

LAW COMMISSION OF INDIA



सत्यमेव जयते

102ND REPORT

ON

**SECTION 122(1) OF THE CODE OF CRIMINAL PROCEDURE, 1973:
IMPRISONMENT FOR BREACH OF BOND FOR KEEPING
THE PEACE WITH SURETIES**

APRIL, 1984.

JUSTICE K. K. MATHEW

No. F. 2(16)/83-LC

Shastri Bhavan,
New Delhi-110001.

Dated, the 2nd July, 1984

My dear Minister,

I am forwarding herewith the 102nd Report of the Law Commission on "Section 122(1) of the Code of Criminal Procedure, 1973: Imprisonment for breach of bond for keeping the peace with sureties".

The subject was taken up by the Law Commission on its own. The need for taking up the subject is explained in Para I of the Report.

The Commission is indebted to Shri P. M. Bakshi, Part-time Member and Shri A. K. Srinivasamurthy, Member-Secretary, for their valuable assistance in the preparation of the Report.

With regards,

Yours sincerely,

(K. K. Mathew)

Shri Jagannath Kaushal,
Minister of Law, Justice,
and Company Affairs,
New Delhi.

Encl. 102nd Report.



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CHAPTER 1

INTRODUCTORY

1.1. This Report deals with an anomaly that exists at present in regard to the law relating to imprisonment of persons who have executed a bond with sureties for keeping the peace under the Code of Criminal Procedure, 1973. The anomaly arises with reference to the punishment of persons who commit a default in complying with the bond. Because of the practical importance of the subject, the Commission has taken it up of its own, and without bringing in the question of reforms in other provisions of the Code.

Reasons for taking up the subject.

1.2. The problem has mainly reference to section 122(1)(b) of the Code of Criminal Procedure, 1973. That section relates¹ to the action to be taken against a person who has given a bond with sureties for keeping the peace under section 117 of the Code.² The precise question to be considered is, what is to happen if the bond is violated? So far as a person who has executed a bond *without sureties* is concerned, section 122 (1) (b) makes a clear provision for sending the defaulter to prison. However, in the case where the bond is *accompanied by sureties*, the clause makes no such provision.

The problem in brief

1.3. This creates an anomaly, because the more serious case is left uncovered by the law, while the less serious case has been provided for. Probably, the assumption underlying the present legislative position is that in case of a bond with sureties, monetary penalties can be recovered from the sureties, and thus some kind of sanction already exists. But this does not explain why the case should be left uncovered so far as *imprisonment of the defaulter* is concerned. After all, the primary liability is that of the defaulter. It is he against whom an apprehension exists that he may commit a breach of the peace. It is he on whom the law primarily operates; and it is he who binds himself. Sureties are envisaged as persons with secondary liability. The principal liability should be of the defaulter. So viewed, the present law is not satisfactory and needs attention.

The anomaly.

1.4. It may be mentioned that the Commission, when it took up the subject for consideration, prepared and circulated to interested persons and bodies a Working Paper³ on the subject.

Working Paper.

The comments received on the Working Paper will be referred to at the appropriate place.⁴ The Commission is grateful to those who have responded to the Working Paper.

1. For the text of section 122, see para 2.3, *infra*.

2. For the text of section 117, see para 2.2, *infra*.

3. Working Paper issued on 23rd January, 1984.

4. Paragraph 2, 6, *infra*.

CHAPTER 2

THE PRESENT LAW, AND COMMENTS ON THE WORKING PAPER

The provisions of the Code: section 107(1).

2.1. For understanding the matter in greater depth, it is necessary to examine the scheme of the sections of the Code of Criminal Procedure, 1973 that are relevant to the topic under discussion.

Section 107(1) of the Code reads as under:—

“107(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 hereafter 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.”

Breach of the bond, if ultimately executed, is dealt with in section 122, to be considered presently.¹

In section 107(1) of the Code, the words “with or without sureties” were added by Act 45 of 1978, which amended the Code of Criminal Procedure, 1973. However, similar amendment was not made (by the Act of 1978) in section 122(1)(b) of the Code. This point will be adverted to later, in greater detail.

Inquiry after issue of notice and order under section 117.

2.2. After issue of the notice under section 107, an inquiry is held for determining whether the allegations on the basis of which the notice was issued are substantiated by evidence. Section 117 of the Code provides for the action to be taken on such inquiry.

It reads—

“117. 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.

.....
(The proviso to the section is not material).”

We may skip over the four sections of the Code that follow section 117, since they are material for the present purpose.

Section 122(1) of the Code: imprisonment for breach of bond.

2.3. The final order to furnish security may result in two situations, which are dealt with in section 122(1) of the Code, quoted below:—

“122(1) (a) If any person ordered to give security under section 106 or section 117 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except

1. Para 2.3, *infra*.

in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or magistrate who made the order requiring it.

(b) If any person, after having executed a bond *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 a 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.”
(Rest of the section is not material for the present purpose).

It is obvious that sections 107 and 122 are inter-connected with each other, and matters covered by section 107, which represents the initial stage of the proceedings, should be covered by section 122, which represents the final stage. Unfortunately, however, section 122(1) falls short of that. While section 107 contemplates a bond with or without sureties, section 122(1)(b) addresses itself only to a bond executed without sureties. In this manner, there arises an anomaly. A person who, under section 107, has been required to execute a bond without sureties can, if there is a default, be imprisoned under section 122(1), but not a person who has executed a bond with sureties.

2.4. It appears that the anomaly referred to above¹ has arisen as a result of the accidents of legislation. Briefly, the history of the legislative provisions on the subject, so far as is material, is as under:—

The anomaly:
how it has arisen.

(i) In the Code of Criminal Procedure, 1898, (the predecessor of the present Code) section 107 (corresponding to present section 107) provided for a bond “with or without sureties”. But when the Bill to replace the earlier Code (i.e. the Bill which led to the enactment of the present Code of 1973) was discussed in Parliament, the words “with or without sureties” were deleted from section 107 by a Lok Sabha Amendment. The amendment of the Lok Sabha also inserted, in section 122(1), an additional clause (b)², not contained in the earlier Code.

Presumably, clause (b) was considered necessary since, where there are no sureties, the only sanction would be recovery of a penalty from the defaulter (so far as monetary sanctions are concerned).³ This may not always be effective, and hence imprisonment was provided for. In any case, the scheme as it was enacted in 1973 was not illogical. Sections 107 and 122, as they ultimately emerged at that time, were in harmony with each other. Both the sections contemplated bonds without sureties only.

(ii) The illogicality really came in 1978. In that year, section 107(1) was amended, and the words “with or without sureties” were re-introduced in that sub-section. But no amendment was made in section 122(1)(b) to cover the case of bonds executed with sureties under section 107(1) as so amended. It is from this date that the position has become illogical. Of the field covered by section 107, only a part is now covered by section 122. The rest is left uncovered.

1. Paragraphs 2.1, to 2.3, *supra*.

2. For the text of section 122, see paragraph 2.3, *supra*.

3. For the law between 1973 and 1978, see *Bashir v. State of Rajasthan*, (1977) Cr. L. J. (NOC) 198 (Raj.).

(iii) As a result, under the present position,—

(a) default in complying with a bond for keeping the peace executed under section 107(1) can be punished with imprisonment of the defaulter under section 122(1) (b); but

(b) default in complying with a bond for keeping the peace, if accompanied with sureties, cannot be punished with such imprisonment, and only monetary penalties can be recovered from the sureties¹.

Need for rectifying the anomaly.

2.5. This does not appear to be a very satisfactory position. *Ex-hypothesi* where, in proceedings by way of preventive action, a person is called upon to furnish (besides his own bond), sureties also, the case is more serious than the case where only his personal bond is required. To put it differently, the need for preventive action against breach of peace is assumed to be stronger in cases where sureties are insisted upon, than in cases where sureties are not insisted upon.

On this logic, the law, where it provides for sureties, should lay down more severe sanctions for default. For obvious reasons, it is necessary that the discrepancy between section 107(1) of the Code of Criminal Procedure (as it stands after the amendment of 1978) and section 122(1)(b) of the Code (not amended in 1978) should be rectified, by making an appropriate amendment in the latter provision. The precise amendment will be suggested in a later Chapter of this Report.²

Comments received on the Working Paper.

2.6. As already stated³, the Law Commission had circulated a Working Paper on the subject under consideration, namely, whether section 122 of the Code of Criminal Procedure, 1973 should be amended so as to include therein the case where a bond is taken with sureties. A request was made to interested persons and bodies to send in their comments by the 19th March, 1984. All comments received upto the date of signing this Report have been taken into account by the Commission before finalising its recommendation.

In all, six comments have been received on the Working Paper. Two of them have been received from High Courts.⁴ The other four⁵ are from the State Governments of Haryana, Meghalaya, Rajasthan and U.P. All the six comments are in entire agreement with the need for amending the law on the lines envisaged in the Working Paper and in this Report.

1. Paragraphs 2.1 and 2.3, *supra*.

2. Paragraph 3.1, *infra*.

3. Paragraph 1.4, *supra*.

4. Law Commission File No. F. 2(16)83-L.C. S. No. 3 and 5.

5. Law Commission File No. F. 2(16)83-L.C. S. No. 6, 4 and 6, and later comments received under letters dated 9th April and 12th April, 1984 from the Governments of Meghalaya and Rajasthan respectively.

CHAPTER 3

RECOMMENDATIONS

3.1. In the light of the above discussion, we recommend that section 122(1) (b) of the Code of Criminal Procedure, 1973 (the relevant portion has been already quoted)¹ should be amended, by substituting, for the words "without sureties", the words "with or without sureties".

Recommendation regarding section 122(1) (b), Code of Criminal Procedure, 1973.

3.2. Consequential changes, if any, needed in other provisions of the Code, including the Forms appended to the Code, can be taken up at the drafting stage.

Consequential changes.

1. Paragraph 2.3, *supra*.
2. Cf paragraph 2.5, *supra*.

K. K. MATHEW	..	..	..	..	<i>Chairman</i>
J. P. CHATURVEDI	..	..	..	..	<i>Member</i>
DR. M. B. RAO	..	..	..	..	<i>Member</i>
P. M. BAKSHI	..	..	..	..	<i>Part-Time Member</i>
VEPA P. SARATHI	..	..	..	..	<i>Part-Time Member</i>
A. K. SRINIVASAMURTHY	..	..	..	..	<i>Member-Secretary</i>

Dated April, 1984.

ERRATA

- (i) On the *cover page* and the *first opening page* of the report, the words and figures "April, 1984" should be read as "July, 1984".
- (ii) On the *last page* below the signatures, the words and figures "Dated April, 1984" should be read as "Dated the 2nd July, 1984".
- (iii) In *line 2* of *para 2* of the *forwarding letter*, the figure "1" should be substituted by the figure "1.1".
- (iv) In *para 1.1*, in *line 4*, one alphabet "1" in the word "anomaly" should be deleted.
- (v) In *para 2.2*, in the *last sentence*, the word "not" should be inserted after the words "since they are" and before the word "material".