
(1996) 04 OHC CK 0030

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 1830 of 1995

Bhagaban Sethi and Others

APPELLANT

Vs

Bhubanananda Samantray

RESPONDENT

Date of Decision : 04-04-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 111, 113, 115

Citation : (1996) 1 OLR 485

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

Bench : Single Bench

Advocate : B. Patnaik, R.K. Badu and P.K. Panda, for the Appellant; A.S. Naidu, C.R. Dash and P.K. Mohapatra, for the Respondent

Judgement

P.K. Misra, J.—Some of the members of second party in a proceeding u/s 107 of the Code of Criminal Procedure (herein after referred to as the "Code") are the petitioners in this application u/s 482, read with Section 401 of the Code for quashing the order u/s 107 of the Code.

2. The petitioners claim that most of them are employees either under the Government or under some public sector undertakings. It is stated that the proceeding u/s 107 of the Code has been initiated on the basis of frivolous allegations made by the first party-apposite party. It is submitted that the notice under Aunexure-1 is invalid on the pre-conditions for initiating a proceeding u/s 107(1) of the Code have not been fulfilled. It is further submitted that since no enquiry has been conducted before initiation of the proceeding u/s 107(1) of the Code, the proceeding should be quashed. It is further submitted that along with the notice under Annexure-1, no station diary entry nor FIR was enclosed and as such the notice was vitiated.

3. The learned counsel appearing for the petitioners has placed reliance on the decision reported in Rabi " Rabindranath Biswal and Others Vs. Rankanath Pradhan and Others, , in support of his contention that initiation of a proceeding without any enquiry is vitiated. He has further submitted that since the notice

served on the second party members did not comply the provisions under Sections 111, 113 and 114 of the Code, the same should be quashed in view of the decisions reported in 1987 (I) OLR 448, Harekrushna Singh and Ors. v. Kailash Ch. Beura and Ors. and 1987 (II) OLR 62, Rama Chandra Jena and Ors. v. Muralidhar Ojha and Ors. Some other decisions taking similar view have been cited.

4. It is not necessary to refer in detail to the various decisions cited on behalf of the petitioners as all these decisions have been considered in Crl. Misc. Case No. 10 of 1995 decided on 2-4-1996 wherein it has been stated that it is not obligatory on the part of the Executive Magistrate to conduct a preliminary enquiry before deciding to proceed u/s 107(1) of the Code. It has been further held that service of notice in an irregular manner without containing the substance of the information received and without being accompanied with the order u/s 111 of the Code does not ipso facto vitiate the proceeding or even the notice, and a person receiving such defective notice should appear before the Magistrate and pray for compliance with the provisions of Sections 111, 113 and 114 of the Code.

5. In the present case, it is apparent from the notice under Annexure-1 that the proceeding has been initiated on the basis of the petition filed by the first party as well as the enquiry report submitted by the Office-in-charge, Krushnaprasad Police Station. The question whether a proceeding u/s 107(1) of the Code can be initiated merely on the basis of the petition filed by the private person does not arise in this case as, the order initiating the proceeding is also based on the enquiry report submitted by the Officer-in-charge Krushnaprasad Police Station. If a complaint case of any offence can be sent by a Magistrate to the Officer-in-charge for enquiry and report in accordance with Section 156(3) of the Code and order of cognizance on the basis of such report can be taken, there is no reason as to why adoption of a similar course and initiation of a proceeding u/s 107(1) of the Code, on the basis of the petition by the first party as well as enquiry report submitted by the Officer-in-charge of a police station shall be held to be vitiated.

6. Notice under Annexure-1 appears to be copy of the order u/s 111 of the Code. If the petitioners feel that they require any further details, they may approach the Magistrate and pray for supply of necessary details in accordance with the provisions of Sections 111, 113 and 114 of the Code and the notice issued under Annexure-1 need not be quashed.

7. The petitioners claim that they are employees of the Government or public sector undertakings. Prima facie it may not be advisable to insist on their personal attendance. It is open to the petitioners to file applications before the Magistrate by engaging advocate to dispense with their personal attendance in accordance with Section 115 of the Code and if such petitions are filed the Executive Magistrate concerned should deal with the matter liberally keeping in view of the fact that the petitioners are employees either under the Government

or public sector undertakings.

8. If any application is filed for supplying the details, the same shall be dealt with in accordance with law keeping in view the spirit of Sections 111,113 and 114 of the Code so that the petitioners shall be in a position to file the show cause. It is made clear that if the Magistrate feels that due to passage of time and change of circumstances, there is no further apprehension of the breach of the peace, he may drop the proceeding.

Subject to the aforesaid observations, the Criminal Misc. Case is disposed of.