
(1988) 08 OHC CK 0022

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 355 of 1985

Padmacharan Sahu

APPELLANT

Vs

Miss P. Rajeswari

RESPONDENT

Date of Decision : 05-08-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 310, 482
Penal Code, 1860 (IPC) — Section 427, 428

Citation : (1988) 66 CLT 772

Hon'ble Judges : L. Rath, J

Bench : Single Bench

Advocate : B.S. Ratho, P.K. Bhuyan, Manoj Misra, R.P. Mohapatra and A.K. Satpathy, for the Appellant; Y.S.R. Murty and Y.K. Murty, for the Respondent

Final Decision : Allowed

Judgement

L. Rath, J.—This petition u/s 482 Code of Criminal Procedure is directed against the order of the C.J. M. Ganjam, confirmed in revision by the Sessions Judge directing a local inspection to be made by an Advocate to assess the damages of the building occupied by the complainant. Cognizance of the offence was taken against the Petitioner under- Sections 427 and 428, I.P.C. on the basis of the complaint of the opposite party, but before the trial had begun and no evidence recorded, a petition for local inspection was filed and accepting it, the learned C.J. M. directed deputation of an Advocate Sri Arun Kumar Rout to make a local inspection of the spot for the purpose. The order was challenged in revision and as earlier stated, it having failed, the Petitioner invokes the inherent powers of this Court.

2. Mr. B.S. Ratho, learned Counsel appearing for the Petitioner, has urged firstly of lack jurisdiction in the Magistrate to appoint a commissioner for local inspection and secondly, the propriety of any local inspection even before the trial had begun. The objections taken by Mr. Ratho appear to be unexceptionable. The only provision in the Code of Criminal Procedure dealing with the question is

Section 310 which authorises a Judge or a Magistrate to visit and inspect, after due notice to the parties, any place in which an offence is alleged to have been committed with a view to properly appreciate the evidence given at such inquiry or trial and before such step is taken, he is to arrive at an opinion that the step is necessary. As the section itself says the power is to be exercised by the Judge or the Magistrate himself and hence a delegation of the same to some - other person is not competent. The inspection also can only be made for the purpose of appreciating the evidence already on record but can never be used to fish out evidence when there is none. Since the learned C.J. M. in the instant case acted contrary to law and facts having ordered a local inspection to be made before any evidence was put on record and delegated his functions also to another the order is not clearly supportable and hence the same is quashed.

3. In the result the Criminal Miscellaneous Case is allowed.