

(1986) 09 OHC CK 0048

In the Orissa High Court

Bairagi Charan Jena and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 24-09-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 111

Citation : (1987) 63 CLT 10 : (1988) CriLJ 286

Hon'ble Judges : K.P. Mohapatra, J

Bench : Single Bench

Judgement

K.P. Mohapatra, J.—The impugned orders were passed u/s 107, Cri. P.C. ("Code" for short). Mr. Pasayat, appearing for the petitioners strenuously urged that the learned Executive Magistrate did not comply with . the requirements of Section 111 of the Code and passed the impugned orders mechanically without application of judicial mind. Therefore, they are liable to be quashed.

2. In the first case there was allegation of dispute between a group of students of the Utkal University Vani Vihar and a group of persons of village Patia nearby. In the second case the alleged dispute centered round cutting of some mango trees of the same village. The first party was Raja Krushna Chandra Deb and the members of the second party were a group of villagers.

3. I have carefully gone through the impugned orders, as well as, the first information reports lodged by the Police Officers of Saheednagar Police Station. It would appear therefrom that there were specific incidents after the occurrence of which there was apprehension of breach of peace in the locality. But curiously enough the impugned orders do not reflect the substance of the informations which were supplied to the Executive Magistrate and which the latter received before acting u/s 107 of the Code. Section 111 makes it imperative for the Executive Magistrate to set forth the substance of the information received before passing an order u/s 107 of the Code. The intendment of the legislature is that before any action is taken against a person to bind him down and restrict his freedom under the provisions of Section 107 of the Code, the Executive

Magistrate must apply his judicial mind and should not pass an order mechanically simply because he has received an information from a police officer. In this connection reference may be made to a Division Bench case of this Court reported in AIR 1970 Orissa 184 : 1970 Cri LJ 1378 Mandalapu Sundar Narayan v. V.V. Chenulu, in which on the subject of discussion the following conclusion was reached:

We would not examine whether the order passed by the learned Magistrate on 24-10-1967 can be supported on the aforesaid principles. The Magistrate had before him an application filed by the opposite party. Therein all the facts were narrated as to how the opposite party was restrained and assaulted by the petitioners. The Magistrate however, did not set forth the substance of the information received by him, nor did he send a copy of the petition filed before him along with the notice to show cause. The Magistrate does not appear to have applied his Judicial mind to the facts of the case, nor did he record his reasons in writing. It is understandable that the reasons need not be elaborate or detailed. All the same the order in writing must show ex facie that the reasons were considered and the Magistrate was satisfied.

As already referred to above, in the present case the Executive Magistrate does not appear to have applied his judicial mind to the facts of the case. He did not set forth the substance of the informations received by him. The notices which were issued for service on the petitioners also did not contain the substance of the information on the basis of which the Executive Magistrate had reasons to believe that there was apprehension of breach of peace. It is pertinent to point out that in a case u/s 107 of the Code unless the notice should contain the substance of the information, it will be difficult on the part of the delinquent to meet the allegations brought against him. Therefore, not only in the order but also in the notice substance of the information received by the Executive Magistrate should, as a general rule, be mentioned so as to give sufficient notice to the delinquent to meet the allegations.

4. The notices issued on the petitioners do not meet with the legal requirements of Section 111 of the Code. Therefore, they are liable to be quashed and are hereby quashed. It is open to the Executive Magistrate to take action according to law if the necessary conditions still exist.