

HP Board of Departmental Examination

May 2021
PAPER: 2

CRIMINAL CASE (for IAS/HAS Officers)

Time Allowed 3 hours

Maximum Marks 100

Attempt ALL Questions

QUESTION NO I

On 1.1.2018, HC Hari Singh and HHC Vikas Kumar produce three persons before SDM Shimla (Urban), who were arrested on the previous night under Section 107/151 Cr PC. They present a Kalandara titled State Vs. (1) Ajay Kumar son of Sh V.K. Gupta, (2) Shiv Sharma son on Sh Jai Dev and (3) Rajender Kumar son of Sh Hari Prasad under Section 107/151 Cr PC.

The Kalandara contains following information:

On the intervening night of 31.12.2017 and 01.01.2018 a person named Ajay Kumar called SHO, Chotta Shimla on telephone and informed that his tenants, namely Shiv Sharma and Rajender Kumar, who are in a drunken state, have started shouting and creating nuisance in the locality. He informed that they are not listening to anyone and are threatening everyone with dire consequences. The SHO sent one HC and one HHC in Police Van to the spot immediately. The police personnel found that heated argument was going on between Ajay Kumar and his family members on one side and Shiv Sharma and Rajender Kumar on the other hand. They tried to pacify the parties but they did not listen to their advice and started abusing each other. Some of the neighbours were also present on the site. When they did not heed the advice of the police personnel they were arrested u.s. 107/151 Cr PC which had become essential to prevent any breach of peace.

The SHO further stated, in the Kalandara, that all three of them should be bound down u.s. 116 (3) till the completion of Inquiry and that the matter be heard and decided as per the Cr PC.

The SDM Shimla (Urban) heard the police personnel who presented the arrested persons before him. On questioning, the police personnel reiterated the contents of the Kalandara.

On questioning by the SDM, Ajay Kumar said that Shiv Sharma and Rajender Kumar were his tenants. They returned around mid-night from a New Year party; they looked drunk and they started abusing him and his family members without any reason. Both Shiv Sharma and Rajender Kumar said that they had returned after attending a get together with friends on the occasion of New Year but their landowner (Ajay Kumar) did not open the main gate of the house and refused to allow them to enter their rented house. When they requested him and tried to persuade him, he, along with his family members, started abusing them. They said that they did not drink alcohol in the party and they were in their senses.

Sh Ajay Kumar was represented by Sh. Dig Vijay, advocate and Sh Shiv Sharma and Sh Rajender Kumar were represented by Sh Rajeev Sharma, advocate. Sh. Dig Vijay, advocate stated that his client was the complainant and he should not have been made a respondent in this case, rather he should be the informant and the case should have been against the tenants only. Therefore, the police report was totally wrong. The advocate representing Sh Shiv Sharma and Sh Rajender Kumar stated that the police report was totally wrong and his clients had done nothing. He stated that his clients do not take alcoholic drinks and moreover the police did not get any medical report on this point. He pleaded that the police report did not merit any action u.s. 107 Cr PC. However, if the Court wanted to proceed, he was ready to furnish bail bonds on behalf of his clients. He further pleaded that he should be provided with the copy of the police report so that he can file reply. He argued that the matter should be adjourned for filing the reply.

Advocate representing Sh Ajay Kumar also stated at the bar that he was ready to furnish the bail bond if the court wants to take up the proceedings. He further stated that he should be supplied with the copy of the Kalandara so that the reply is filed.

The police personnel pleaded that all three Respondents are of quarrelsome nature and they will have a fight after they leave the court premises. Therefore, there was a need to bind them under section 116 (3) till completion of the inquiry.

- i. Assume you are the SDM Shimla (Urban) and the Respondents are presented before you. Pass the orders on January 1, 2018? **(The Order(s) should address all the points raised by the parties.) (15 MARKS)**
- ii. Draft an order u.s. 111, assuming that you have to proceed under Section 107 Cr PC. **(05 MARKS)**

QUESTION II

On a private complaint u.s. 107 Cr PC, SDM, Hamirpur issues notice u.s. 111 Cr PC to two persons. The Respondents appear before him and deny the contents of the Notice. They state that the information was false. The Complainant is also present in the Court. Both the Complainant and the Respondents start to argue in the court room and begin to accuse each other before the SDM. Both the parties list several incidents where the opposite party created a nuisance in the locality and threatened the other party with violent acts. The parties are not represented by any advocate. The SDM feels that their behavior is not proper and feels that they could occasion breach of peace. The SDM decides they should be bound down to keep peace. He, therefore, directs both the parties to execute personal bonds of Rs 2000 to maintain peace for a period of six months with one surety each of the like amount.

- i. Comment on the legality of the order passed by the SDM. **(05 Marks)**
- ii. Suppose that in the above case, the SDM after witnessing the behavior of the parties, orders that since the Respondents are of quarrelsome nature they can cause breach of peace any time. He feels that there was immediate reason to take action against them to

prevent such breach of peace, he therefore directs that the Respondents should execute the bond u.s. 116 (3). Thereafter, he adjourns the case for the next date (after 15 days) for recording of complainant's evidence. Will this order stand legal scrutiny or not and why? (05 Marks)

QUESTION III

The Police presents a Kalandara under Section 133 Cr PC before the SDM, the gist of information is as follows: "B complained to the police that A has blocked a public path leading to the house of B and other villagers. The police team visits the spot and finds that the path leading to some of the village houses has been blocked by A. On the spot A states that the path is not public path but passes through his land which he needs for construction of an additional room. A also claims that there is an alternate path available that leads to the houses of B and other villagers. B and a few persons of the village contest the claim of A. The police officer visiting the site is convinced that A has caused public nuisance as defined under Section 133 Cr PC and presents the case to the SDM for action."

- i. Pass an order on the Daily Order Sheet based on the information given above. (15 marks)
- ii. Draw a Conditional Order under Section 133 Cr PC, assuming that the SDM wants to proceed u.s. 133 Cr PC. (15 Marks)

QUESTION IV

- i. What is the impact of a Civil Suit on the proceedings under Section 145 Cr PC? Discuss by citing relevant Case Law. (15 Marks)
- ii. Can a Magistrate pass an order staying or dropping the proceedings under Section 147 Cr PC on the ground that a civil suit has been instituted on the same issue and that there is no likelihood of a breach of the peace after institution of the civil suit. (5 Marks)

QUESTION V

Whether the Statements given below are True or False

- i. The proceedings under Section 174 Cr PC have a very limited scope. The object is merely to ascertain whether a person has died in suspicious circumstances or it was an unnatural death and if so what is the apparent cause of the death. The question regarding details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under Section 174 Cr P C.
- ii. In each case of death in police custody, Inquest by a Magistrate is a must.
- iii. While holding the inquiry under Section 176 Cr PC, the Executive Magistrate functions as a Criminal Court.

- iv. EM can decide the question whether welfare of the children demands their custody to be with the mother or with the father in the proceedings under section 97 Cr P C.
- v. Under Section 145 Cr PC, Executive Magistrate has the power to make an order directing the delivery of possession to a person who was not in possession on the date of the preliminary order under Section 145(1).
- vi. It is the preliminary order that gives the Magistrate jurisdiction to proceed under Section 145 Cr P C and omission to draw up a preliminary order, therefore, renders all proceedings without jurisdiction.
- vii. An EM dismisses an application filed u.s. 145 Cr P C, wrongly, for default of appearance of the applicant, he can then review his own order and restore the application.
- viii. Cases under Section 145 and 147 Cr PC can be decided on the basis of Affidavits and the documentary evidence filed by the parties qua the dispute without examining the parties to the dispute by the Executive Magistrate.
- ix. The period of six months, after which the proceedings end, under section 107/108/109/110 Cr PC starts when the Executive Magistrate draws up notice u.s. 111 Cr PC.
- x. Local inquiry is a pre condition before making an order absolute in the proceedings u.s. 133 Cr PC.

(10X2= 20 MARKS)