

CHAPTER - XLIX

SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR

2124. SECTION 106 OF THE CODE OF CRIMINAL PROCEDURE – SECURITY FOR KEEPING THE PEACE ON CONVICTION

- (1). Section 106 of the Code of Criminal Procedure provides that a Court of sessions or a Magistrate of the First Class may, at the time of passing sentence on a person convicted of certain specified offences, order him to execute a bond for keeping the peace for any period not exceeding three years. It differs from Sections 107 to 110, as the order must be passed at the same time when there is a conviction and passing of a sentence. The court may order the bond to be executed with or without sureties.
- (2). The offences in connection with which security can be taken under the section are:-
 - (a). any offence punishable under chapter VIII of the Indian Penal Code, other than an offence punishable under section 153 A or section 153 B or section 154 thereof;
 - (b). any offence which consists of, or includes assault or using criminal force or committing mischief;
 - (c). any offence of criminal intimidation
 - (d). any other offence which caused or was intended or known to be likely to cause a breach of peace.
- (3). In passing an order under section 106 of the Code of Criminal Procedure, it has to be seen, not whether the persons concerned did commit a breach of the peace, but whether they were convicted of an offence which necessarily involves a breach of the peace.
- (4). Evidence of past conduct is not legal evidence for an order under Section 106.
- (5). Section 106(3) provides, that, if the conviction is set aside on appeal or otherwise, the bond executed shall become void. Also, the Appellate Court can, while upholding the conviction for the specific offence, set aside the order for security passed against the accused.
- (6). Under sub-section (4), power is given to the appellant court and the High Court in revision to demand security under the section.
 - (i). In prosecutions for any of the offences referred to in clauses (a), (b) and (c) above the need to move the trial Magistrates to bind over the accused concerned under Section 106 should be carefully examined and timely action taken in cases in which it is warranted. In respect of persons so bound over, rowdy sheets should be opened and their movements periodically checked and noted. Amongst other information, the names and addresses of the sureties should be mentioned in the sheets.

- (ii). If during the term for which an accused is bound over under Section 106, breaks the peace, steps should promptly be taken against him and his sureties and the Court moved to forfeit their bonds.

2125. SECTION 107 OF Cr.P.C - SECURITY FOR KEEPING THE PEACE IN OTHER CASES

(1). An Executive Magistrate who is informed that any person is likely to commit a breach of the peace or disturb the public tranquility, or to do any wrongful act that may probably occasion a breach of the peace or disturbance of the public tranquility, may, under-Sub-Section (1) of Section 107 of the Code of Criminal Procedure 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 a period not exceeding one year.

(2) (a). Section 107 is thus an effective means for preventing breaches of the peace or disturbances of public tranquility in connection with religious processions, festivals, fairs, elections, political movements or other disputes between factions. It is not essential in every case that there should be two parties against each other. It must however, be clear that a breach of the peace is imminent, unless averted by proceedings under the section.

(b). Before starting proceedings under this section, the Police should collect evidence, oral and documentary, of persons (including Police Officers) acquainted with the circumstances of the case, regarding.

- (i). the specific occasion on which the breach of the peace is anticipated;
- (ii). the existence of a cause, quarrel or other circumstances which is likely to lead to the breach and the period of its duration;
- (iii). the declaration of the parties indicating their determination to carry out, or to prevent, certain things in connection with the subject-matter of the quarrel;
- (iv). the strength and the following of the party or parties, and
- (v). attempts made for conciliation with their results.

(c). It is not necessary to record elaborate statements of witness, short notes being sufficient. The provisions of Section 162 of the Code of Criminal Procedure do not apply to any statements or notes made in connection with such an enquiry. In fact, the enquiry is not governed by any of the provisions of Chapter XII of the Code of Criminal Procedure.

(3). Section 151 of the Code of Criminal Procedure empowers a Police Officer to arrest without warrant any person designing to commit a cognizable offence, if, in his opinion, the commission of the offence cannot otherwise be prevented. If, then, action under section 107 is

contemplated against the arrested person, he may be produced before an Executive Magistrate for taking action.

(4). The Magistrate may, under Section 116 order the execution of an interim bond, with or without sureties, for keeping peace until the conclusion of the inquiry may detain him in custody until such bond is executed or, in default to execution, until the inquiry is concluded.

(5). The provisions of Chapter XXXIII of the Code of Criminal Procedure relating to bail do not apply to an order of detention passed under Sub-Section (4) of Section 107 Cr.P.C or Sub-Section (3) of Section 116 Cr.P.C. a person who has been arrested by the Police under section 151 of the Code of Criminal Procedure for the initiating of security proceedings or against whom security proceedings have already been started, is as a rule entitled to be released on bail under Section 436 Cr.P.C. But the proviso to Section 436 states that “nothing in this section shall be deemed to affect the provisions of Sub-Section (3) of Section 116 Cr.P.C. These are, therefore special provisions which are not affected by Section 436, 437, 439 and 440 Cr.P.C.

(6). Thus, superior courts interfere in the matter of release on bail with an order passed by a competent Magistrate acting under Sub-Section (4) of Section 107 Cr.P.C. This, obviously, is a very useful provision for those entrusted with the task of maintaining law and order and may well be resorted to for the detention of person arrested under Section 151 Cr.P.C., if that is considered necessary for the public safety or in the interest of the public peace.

SECTION 110 CR.P.C. – SECURITY FOR GOOD BEHAVIOUR FROM HABITUAL OFFENDERS

2126. Security cases under section 110 of the Code of Criminal Procedure against local habituals should be built up on details recorded in the Station Crime History as the result of careful watching by the Police. It should be very exceptional for a local criminal for whom a History Sheet has not been opened, to be put up under these sections.

2127. The section requires that the person proceeded against should be within the local limits of the Magistrate’s jurisdiction (Executive Magistrate) at the time when proceedings are taken against him. Otherwise, the Magistrate can not take action under this section. Temporary presence within the limits of the Magistrate’s jurisdiction is sufficient. But, then the presence must be at the time when the proceedings are initiated.

- (1). The object of this section also is preventive and not punitive, and action under it is not intended as a punishment for past offences. It is aimed at protecting society from dangerous characters against the perpetration of crimes by placing them under such substantial but not excessive security as would prevent them from resorting to evil courses.
- (2). To sustain a charge under clause (a), the person proceeded against must be proved to be by habit a robber, house-breaker, thief or forger. The word “habit” implies a tendency or capacity resulting from the repetition of the same acts.

- (3). To substantiate a charge under Clause (b), it must be proved that the person proceeded against is a habitual receiver of stolen property knowing the same to be stolen.
- (4). Clause (c) of section 110 Cr.P.C. is designed to meet the cases of persons who assist the thief after theft by harbouring him, protecting him from discovery and arrest, and helping him to dispose of his property. The acts, which amount to harbouring must be done with an intention of screening the offender from legal punishment or of preventing him from being apprehended.
- (5). Clause (d) of section 110 Cr.P.C. prescribes certain offences, the habitual commission or abetment of which, or the attempt to commit which, is ground for taking action under this section.
- (6). Clause (e) contemplates taking security when one habitually commits or attempts to commit or abets the commission of offences involving breach of the peace. The following are the offences within the purview of this clause:
 - (i). offences punishable under Chapter VIII of the Indian Penal Code, other than those punishable under sections 143, 149, 153-A and 154, Indian Penal Code,
 - (ii). assault or other similar offences, and
 - (iii). criminal intimidation.

2128. This can be effectively used in curbing the activities of factionists.

- (7). Under Clause (g), “a man of desperate and dangerous character” means a person who shows such a reckless disregard for the safety of the person or property of his neighbours that his being at large without security would be detrimental to the community.
- (8). Section (2) of Section 41 Code of Criminal Procedure empowers the Police to arrest without certain classes of habitual offenders described in section 110 of the Code of Criminal Procedure. Proceedings under Section 110 of the Code of Criminal Procedure may follow an arrest under Section of 41 (a) of Code of Criminal Procedure.

2129. Sub-Section (4) of Section 116 Cr.P.C. Provides that the fact that a person is a habitual offender may be proved by evidence of general repute or otherwise. The general reputation of a man is that which he bears amongst the people in the place in which he lives. Vague and general statements that a man is a habitual offender is not sufficient evidence on which he is liable to be bound over under Section 110 Cr.P.C. It is very important that evidence of bad repute should be reliable. It is essential that witnesses should be able to give intelligent reasons for their believing the respondent to be a bad character. Hearsay evidence amounting to general repute is admissible for the purpose of proceedings under Chapter VIII of the Code.

2130. Although witnesses may be examined as to the respondent's general character, their testimony is not of much value as to the habits of a suspected person, unless they can, in support of their opinion, adduce instance of the misconduct imputed. When the person against whom proceedings under Section 110 Cr.P.C. are instituted for being a habitual offender, a well known resident of the locality and his fellow citizens though not living in his immediate neighbourhood, are competent witnesses to his general repute. General repute can be proved not only by such opinion evidence as is referred to above, but also by letting in other evidence which is sanctioned by the general law as enunciated in the Evidence Act. Such evidence may be evidence of specific acts, previous convictions or association with bad characters. A Police Officer who deposes to the reputation of the respondent should give the basis of his knowledge and point out how he came to consider him a man of bad character.

2131. Previous convictions are admissible in evidence, but they are not conclusive proof in a case under Section 110 Cr.P.C. Its evidentiary value increases when there is also evidence of general repute of definite acts subsequent to the respondent's release from jail. These acts should comprise preferably reported instances.

2132. The History Sheet is a privileged document and is not generally produced in evidence. Information contained in it should be proved by the evidence of persons who have direct and first-hand knowledge of them.

2133. If the respondent is an ex-convict, the officer-in-charge of the Police Station can also put in evidence and prove a statement showing a marked decrease in crimes when the respondent was in jail and marked increase when he was outside.

2134. When evidence of suspicion against the respondent in certain crimes is spoken to by a Police Officer, he must substantiate his suspicion by giving cogent and convincing reasons. A vague suspicion is not enough to warrant the respondent being bound over under Section 110 Cr.P.C. Evidence of misconduct should relate to recent incidents and not acts committed by the respondent years ago.

2135. Where several persons are jointly put up under Section 110 Cr.P.C. evidence of the offences by each of them should not be admitted as against others unless concert between them is shown.

SECTION 109 Cr.P.C.– SECURITY FOR GOOD BEHAVIOUR FROM SUSPECTED PERSONS

2136. Before a person can be proceeded against under Section 109 of the Code of Criminal Procedure, he must be found to be taking precautions to conceal his presence and there must be reason to believe that he is taking the precautions with a view to committing any offence. Merely because a person hid his face by means of a cloth when his presence was noticed by

somebody going on the road at midnight, it cannot be said that he was taking precautions to conceal his presence. Again, from the mere fact that at the sight of the Police Officer he began to move briskly and when called out he ran, it cannot be said that he was taking precautions to conceal himself. It has also been held that by mere possession of a crow-bar by a person without any precautions being taken to conceal his presence, the requirements of Section 109 (a) of the Code of Criminal Procedure cannot be said to have been satisfied. The person proceeded against must have taken precautions to conceal his presence with a view to committing an offence. Mere disinclination for the society of the police amounts to no concealment. Mixing with the crowd or moving in and out of the crowd or 'dashing' into it in a railway shed does not amount to taking precautions to conceal one's presence.

2137. The following illustrations are given as examples of cases coming under Section 109 (a) of the Code of Criminal Procedure.

- (i). A person concealing himself at night with his companions in hedges near a village, giving wrong name and address and being unable to explain his presence in hedges at night with house-braking implement and refusing to disclose the identity of his companions who had escaped into jungle.
- (ii). The respondent giving false name and address to the police was seen attempting to feel the pockets of crowds at the railway station, appearing originally at 9 a.m. and suddenly disappearing for two hours and re-appearing at 11 a.m.

2138. As regards concealment, it has been held that it need not be continuous. Even a single attempt at concealment may be enough.

2139. Proceedings under both the sections (Section 109 and 110 of the Code of Criminal Procedure) cannot be taken against one and the same individual at one and the same time.

2140. Reports under Section 109 should be submitted before the Magistrate (Executive), observing the following principles:-

- (i). Once information is laid before the Magistrate, it cannot be withdrawn. Section 321 of the Code of Criminal Procedure has no application to security proceedings;
- (ii). Copies of statements of witness recorded by the Police Officer need not be provided to the respondent, as the information laid before a Magistrate is not a Police report coming within the purview of Section 173(4) of the Code of Criminal Procedure; and
- (iii). Under Section 116(2) of the Code of Criminal Procedure as for as a summons case has been prescribed for all inquiries to Sections 107, 109 and 110 of the Code of the Criminal Procedure.

2141. The Superintendent of Police should specially ensure that security proceedings initiated under Sections 107, 109 and 110 of the Code are concluded with utmost expedition in the courts. The Senior Superintendent of Police (Law & Order) should verify this during the monthly crime meeting.

2142. The court before which proceedings are initiated should be promptly moved for an order under Sub-Section (3) of Section 116 of the Code pending completion of the inquiry under Sub-Section (1) of the Section. The Superintendent should ensure that such action is unfailingly taken by the officer conducting prosecution or by the concerned Station House Officer.

2143. When there are objections to raise the sureties tendered in pursuance of an order made under (3) of Section 116 or Section 117 of the Code, the Police should raise without delay.

2144. Further inquiry can not be ordered under Section 398 of the Code of Criminal Procedure into the case of a person discharged under Section 118 of the Code of Criminal Procedure. In Such cases, the District Magistrate has power under Section 401 of the Code of the Criminal Procedure to report for the order of the High Court.

SECTION 108 Cr.P.C. - SECURITY FOR GOOD BEHAVIOUR FROM PERSONS DISSEMINATING SEDITIOUS MATTERS

2145. When an Executive Magistrate receives information that any person within his jurisdiction either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate or abets the disseminates of any matter concerning.

- (a). Publication which is punishable under sections 124 A or 153 A or 153 B or Section 295 A of the Indian Penal Code.
- (b). To an act amounting to criminal intimation or defamation under the Indian Penal Code concerning a judge acting or purporting to act in the official discharge of his official duties, and
- (c). Sale, imports, exports hire, distribution or publication of any obscene matter, as referred in section 292 of the Indian Penal Code,
- (d). The Magistrate may require such person to show cause why he should not be ordered to execute a bond with or without sureties for his good behaviour.
- (e). In such cases, the question of fact which must be determined is the antecedents of the person and other surrounding circumstances.

PUBLIC NUISANCES AND DISPUTES AS TO IMMOVABLE PROPERTY

2146. It is the duty of the police officer to report immediately to the executive magistrate concerned who, as he thinks fit, may make a conditional order to remove the nuisance or apprehended danger. The Magistrate, upon a police report where dispute concerning land or water is likely to cause breach of peace shall make an order in writing , requiring the parties concerned in such disputes to attend his court in person or by pleader.

2147. The officer-in-charge of the police stations shall, under the following circumstances and provisions of the Code of criminal procedure, 1973, send reports to the concerned Sub-

Divisional Magistrates or to any other Executive Magistrate, specialty empowered on this behalf by the State Government for the purposing preventing imminent breach of place and for ensuring peace in the area:-

- (a). Section 133 Cr.P.C. - Requesting the Magistrate for conditional order for removing the nuisance to the public.
- (b). Section 144 Cr.P.C. - Informing the Magistrate and requesting to issue order in urgent cases of nuisance or apprehended danger to the community.
- * (c). Section 145 Cr.P.C. - Informing the Magistrate and requesting urgent action against the parties who are concerned in a dispute relating to land or water which is likely to cause breach of peace.
- (d). Section 147 Cr.P.C. - The Dispute concerning the right of use of land or water.

* The report to be sent by Police will be in the Form No. I F1.

THE CRIMINAL LAW (AMENDMENT) ACT, 1932

2148. There are certain circumstances under which a person or a group of person intentionally cause any individual to abstain from doing work or obstruct the workers using violence or intimidated words or loiter near the place where a person carries on business and in such circumstances the police officer not below the rank of officer in-charge of a police station shall register a case, suo-motto, and proceed with the investigation of the case.

2149. The police officer shall register such cases under sections 71 (a) or (b), as the case may be, of the Criminal Law (Amendment) Act, 1932. The police may arrest the accused person immediately on registering the case to prevent breach of peace in the area and to ensure peace thereon. Since this is a “Suo-Motto” case, it shall be investigated by some other officers of the same jurisdiction and not by the officer who registered it.

2150. It shall be remembered that encouragement of indigenious industries or advocacy of temperance, without the commission of any offence of the acts prohibited by section 7 (1) (a) (b) of the Criminal law (Amendment) Act, 1932 is not an offence under this section.

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