistrate on the date fixed for final disposal even after seeking adjournments on the previous dates.

10. We have heard the learned counsel for the parties and perused the material placed on record.

11. As noticed, the scope and nature of Section 107 CrPC is preventive and not punitive. It aims at ensuring that there be no breach of peace and that the public tranquillity be not disturbed by any wrongful or illegal act. The action being preventive in nature is not based on any overt act but is intended to forestall the potential danger to serve the interests of public at large. In other words, this provision is in aid of orderly society and seeks to avert any conduct subversive of the peace and public tranquillity. The provision authorises the Magistrate to initiate proceedings against a person if upon information, he is satisfied that such person is either likely to commit breach of peace or disturb public tranquillity or is likely to commit any wrongful act that might probably produce the same result. Simply stated, the provisions of Chapter VIII of the Code are merely preventive in nature and are not to be used as a vehicle for punishment.

12. Moreover, the object of furnishing security and/or executing a bond under Chapter VIII of the Code is not to augment the state exchequer but to avoid any possible breach of peace for maintaining public peace and tranquillity. It is also explicitly stipulated under Proviso (b) to Section 117 that the amount of bond shall be fixed with due regard to the circumstances of the case and shall not be excessive. The Magistrate while ordering security under Section 117 has to take into consideration the status and position of the person to decide the quantum of security/bond; and cannot alter the purpose of the provisions from preventive to punitive by imposing heavy quantum of security/bond, which a person might be unable to pay. The demand of excessive and arbitrary amount of security/bond stultifies the spirit of Chapter VIII of the Code, which remains impermissible.

13. Further, Section 446 CrPC lays down the procedure for forfeiture of bond for appearance or for production of property and also for any other bond under the Code. The provision empowers the Court to call upon such person bound by the bond to pay penalty or to show cause as to why he should not pay the penalty. Sub-section (3) of Section 446 CrPC vests discretionary power to the Court to remit any portion of the penalty mentioned and enforce payment in part only, after recording its reasons for doing so. This clearly

enunciates that even when a person fails to show sufficient cause as to forfeiture of the bond amount, the Court is not bound to direct payment or recovery of the entire bond amount. The Court can exercise its discretion and remit some portion of the bond owing to the nature of the offence, status and position of the person, and having regard to other facts and circumstances of the case or when the amount of bond is unduly excessive.

14. Admittedly, on the alleged date of violation of the terms of bond, the said election process had already been completed. Even if the generalised terms of bond as furnished are taken into consideration, the allegations against the appellant had been that he obstructed the officials while discharging their duty and quarrelled with them with indecent language after undertaking illegal construction with encroachment. For his alleged acts, he could have been proceeded under the applicable law for any encroachment or illegal construction and he could have also been prosecuted, as indicated by the Revisional Court, under Section 186 IPC but, in all such processes, the appellant was to be extended reasonable opportunity of defending himself. Without adopting regular proceedings with an opportunity of defence to the appellant, assuming him to be guilty of encroaching over public property and of having committed the offence under Section 186 IPC cannot be countenanced.

15. Even if it be assumed that apart from his alleged actions of encroachment and obstructing the officials, the actions of appellant indeed led to breach of peace, the question would still remain as to whether he was to be penalised with the entire amount reflected in the bond. It cannot be ignored that the bond executed by the appellant was to the tune of Rs. 5,00,000/-. The appellant is a daily-wage earner, relying on day-to-day income for his everyday meals. As to proportionality of the amount of bond, it could be noticed that even for the offence under Section 186 IPC, the prescribed punishment is of imprisonment extending to three months or with fine upto Rs. 500/- or both. Viewed thus, the amount of Rs. 5,00,000/- is unduly exorbitant, as the fine prescribed for the offence under the IPC itself is an amount of only Rs. 500/-.

16. Therefore, looking to the totality of circumstances; the nature of alleged acts and the amount of the bond; the fact that the purpose for which bond was executed had already been achieved; that there was no imminent threat to breach of public peace from appellant; and the fact that the appellant is a daily-wage earner and would not have proper means to arrange the bond amount, we are of the view that, forfeiture of an amount of Rs. 5,00,000/-, on ground of obstructing a public servant while on duty, that too under Section 107 CrPC, is exceptionally high and beyond *raison d'être* of Section 107 as also Chapter VIII of the Code. We also find that the bond amount of Rs.5,00,000/- is excessive even within the contours of Proviso (b) to Section 117 CrPC itself, regardless of the facts of the case.

17. In view of the above, to meet the ends of justice and with the discretion of remitting the penalty vested in Court, the present appeal is allowed to the extent that the amount to be deposited by the appellant is reduced to the nominal amount of Rs. 5,000/- (Rupees Five Thousand) owing to the peculiarity of the facts and circumstances of the present case.

18. It is hereby directed that the amount be deposited by the appellant within six weeks from the date of receipt of a copy of this judgment.