

## E Lectures.

9<sup>th</sup> Semester (Code of Criminal Procedure)

### Unit -IV :-

#### **1) Section 106-110:- (security proceedings)**

##### **Section 106:-**

The chapter contemplates two kinds of securities ie security for keeping peace on conviction and in other cases and secondly security for good behavior. Security for keeping peace under section 106 can be required when a person is convicted of certain offences involving a breach of peace and the court is of the opinion that it is necessary to require such person to execute a bond for keeping the peace. The order requiring security is passed at the time of passing sentence following the conviction and no further proceedings are necessary before demanding security proceedings under section. The section is aimed at persons whose past conduct has proved dangerous to the public and is intended to secure public tranquility and peace. Further it refers only to parties convicted of certain offences and cannot be applied to cases where there is only a possible apprehension of future breach of peace. Security cannot be demanded when there is no conviction however if there are strong grounds for apprehension of a future breach of the peace, the EXECUTIVE magistrate must act under section 107 or apply to the officer having authority to proceed under that section. It is also to be noted that in order to justify a direction under this section there must be a reasonable probability of breach of peace being committed and not merely a bare possibility.

It is the offence for which the person is convicted and not the facts as put in evidence at the trial which determines whether or not security may be demanded.

It would be worthwhile to mention that the term 'breach of peace' has no confined definition but would embrace offences against public tranquility dealt with in chapter VIII, Indian penal code.

### **Section 107:-**

The object of this section is prevention not punishment of offences. It is not intended to punish persons for anything that they have done in the past but to prevent them from doing in future something that might occasion a breach of peace. This provision is a measure for the protection of the society. The magistrate should on the receipt of credible information issue an order under section 111 calling upon the person informed against to show cause. A legal and valid preliminary order under section 111 is *sine qua non* for initiating the proceedings under section 107 and taking action under 107 before making preliminary order under 111 is a serious defect. Thus the requirements of the section are a) there must be information that a person is likely to commit a breach of peace or disturb the public tranquility or do a wrongful act which may probably cause a breach of peace or disturb the public tranquility, b) the magistrate, if he is of opinion that there is sufficient ground for requiring the person against whom the information is laid to show cause why he should not be ordered to execute a security bond for keeping the peace, should issue notice to him and c) in calling upon the person to show cause the magistrate must

proceed 'in manner hereinafter provided' and this means that he must issue notice in accordance with the requirements of section 111.

Just as a summons trial commence with reading out the particulars of the offence to the accused, a proceeding under section 107 also must necessarily be deemed to have commenced with the reading over of substance of the information received. The commencement of inquiry in a proceeding under section 107 of the code has necessarily to be interpreted in terms of the commencement of a summons trial. A summons trial commences when the accused appears or is brought before the trial court and the particulars of the offence are stated or read out to him. Thus the moment the accused has appeared and the substance of the accusation is explained to him, a summons trial commences. The point of commencement of a proceeding under section 107 of the code must, therefore, be determined in the same term; section 112 provides for reading over or explaining the substance of the accusation and the satisfaction of the magistrate.

**Section 108:**

The person to be proceeded against under this section must be one who has been disseminating seditious matter and from whom there would be fear of a repetition of the offence. This is a question of fact in each cause which should be determined with reference to the antecedents of the person and other surrounding circumstances. The magistrate can exercise jurisdiction under this section if the person proceeded against is within the local limits of his jurisdiction.

It could be well said that the section is directed against the dissemination in any manner, by speech or writing, of any matter, the publication of which-

- (a) Is punishable under section 153-A of the Indian Penal Code (promoting enmity between classes) or
- (b) Under section 124-A of the Indian Penal Code (sedition) or
- (c) Under section 153-B of the Indian Penal Code (imputations, assertions, prejudicial to the national integration) or
- (d) under section 295-A of the Indian Penal Code (malicious act insulting the religion or religious beliefs of any class) or
- (e) under section 503 (intimidation) or section 499 (defamation), Indian Penal Code, being a matter of concern for a judge, acting or purporting to act in discharge of his official duties, and
- (f) making, producing or keeping for sale, import, export conveying, selling, letting to hire, distributing, publically exhibiting or in any other manner putting into circulation any obscene matter such as is referred to in section 292 of the Indian Penal Code.

To take action under this section it should be proved that if not prevented the accused would continue to act in the way in which he has done. It may fairly be assumed that a person who habitually does something is likely to continue to do so but then the habitual nature of his activities must clearly be proven.

### **Section 109:**

this is a preventive section intended to frustrate the designs of criminally minded persons before they are carried out. It is concerned only with the future conduct of the person proceeded against. The preventive action is

taken because it is apprehended the person proceeded against is likely to commit some cognizable offences in future. The section is one of restrictive liberty and must be applied only where strictly applicable. Especially in view of the fundamental rights guaranteed under article 19 of the constitution. This section deals with a person who takes precaution to conceal his presence within the local limits of the magistrate's jurisdiction and there is reason to believe that he does so to commit a cognizable offence. The words 'the magistrate may' shows that it is in the discretion of the magistrate to proceed or not to proceed against a person but in exercising his discretion care should be taken to see that the stringent provisions of the section are not abused. As an illustration person who gives a false name and delivers letters secretly, containing incitement to commit crime or demanding money for the means of committing crime comes within the provisions of this section. The section lays down two prerequisites, namely:

- a) the person concerned must be taking precautions to conceal his presence, and
- b) there must be reason to believe that he is doing so with a view to commit a cognizable offence.

Thus as per Prahlaad Sahni Vs State AIR 1960 Pat 115, these two conditions precedent must co-exist and if one of them is absent, there can be no order under the section.

Further it may be taken note of that words 'concealing presence' are very wide. They are sufficient to cover the concealment of bodily presence, for example, in a house or grove or under a bridge as well as the case when a man conceals his appearance eg by wearing a mask or covering his face or

disguising himself by a uniform or in some other manner. Further the expression 'taking precautions to conceal his presence' is equivalent to taking precautions to conceal the fact that he is present.

### **Section 110:**

this section contemplates the keeping under control the persons who are habitual criminals and who would take their habits with them wherever they go. It intends to deal with ex-convicts or habitual criminals and dangerous and desperate outlaws who are so hardened and incorrigible that the ordinary provisions of the penal law and the normal fear of condign punishment for crime are not sufficient deterrents for them or adequate safeguards for the public.

The section is not intended to provide an indirect means of securing conviction in cases where a prosecution for substantive offence is likely to fail. The section is really intended to curb the dangerous activities of hardened criminals, and to secure the interest of the community from injury at their hands. If it is not used with caution and discretion it might easily become an engine of oppression. It may further be noted that proceedings under this section are judicial and not executive and the court is expected to follow the procedure strictly. When a person is sought to be proceeded against under this section it must be made clear to him as to which particular sub section he is charged with. Mere accretion that a person is of criminal tendencies or of

tyrannical habits is not enough. It must be specifically stated under which of these categories of cases the accused is alleged to come.

### **Section 111:**

This is a very essential section as far as the discussion under consideration is concerned and omission to comply with the section would render the proceedings illegal. This and the following sections lay down the procedure to be followed in taking the action under one of the sections 107,108, 109 and 110. Before the proceedings are initiated under any of these sections, the magistrate must receive certain information. Each of these sections provides that on receipt of such information the magistrate may require the person informed against to show cause in the manner provided. We may say that an order under this section is analogous to a charge framed in the case of regular trial of an accused person for an offence. The order has to be read over to the person in respect of whom it is made though the code does not provide that he should plead to it.

This section provides for passing preliminary order and the magistrate shall make the order :-

1. setting forth the substance of the information received,
2. the amount of bond to be executed,
3. the term for which it is to be in force,
4. the number, character and the class of securities(if any) required.

The purpose of giving substance of the information in the notice is to afford a reasonable opportunity to the accused to come prepared to meet the allegations.

**Section 112.**

The provisions of this section would be applicable only when the person proceeded against is present in the court. This section will have no application were the notices are issued against the accused.

**Section 113.**

If the person proceeded against is not present in the court, summons or warrant should be issued against him. The magistrate while taking action under this section shall record the substance of the report or the information on the basis of which he chooses to proceed under this section. The magistrate should not issue a warrant of arrest except upon clearest grounds for belief that unless such warrant is not issued a breach of peace is inevitable. The provisions contained in the proviso are mandatory and must, therefore, be complied with before a warrant is issued.

**Section 114:**

An omission to sent a copy of the order with the summons does not invalidate the proceedings. It is an irregularity which can be cured by section 465 of the code. So also a failure to supply a copy of the order passed under section 111 would not vitiate the proceedings if the person proceeded against is aware of the contents of the order.

### **Section 115:**

Under this section the magistrate has the power to dispense with the personal attendance of a person to be proceeded against under section 107. However he has no such power in respect of a person to be proceeded against under section 108,109 or 110.

### **Section 116:**

After a notice and order has been served upon a person an inquiry shall be held under this section. Where a person is called upon to furnish security for keeping the peace or for giving security for good behavior the procedure to be followed in inquiry will be as is prescribed for conducting trial and recording of evidence in summons case.

Inquiry under this section is a judicial inquiry. Therefore evidence should be taken in presence of the party charged and an opportunity should be given for cross examination of the witnesses. The words “to take such further evidence as may appear necessary” means that the magistrate may take further evidence relating to other incidents and may not confine himself only to the subject matter of the notice issued to the persons proceeded against. Consideration of such other matters may enable the magistrate to form his opinion.

A proceeding under this section is an enquiry and it cannot be equated with a trial. The inquiry contemplated under sub section 2 is an inquiry by the magistrate, independent of the inquiry by the police and their satisfaction.

Again, the magistrate before he passes as order under sub section 3 must be satisfied that the person is prone to extremely unruly conduct and shows

inclination to commit acts of violence. He has to make some sort of an enquiry for the purpose though it is not necessary that he must record evidence in that enquiry.

### **Section 117:**

This section provides for the final order to be passed if, after the inquiry under the last section, the magistrate finds that it is necessary to demand security for keeping the peace or maintaining good behavior. It contemplates only an order demanding security. Section 122 provides for an order to be passed if the order under this section is not complied with.

The order of the security should ordinarily be such as may enable the party concerned to get a surety. The proceedings under the security provisions are intended to prevent commission of offences as also to enable the person proceeded against to improve and keep good behavior. This aspect should be kept in mind or else such person may not be able to give security.

### **Section 118:**

If the result of the inquiry under section 116 is favorable to the person proceeded against, he is discharged. Discharge would mean permission to depart. Discharge under this chapter is not to be used in technical sense. Thus in such a case when a magistrate definitely comes to the conclusion that there is no apprehension of the breach of peace and it would be fruitless to continue an inquiry, the magistrate can drop the proceedings. An order of discharge under this section is not appealable.

### **Section 119:**

Under this section a convict undergoing a sentence of imprisonment cannot be obliged to give security for good behavior until the period of imprisonment ends; nor can the order for imprisonment in default be made till then.

### **Section 151:-**

The object of the section is to prevent the commission of an offence which a person designs or intends to commit. The section authorizes a police officer to arrest if he has knowledge that the person sought to be arrested entertains a design to commit a cognizable offence. It must further appear to the presiding officer that the commission of the offence could not be otherwise prevented. The discretion is vested solely in the police officer and that discretion cannot be questioned or canvassed in a proceeding under article 226 of the constitution. But as said above a police officer may arrest under this section only if he knows of a design to commit a cognizable offence. It would be an abuse of this power if the police officer arrests a person without knowledge of any illegal design.

In *Balraj Madhok Vs Union Of India* AIR 1967 Delhi 31 it was held that the police officer cannot arrest a person under section 151 merely on an apprehension of breach of peace. What is required under this section 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.