

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1119 of 2021

=====

Lalan Prasad Singh S/O Late Swarup Lal Prasad Singh @ Swarup Lal Singh,
R/O Village And Post- Pakra, Ward No. 5, P.S.- Naugachhia, District-
Bhagalpur, State- Bihar

... .. Petitioner

Versus

1. The State Of Bihar through The Principal Secretary., Food And Civil Supply Deptt., Govt. Of Bihar, Patna.
2. The Director, Food and Civil Supply Department, Government of Bihar, Patna
3. The Information and Technology Department, Government of Bihar, Patna
4. The District Magistrate-cum-Collector, Bhagalpur
5. The District Food Supply Officer, Bhagalpur
6. The Superintendent of Police, Bhagalpur
7. The Deputy Superintendent of Police (Rural), Naugachchiya Bhagalpur
8. The Sub-Divisional Officer-cum- Sub-Divisional Magistrate, Naugachhia, Bhagalpur
9. The Officer-in-charge, Naugachhia
10. The Block Marketing Officer, Naugachhia, Bhagalpur
11. The Assistant District Supply Officer, Naugachhia, Bhagalpur

... .. Respondents

=====

Appearance :

For the Petitioners	:	Mr. Shambhu Sharan Singh, Advocate
For the State	:	Mr. Vijay Kumar Sinha, AC to AAG-5

=====

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 07-04-2026

The present criminal writ petition has been preferred by the petitioner seeking quashing of the entire proceeding in Case No. 437 of 2021 initiated vide order dated 03.04.2021 passed by learned Sub-Divisional Magistrate, Naugachhia, Bhagalpur under Section 107 Cr.PC.



2. The said proceeding has been initiated by learned Executive Magistrate in the light of the letter bearing No. 243 dated 03.04.2021 written by Assistant District Supply Officer, Naugachhia. As per the letter, the petitioner unnecessarily harasses the PDS dealers. He also demands money from them and on account of non-payment of the same, he threatens to implicate them in false cases.

3. In view of the letter, the proceeding under Section 107 Cr.PC was initiated against the petitioner herein by learned S.D.M to maintain the peace. Learned S.D.M also directed the petitioner herein to appear before him to show cause why bond of Rs.1,00,000/- with two sureties is not executed by him to maintain peace for a year. Accordingly, notice was issued to the petitioner by learned S.D.M.

4. On notice, the petitioner appeared before learned S.D.M. and filed his show cause, submitting that the petitioner had filed two R.T.I. petitions against District Supply Officer in regard to distribution under Pradhanmantri Pravasi Majdoor and regarding his movable and immovable property and hence, the false complaint has been made by the Assistant District Supply Officer against the petitioner herein which leading to initiation of the present proceeding under Section



107 Cr.PC.

5. Evidence was also invited from both the sides and on the basis of the pleading and the evidence, the learned S.D.M. came to the finding that the petitioner herein extended threat of journalism to Supply Department and different schools of Education Department and demanded money and hence, the employees and P.D.S. dealers lived under fear from him. Hence, there was possibility of breach of peace in his area. Hence, he directed the petitioner herein to execute bond of Rs.1,00,000/- with two sureties for one year to maintain peace. This final order was passed on 02.04.2022.

6. I heard learned counsel for the petitioner and learned AC to AAG-5 for the State.

7. Learned counsel for the petitioner submits that in the alleged facts and circumstances, the initiation of the proceeding under Section 107 Cr.PC against the petitioner is totally unwarranted and beyond the extent and scope of jurisdiction of the Executive Magistrate under Section 107 Cr.PC. The whole proceeding is absolutely malafide and arbitrary and, accordingly, liable to be quashed.

8. He also submits that though the final order in the proceeding initiated under Section 107 Cr.PC has been passed



concluding the proceeding and even the period of the bond of one year has lapsed, the adjudication of the legal issue regarding maintainability of such proceeding under Section 107 Cr.PC in the alleged facts and circumstances, requires to be adjudicated by this Court, so that Executive Magistrates do not misuse the proceeding under Section 107 Cr.PC to harass the common citizens.

9. However, learned AC to AAG-5 defends the initiation of proceeding under Section 107 Cr.PC. He also submits that the proceeding under Section 107 Cr.PC has been already concluded vide final order dated 02.04.2022 by which the petitioner was directed to execute the bond for one year and even that period of one year has passed. Hence, the present writ petition has become infructuous, and, therefore, there is no need to adjudicate the matter.

10. I considered the submissions advanced by both the parties and perused the material on record including the record of learned S.D.M.

11. Undisputedly, the proceeding initiated under Section 107 Cr.PC against the petitioner is already concluded vide order dated 02.04.2022 and even the period of bond required to be executed by the Petitioner herein to maintain



peace for one year has passed. However, in view of the importance of the issue involved, I consider it fit to dispose of the present writ petition on merit, so that law regarding extent and scope of the jurisdiction of Executive Magistrate under Section 107 Cr.PC is clarified.

12. However, before I proceed to consider the rival submissions of the parties, it would be desirable to refer to the relevant statutory provisions and the case laws.

13. Section 107 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.PC') reads 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 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.

(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 tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.”

(Emphasis supplied)

14. Section 107 Cr.PC is part of chapter-VIII of the Code containing Sections 106 to 124. Chapter-VIII deals with



security for keeping peace and for good behaviour. Section 106 provides for security for keeping peace on conviction, whereas Section 107 provides for security for keeping peace in other cases. Sections 108 to 110 provide for security for good behaviour from classified persons. Sections 111 to 124 provide for procedure to be followed during the proceeding and other miscellaneous matters.

15. Section 111 Cr.PC reads as follows :-

“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.”

16. Section 116 Cr.PC reads as follows :-

“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 tranquility 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 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 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.”

17. Section 117 Cr.PC reads as follows :-

“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.”

18. Section 118 Cr.PC reads as follows :-

“118. Discharge of person informed against.

- If, on an inquiry under section 116, it is not 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, the Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or if such person is not in custody, shall discharge him.”

19. Chapter-IX of the Bharatiya Nagarik Suraksha Sanhita, 2023 containing Sections 125 to 143 is similar to Chapter VIII of the Cr.PC.

20. Section 111 Cr.PC requires that when the Executive Magistrate initiates proceeding under Section 107 Cr.PC, he has to give opportunity, by an order in writing, to the person proceeded against giving forth the substance of information received, the amount of the bond to be executed, the term for which it is to be enforced and the number, character and class of the surety, if any required.



21. Section 116 Cr.PC further requires the Executive Magistrate to inquire into the truth of information upon which action has been initiated and even take evidence, as may appear necessary.

22. As per **Section 117 Cr.PC**, the person proceeded against under Section 107 Cr.PC can be directed to execute a bond for keeping peace but only if it is proved that such bond is necessary to be executed by him to keep peace. However, if such necessity is not proved, the petitioner is required to be discharged.

23. From bare perusal of the provisions of Chapter-IX of Cr.PC, it clearly transpires that the extraordinary jurisdiction under this chapter has been given to the Executive Magistrate for maintaining peace and good behaviour from persons who may be danger to the peace of the society.

24. The scope and object of Chapter-IX of Cr.PC are preventive and not punitive in nature as held by Hon'ble Supreme Court in **Madhu Limaye Vs. Sub Divisional Magistrate Monghyr** as reported in **1970 (3) SCC 746**.

25. Where substantive offence is committed by a person, the proper procedure is to institute regular prosecution against the persons committing the offence and not to initiate



proceeding under Section 107 Cr.PC. In **Brahmdeo Singh Vs. State of Bihar** as reported in **1979 SCC OnLine Pat 172**, proceeding under Section 107 Cr.PC was initiated against the Petitioner on account of assault that had taken place between the parties on account of enmity which existed between them and one police case was instituted in that connection and the Magistrate was satisfied from the police report that at any time rioting or any other unpleasant incident could take place between the parties, though there was no allegation of any additional overt-act on the part of the parties giving apprehension of breach of peace. Here, a co-ordinate Bench of this Court long back in 1979 held that initiation of the proceeding under Section 107 Cr.PC was highly improper, because the person who had allegedly committed assault was being prosecuted and there was no allegation of additional overt-act on his part.

26. Similar view has been taken by Kerala High Court in **Lovely Vs. State of Kerala** as reported in **2023 SCC OnLine Ker 7567**, wherein proceeding under Section 107 Cr.PC was initiated against the petitioner on the basis of her alleged involvement in a registered crime. Here Kerala High Court held that initiation of proceeding against the petitioner



was not just and proper, holding that Section 107 Cr.PC is not intended to punish persons for anything done in the past but to prevent them from doing in future something that might occasion a breach of the peace. The section is designed to enable the Magistrate to take measures with a view to preventing the commission of offenses involving a breach of peace or disturbance of public tranquility.

27. In **Jayanth K.C. Vs. State of Kerala** as reported in **2025 KHC 1591**, Kerala High Court reiterated the similar view as held in **Lovely Case** (supra). Here proceeding under Section 107 Cr.PC was again initiated on the basis of a registered crime against the petitioner and it was held that being an accused in a case alone, was not sufficient to initiate proceeding under Section 107 Cr.PC and the breach of peace which was sought to be prevented by requiring the accused to execute a bond under Section 107 Cr.PC should have been imminent and not a distant possibility.

28. It is also very pertinent to point out that Chapter-VIII of Cr.PC, of which Section 107 is a part, is intended to maintain public peace and tranquility and the concept of public peace is much wider than the instances of tension between few individuals or problem of law and order. Public order and peace



affects public at large. If the effect of any dispute or tension is confined only to few individuals who are party to dispute, such dispute could not give any apprehension of breach of public peace and tranquility. Hence, such situations are not contemplated under Section 107 Cr.PC giving extraordinary jurisdiction to the Executive Magistrate. In **Christalin Costa Vs. State of Goa and Ors.** as reported in **1992 SCC OnLine Bom 252**, there was strained relationship between two individuals. There was complaint and counter-complaint against each other and, on account of the Complaint filed, proceeding under Section 107 Cr.PC was initiated against the party. Here, Bombay High Court, long back in 1992 held that bare perusal of Section 107 Cr.PC read with Section 111 shows that such proceedings are to be initiated only in respect of information received by the Magistrate, if he is satisfied that there is danger or likelihood of somebody committing breach of peace and disturbing public tranquility. It was further held that the situation, where there are quarrels between two private individuals, is not contemplated by Section 107 Cr.PC read with Section 111 Cr.PC, because quarrel between individuals are not normally creating any problem of public order and at the most it may lead to a problem of law and order to be dealt with by



appropriate penal law. Bombay High Court in paragraph no.7 had further held that the proceeding under Section 107 Cr.PC are always dealing with preventive measures to be taken by the Magistrates not to prevent any possibility of breach of peace and disturbing the public tranquility.

29. The view taken by Bombay High Court in **Christalin Costa case** (supra) was reiterated by it in **Perswami Kandswami Devendra Vs. Sr. Inspector of Police** as reported in **2003 SCC OnLine Bom 251**, wherein Bombay High Court has held that domestic quarrels, petty quarrels between neighbouring persons, which do not have long life, are not the subject matters of the actions to be taken in view of section 107 of the Code. The energy and time of public servant concerned should not be wasted in such trifling matters or for satisfying the personal vendetta or for the purpose of giving lessons to each other.

30. Similar view has been also taken by Bombay High Court in **Sandeep Shivaji Mhatre Vs. The State of Maharashtra and Anr.** as reported in **2014 SCC OnLine Bom 5297**. Here, the Executive Magistrate had initiated proceeding under Section 107 Cr.PC against the petitioner on the basis of FIR and the report forwarded by the police. Here Bombay High



Court held that such proceeding could not be justified merely on the basis of solitary instance of violence between two individuals.

31. In Ram Prakash and Anr. Vs. State as reported in **1996 SCC OnLine Del 314**, Delhi High Court quashed the proceeding under Section 107 Cr.PC which was initiated in view of dispute between landlord and tenant.

32. It would be also pertinent to point out that vague allegation cannot be the basis of initiation of proceeding under Section 107 Cr.PC. There must be allegation of specific overt-act giving apprehension of breach of public peace. Here, one may refer to **Kuldeep Singh and others Vs. The State of Bihar and Ors.** as reported in **1988 SCC OnLine Pat 77**, where proceeding under Section 107 Cr.PC was initiated. There was nothing on record to show that the Petitioner had contributed anything or had done any wrong or committed any overt-act giving rise to reasonable apprehension of breach of peace at his instance. The allegation was absolutely vague. The notice given to the Petitioner only showed that breach of peace was apprehend between the parties because of pendency of the case under the B.B.C. Act. Here, co-ordinate Bench of this Court long back in 1988 held in paragraph no. 6 of the Judgment that



it is a fundamental requirement of the law that there must be some material to show that the Petitioner had committed any overt-act or any wrong, so that reasonable apprehension of breach of peace could be apprehended at his instance and for that purpose, specific overt-act must be assigned against him who is proceeded against under Section 107 Cr.PC, and hence, initiation of any proceeding for want of specific overt-act or wrong cannot be sustainable.

**Whether Criminal Writ Petition is
maintainable/ entertainable?**

33. The maintainability/entertainability of the writ petition against initiation of proceeding under Section 107 Cr.PC vide order dated 03.04.2021 passed by learned Sub-Divisional Magistrate, Naugachhia, Bhagalpur arises in view of the statutory remedy under Criminal Procedure Code against the impugned order dated 03.04.2021, passed by learned Executive Magistrate. Vide order dated 03.04.2021, learned Executive Magistrate issued show cause to the petitioner, giving substance of the allegation, why the petitioner should not be directed to execute bond of Rs.1,00,000/- with two sureties for one year.

34. Here the petitioner could have challenged the interlocutory order dated 03.04.2021 passed by learned Executive Magistrate under Section 482 Cr.PC invoking



inherent jurisdiction of this Court. However, he has preferred criminal writ petition against the impugned order dated 03.04.2021 and the entire proceeding initiated under Section 107 Cr.PC.

Availability of Efficacious Alternative Remedy And Entertainability/Maintainability of Writ Petition Under Article 226 Of The Constitution.

35. The question arises, whether the writ petition is maintainable in view of the availability of the efficacious alternative remedy to the Petitioners. Here, it may be pointed out that maintainability and entertainability of a writ petition are distinct concepts. The objection as to maintainability goes to the root of the matter and if such objection is found to be of substance, the Court is rendered incapable of even receiving the lis for adjudication. However, the question of entertainability is entirely within the realm of discretion of the High Court, as writ remedy is discretionary. Writ Petition, despite being maintainable may be not entertained by a High Court for many reasons or relief could even be refused to the Petitioners, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. It may be further pointed out that availability of efficacious alternative remedy is not an absolute bar to maintainability of a writ petition. However, the



Court can still refuse to entertain the writ petition, if the Petitioner has efficacious alternative remedy as held by Hon'ble Supreme Court in **Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority and Others** as reported in (2023) SCC OnLine SC 95. Relevant paragraph of the judgment reads as follows:

“4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions,



this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

(Emphasis supplied)

36. It has been also held by Hon'ble Supreme Court in **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors.** as reported in (1998) 8 SCC 1 that power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. The High Court has discretion to entertain or not to entertain a writ petition and the High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious alternative remedy is available to the Petitioner, the High Court would not normally exercise its jurisdiction.



However, this restriction is not an absolute bar to maintainability of the writ petition. The High Court can entertain the writ petition in the following three contingencies, namely the writ petition has been filed for enforcement of any of the Fundamental Rights or where there has been any violation of Principle of Natural Justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. The relevant paragraph of the judgments reads as follows:

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

(Emphasis supplied)



37. In Radha Krishan Industries vs. State of Himachal Pradesh and Others as reported in (2021) 6 SCC 771 Hon'ble Supreme Court has further held as follows after referring to relevant Judicial precedents:

“27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in Chand Ratan v. Durga Prasad, (2003) 5 SCC 399, Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706] and Rajasthan SEB v. Union of India, (2008) 5 SCC 632] among other decisions.”



38. Hence, it clearly transpires that in view of efficacious alternative remedy being available to the petitioner, writ petition is generally not entertained, though availability of efficacious alternative remedy is not absolute bar to entertainability of the writ petition. In the following situations, writ petition is entertainable :- (i) The writ petition been filed for the enforcement of a fundamental right protected by Part III of the Constitution. (ii) There has been a violation of principles of nature justice. (iii) The order or proceedings are wholly without jurisdiction. (iv) The vires of a legislation is challenged.

Present Case

39. Coming to the case on hand, I find that the proceeding under Section 107 Cr.PC has been initiated against the petitioner by the Executive Magistrate on letter bearing No. 243 dated 03.04.2021 written by Assistant District Supply Officer, Naugachia to the Executive Magistrate and as per the letter, allegation against the petitioner is that he harasses the P.D.S. dealers and he also demands money from them and on account of non-fulfillment of the same, he threatens them to implicate in false cases. It further transpires from the record that after inquiry, learned Executive Magistrate came to the finding that the petitioner extended threat of journalism to Supply



Department and different schools of Education Department and demanded money and hence, employees and P.D.S. dealers lived under fear from the petitioner. On the basis of such finding, learned Executive Magistrate reach the conclusion/satisfaction that there was possibility of breach of peace in his area and hence, he directed the petitioner to execute bond of Rs.1,00,000/- with two sureties for one year to maintain peace.

40. However, on scrutiny of the alleged facts and circumstances against the petitioner, it clearly transpires that at most the petitioner has committed substantive offence punishable under the Indian Penal Code and hence, he should have been prosecuted for such offences. There was no allegation of any overt-act which could give apprehension of breach of public peace and tranquility. It has been already found that Section 107 Cr.PC is preventive in nature and not punitive. If the petitioner or accused had committed any offence, he could have been prosecuted, but on the basis of the offence committed, the learned Executive Magistrate had no occasion to initiate proceeding under Section 107 Cr.PC which confers extraordinary jurisdiction on the Executive Magistrate for taking preventive measure to maintain public peace and it has been already shown that public peace is much wider concept. For



application of the provisions under Section 107 Cr.PC, there must be allegation of overt-act which may lead to breach of public peace affecting the public at large. Only on account of the fear under which some individuals may be living due to threat being extended by the petitioner does not mean that would lead to breach of public peace.

41. Hence, I find that learned Executive Magistrate has initiated the proceeding without any jurisdiction. There was no occasion for the Executive Magistrate to initiate proceeding against the petitioner under Section 107 Cr.PC. Learned Executive Magistrate, under the guise of acting within its authority/jurisdiction has transcended his authority/jurisdiction. The petitioner should have been prosecuted for the substantive offence alleged committed by him.

42. Initiation of proceeding under Section 107 Cr.PC against the petitioner is nothing but infringement/curtailment of fundamental right of liberty of the petitioner as granted and granting by the Constitution under Article 21. The life and liberty of a citizen cannot be allowed to be curtailed or restricted in a manner as done by the Executive Magistrate. Therefore, this Court under Article 226 of the Constitution of India is duty bound to entertain the writ petition and quash the proceeding.



43. Hence, by resort to writ of certiorari, the entire proceeding initiated under Section 107 Cr.PC vide order dated 03.04.2021, passed by learned Sub-Divisional Magistrate, Naugachhia, Bhagalpur in Case No. 437 of 2021 is quashed. The present petition stands allowed, accordingly.

44. Learned Registrar General is directed to send a copy of this order to the Court of learned Executive Magistrate concerned. Learned Registrar General is also directed to send a copy of this order to Chief Secretary, Government of Bihar for circulating this order amongst the Executive Magistrates for their information.

(Jitendra Kumar, J.)

Shoaib/Chandan/
Ravishankar/-

AFR/NAFR	A.F.R
CAV DATE	13.03.2026.
Uploading Date	07.04.2026.
Transmission Date	07.04.2026.

