

Board of Departmental Examination, Himachal Pradesh

Paper 2 for IAS/HAS Officers: CRIMINAL CASE

September 2020

TIME Allowed 3 hours

Maximum Marks 100

Attempt All Questions. Candidates can consult Bare Acts (Cr P C, IPC).

Question I: Go through the facts of the Case given below and answer the questions:

- i. The Police presented a complaint before the Sub Divisional Magistrate, Una under Sections, 107, 150 & 133 of Cr. P. C. against one Sh. Rajinder Singh alias Jagga.
- ii. It was stated by the Police that the informant (Sh. Radhe Lal) had filed an application before the police alleging that his neighbor Sh Rajinder Singh had not only refused to cut the branches of the mango and shehtoot trees hanging precariously over his house but had also threatened him with dire consequences.
- iii. He had also alleged that the family of Rajinder Singh was of quarrelsome nature and they (Rajinder Singh, his wife Kamla Devi, sons Vijay and Vikrant and daughters Rama and Sunita) kept on threatening him and his wife.
- iv. On verification the Police found that branches of two trees of mango and one tree of shehtoot which were planted on the land of Rajinder Singh were covering the roof of the house of the informant. These could fall at any time. The police stated that a request was made by the informant to lop the branches of the trees, but the respondents refused to do so. The matter was reported to the Panchayat, but no action was taken. Therefore, it was prayed

that action be taken under Sections 107, 150 & 133 of Cr. P. C. The Police listed Rajinder Singh, his wife and children as Respondents.

- v. The police took statements of three independent witnesses (Mr Ganga Singh, Ward Member Mr Bishan Singh and Mrs Chander Kanta wife of Bishan Singh) who corroborated the version of the informant.

The complaint was taken up by the SDM Una on 24.08.2018. The SDM after going through the complaint ordered as under:

"Please call the parties for Preliminary Examination"

Thereafter, the matter was taken up on 27.09.2018 and it was ordered:

"Case called up. Sh. Ram Kumar vice Sh. SL Sharma, counsel for the Petitioner present. Smt. Kamla Devi Respondent present. I have heard the Respondent and the matter of dispute is flow of water and extra growth of the trees intergressing the boundaries of the petitioner and the respondent. Before concluding the enquiry, it is necessary to hear the petitioner personally on next date i.e. 16.10.2018"

Thereafter the matter could not be taken up as the Presiding Officer remained absent or busy or because either of the parties was not present. The proceedings were ordered to be dropped on 06.06.2019 and it was ordered as under:

"Case called. Counsel Sh. Rajesh Thakur along with respondent present. Counsel of Respondent has stated that necessary period of enquiry i.e. six month has been elapsed from its commencement and requested to drop the proceedings. I have perused the case file and found that statutory period of six months from the date of commencement of this case have been over. No further complaint against the respondents has been received either from the police or from the complainant with regard to apprehension of breach of peace in the area. Hence,

as per sub section (6) of section 116 Cr.P.C the proceedings in this case are, therefore, required to be dropped and case file of this court be consigned to the General Record Room after due completion.”

Answer following Questions

A. Examine the legality of the three orders passed by the SDM

(15 Marks)

B. Suppose you are the SDM and the information is laid before you. Pass an Order on 24.08.2018?

(15 Marks)

C. Suppose you join as SDM on 01.05.2019 and your predecessor has passed the orders prior to 06.06.2019 when the case is listed. Assume that on that date both the parties are present before you along with their respective counsels. The ADA is also present on behalf of the State. The counsel of the Petitioner wants the proceeding to continue as the trees were a treat for him and the respondents kept on threatening his family whereas the counsel of the Respondents wants the proceedings to be dropped because period of six months was over. The ADA wants the proceedings to be started afresh as the cause of action was still alive and there was likelihood of breach of peace. Pass a reasoned order as SDM on 06.06.2019.

(15 Marks)

Question No. II: Go through the facts of the case given below and answer the questions:

- i. On 11.01.2019, one Sh. Rajeev Kumar made an application before the SDM giving following information: He (Rajeev Kumar) had demolished his old kitchen and had started construction of a new kitchen. He had ordered bricks for the same. When the mules were bringing bricks on 31.12.2018,

these were stopped by his neighbor Dharam Singh and were not allowed to come to his land/house. When he asked Dharam Singh why his mules were stopped, Dharam Singh and his family members namely Ganga Devi (wife), Ram Singh (brother) Ajay (son) started abusing and quarrelling with him (Rajeev Kumar) and his wife. This has led to the apprehension of breach of peace. He prayed that action against the respondents be taken under Sections 107/150 of Cr. P. C.

- ii. The Sub Divisional Magistrate passed following order on 11.01.2019:

“11.01.2019

Issue notice 111 Cr. P. C. to accused. Case to come up on for 26.02.2019 further hearing. Announced.

Sd/xxx

SDM Kangra.”

- iii. On 26.02.2019 when the case was taken up the Respondents was present. The copies of the complaint were supplied to the Respondents. The matter was listed for a reply on 27.03.2019. Reply was filed on this date wherein the Respondent stated that there was a civil dispute pending between the parties hence the SDM had no jurisdiction. Matter was listed for consideration on 28.05.2019. On that date after listening to the respective versions of the parties SDM ordered that summons be issued to the witnesses of the complainant on 29.06.2019. Service was not effected, hence no witness was present on 29.06.2019. Therefore, the matter was listed for recording the evidence again and the summons were issued returnable for 17.08.2019. The case could not be taken up 17.08.2019 and was ordered to be listed on 06.10.2019. On that date it was ordered on file that the Presiding Officer was busy, hence the matter was ordered to be listed for 13.11.2019.
- iv. The following order was passed by SDM on 13.11.2019:

“13.11.2019

Case Called.

Present: Sh. Dharam Singh Respondent.

Sh. Rajeev Kumar, Complainant.

That already period beyond six months has passed and as per the contents of Kalandra, the matter has stemmed from the dispute owing to land. That the matter is pending in civil court and that both parties are bound down for one year. Let both parties furnish a bail bond of Rs. 10,000/- each. Since the matter regarding a land dispute is pending before the Hon'ble Civil Court, this Court cannot issue order except for restraining parties from going into bickering/quarrel.

That fearing a breach of peace both parties are bound down and file is closed. The file after due completion be consigned to GRR.

Sd/xxx

SDM Kangra.”

Answer following Questions:

- A. Examine the legality of the orders passed by the SDM. (15 marks)
- B. Assume you are SDM Kangra and the information is presented before you. Pass an Order on 11.01.2019. (10 marks)

Question III : Examine the Legality of following Orders passed by SDMs under preventive sections:

- A. Information is laid before the SDM that a building, constructed on the private land of the person concerned, was obstructing the view of the drivers and as a result the spot had become a “black spot” and an accident prone site. Several accidents had occurred because of this. The Owner of the building denies the allegations. During inquiry, witnesses, including experts

from the Police, Transport and Road Safety Departments, testify that the building was indeed a problem. The Magistrate, after inquiry, taking action under Section 133 Cr PC, passes an order to demolish entire building.

(5 Marks)

B. SDM of a Sub Division while proceeding under Section 107 Cr PC read with 150 Cr PC passes the order under Section 111 Cr PC asking the Respondent to furnish interim bond of Rs 10,000 without any surety. Then after conducting Inquiry he finds that the information against the Respondent was true. He Orders him to furnish a Bond for Keeping Peace for a period of one year amounting to Rs 10,000 with two sureties.

(5 Marks)

Question IV

There is a practice of taking Bail Bond for appearance (*muchalka*) under preventive sections. Can Bail Bond be demanded in proceedings taken up by the SDMs/EMs while proceeding under Sections 107/108/109 and 110 of the Cr. P.C? Elaborate your answer with relevant case law. (10 Marks)

Question V

On joining as SDM in a sub division you find that a large number of cases under Sections 107/150 are lying with your court clerk where notices under Section 111 Cr PC have been served and initially the Respondents had attended the court but thereafter effective hearings did not take place. In all these cases period of more than six months has passed since the appearance of the Respondents in response to Notice under Section 111 Cr PC. You also find that in none of the cases inquiry was completed and also in no case time has been extended by passing a reasoned Order. How will you proceed in these cases?

(10 Marks)