
(1983) 11 OHC CK 0013
In the Orissa High Court

Krutibasa Panda and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-11-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 319
Penal Code, 1860 (IPC) — Section 109, 324, 34

Citation : (1984) 57 CLT 186 : (1984) CriLJ 1111

Hon'ble Judges : G.B. Patnaik, J

Bench : Single Bench

Judgement

G.B. Patnaik, J.—This revision is against the order dated 11.8.1983 passed by the Magistrate First Class, Cuttack, by which the learned Magistrate on the basis of materials before him has taken cognizance against petitioners Sadhu Charan Panda and Krutibas Panda under Sections 324/34/109, penal Code, and has issued summons to them to appear on 30.8.1983.

2. Mr. Dey, the learned Counsel for the petitioners, contends that though the F.I.R. contained allegations against the petitioners, but the witnesses examined u/s 161, Criminal P.C. did not implicate the petitioners and, therefore, rightly no charge-sheet had been filed against them. It is no doubt true that while being examined in court, P. Ws. 3, 4 and 5 implicated the petitioners in the offence, but according to Mr. Dey, the power u/s 319, Criminal P.C., is an extraordinary power which should be used very sparingly and only if compelling reasons exist and in the present case there is no such compelling reason for which the Magistrate should not have taken cognizance against the petitioners in exercise of power u/s 319, Criminal P.C.

3. In view of the evidence of P. Ws. 3, 4 and 5 making allegations against the petitioners and also in view of the fact that in the first information report itself, petitioners were implicated with the occurrence, it cannot be said that the learned Magistrate has arbitrarily exercised his power u/s 319 Criminal P.C. It is a well-known principle of Criminal jurisprudence that cognizance of an offence is

taken and offenders are tried when it is brought to the notice of the court that they are involved in the offence. In view of the allegations in the F.I.R., it cannot be said that the evidence of P. Ws. 3, 4 and 5 was an afterthought and the entire case is a concoction. At any rate, that would be a matter to be decided in the trial itself. In view of the admitted position that P. Ws. 3, 4 and 5 had deposed to the effect that petitioners were involved in the offence, the order of the learned Magistrate cannot be interfered with by this Court at this stage. I, therefore, find no merits in this revision which is accordingly dismissed. The interim order dated 3.10.1983 passed in this revision is vacated and the learned Magistrate is directed to conclude the proceedings as expeditiously as possible.