

**IN THE COURT OF SESSIONS JUDGE, KAMRUP, GUWAHATI**

**Present :- Dr. (Mrs) I. Shah**

**Criminal Revision No. 111 (K) of 2010**

1. Sri Kanak Haloi  
S/o Late Sobha Ram Haloi
2. Sri Golok Talukdar  
S/o Late Harmohan Talukdar
3. Ajay Talukdar  
S/o Late Late Debendra Talukdar
4. Sri Bhabesh Haloi  
S/o Late Guda Ram Haloi
5. Smti. Sabita Choudhury  
W/o Sri Upen Choudhury

All are R/o Vill- Sreenagar,  
Pub-Jyotinagar  
P.S.- Noonmati  
Dist.- Kamrup, Assam

**Accused/Petitioners**  
**2<sup>nd</sup> Parties**

**-Vs-**

Sri Mahanta Prasad  
S/o Subhag Prasad  
R/o Lalmati, Bamunimaidam  
P.S.-Chandmari  
Dist.- Kamrup, Assam

**Opposite Party**  
**1<sup>st</sup> Party**

**A D V O C A T E S**

**For the Petitioners** : D. Talukdar

**For the Opposite Party** : K. Kalita

**Date of Hearing** : 11-08-2011

**Date of Judgment** : 14-09-2011

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

This revision is preferred against the order dated 18-02-2009 and 01-12-2010 passed by the learned Executive Magistrate in Case No. 42<sup>m</sup> of 2009. The O/P filed a petition before the Executive Court stating that there is apprehension of breach of peace in the locality. They alleged that the secretary of Sarbajaneen Hindi High School purchased a plot of land measuring 5 Bigha for the purpose of establishment of permanent school building. As per the agreement, the land was handed over to the school authority. The petitioners who were arrayed as 2<sup>nd</sup> party in the petition have their land adjacent to the plot of land agreed to be purchased by school authority and they had tried to disposes the petitioner from the land proposed to be purchased by the school. For that purpose, an FIR was also lodged against the petitioners. The O/P alleged that the petitioners had attempted to assault the Chowkidar of the school and there is apprehension of breach of peace and tranquility in the area. The petition was supported by an affidavit and the learned Magistrate, on the basis of petition, supported by appellant drew a proceeding U/S 107 of Cr.P.C. and directed both the parties to appear before her. A show cause notice was also issued to the petitioners as to why they shall not be directed to execute a bond of Rs. 1,000/- each for keeping peace with the 1<sup>st</sup> party as well as in the locality for a period of one year. The petitioners appeared before the Executive Court and filed their written statement. Thereafter, the case was fixed for evidence of the 1<sup>st</sup> party. It appears from the order dated 18-11-2009 that the 1<sup>st</sup> party i.e. O/P herein was absent on the date fixed. On next date attendance on behalf of the 1<sup>st</sup> party was filed by the advocate and the 2<sup>nd</sup> party was found absent. Again, on next date 1<sup>st</sup> party was found absent and 2<sup>nd</sup> party was

present. Thereafter, on 15-03-2010, advocate for the 1<sup>st</sup> party filed petition seeking adjournment. The next date was also adjourned as the petition was filed on behalf of the 1<sup>st</sup> party. Several dates were fixed where the 1<sup>st</sup> party was found absent and few days 2<sup>nd</sup> party was also found absent. It also reflects from the order that learned Magistrate was also busy on some dates. On 01-12-2010 the 1<sup>st</sup> party was present and 2<sup>nd</sup> party was found absent and the learned Magistrate vide the impugned order issued warrant of arrest against the 2<sup>nd</sup> party.

The order has been challenged on the ground that the learned Executive Magistrate issued the warrant of arrest without her jurisdiction. She has violated the law laid down U/S 107 of Cr.P.C. The W/A was issued after expiry of statutory period of limitation of the proceeding U/S 107 of Cr.P.C. It is further averred that in the order it has been stated that W/A be issued but theailable W/A of Rs. 1,000/- each, was been issued. Therefore, the order and the W/A are contradictory to each other and bad in law. The learned counsel for O/P has submitted that the revision does not lie against the interlocutory order. Admittedly, the petitioners here in were absent without any steps. Therefore, the Trial Magistrate committed no error issuing W/A. Section 107 reads as follows:

*"When an Executive Magistrate receives information 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 disturb the public tranquility 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.*

*Proceeding under this section may be taken before any Executive Magistrate when either the place where the breach of 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 tranquility or to do any wrongful act as aforesaid beyond such jurisdiction”.*

The proceeding herein was drawn on 18-02-2009. The W/A was issued on 01-12-2010. When the proceeding was drawn on 18-02-2009 notice to the O/P was issued and the petitioner who appeared as O/P submitted the written statement on 19-06-2009. Even if 19-06-2009 is considered as commencement of enquiry the one year expires on 19-06-2010 and the W/A was issued on 01-12-2010. The continuation of proceeding beyond one year without recording any reason is bad in law. Section 107 of Cr.P.C. clearly mentioned the time frame of the proceeding. There is nothing to show that after the efflux of time a new proceeding was initiated on the same ground. There is no case of extension therefore the enquiry automatically stands terminated. After expiry of one year, no W/A can be issued by the trial court. The proceeding itself automatically terminates on expiry of the year. Hence, the impugned order is set aside. Revision is allowed. Send down the LCR along with a copy of order and judgment.

Given under my hand and seal of this court on this 14<sup>th</sup> day of September, 2011.

Dictated & Corrected by me

Sessions Judge  
Kamrup, Guwahati

Sessions Judge  
Kamrup, Guwahati

14-09-2011

Respondent is present. Judgment is ready and pronounced in the open court. The proceeding herein was drawn on 18-02-2009. The W/A was issued on 01-12-2010. When the proceeding was drawn on 18-02-2009 notice to the O/P was issued and the petitioner who appeared as O/P submitted the written statement on 19-06-2009. Even if 19-06-2009 is considered as commencement of inquiry the one year expires on 19-06-2010 and the W/A was issued on 01-12-2010. The continuation of proceeding beyond one year without recording any reason is bad in law. Section 107 of Cr.P.C. clearly mentioned the time framed of the proceeding. There is nothing to show that after the flex of time a new proceeding was initiated on the same ground. There is no case of extension therefore the inquiry automatically stands terminated. After expiry of one year, no W/A can be issued by the trial court. The proceeding itself automatically terminates on expiry of the year. Hence, the impugned order is set aside. Revision is allowed. Send down the LCR along with a copy of order and judgment. Detail judgment is given in the separate sheets.

Sessions Judge  
Kamrup, Guwahati