

(1988) 12 OHC CK 0031

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 752 of 1987

Purushottam Dash and Others

APPELLANT

Vs

Bhaskar Dash

RESPONDENT

Date of Decision : 08-12-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 202

Citation : (1989) 1 OLR 78

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

Bench : Single Bench

Advocate : P.K. Nanda, for the Appellant; G.N. Tripathy, for the Respondent

Final Decision : Allowed

Judgement

K.P. Mohapatra, J.—The Petitioners are the members of the second party in a proceeding u/s 107 of the Code of Criminal Procedure for short CPC initiated at the instance of the opposite party who was the first party in the proceeding. Initiation of the proceeding, as well as the notice has been challenged in this case. The proceeding was initiated on the grounds that on 15-6-1987 some of the Petitioners commented on the conduct of the female folk of the family of the opposite party and all the Petitioners being armed with deadly weapons come to assault him, on 10-7-1987 the Petitioners pelted stones at the house of the opposite party damaging some of the household articles and again on 15-7-1987 they declared that they would kill the opposite party. After perusal of the petition u/s 107 Code of Criminal Procedure supported by affidavit and on hearing learned Counsel appearing for the opposite party but without making an enquiry as envisaged in Section 202 and observed in Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others, the proceeding u/s 107 Code of Criminal Procedure was initiated and the Petitioners were directed to appear in the court and show cause as to why they should not be ordered to execute bonds for Rs. 1000/- with two sureties for the like amount to keep peace in the locality for a period of one year learned Counsel appearing for the Petitioners has relied upon

1988 (II) O.L.R. 27, Fakir Charan Singh and Ors. v. State of Orissa and Anr. and submits that before issuance of notice a fact finding enquiry was not held by the Executive Magistrate and so initiation of that proceeding u/s 107 Code of Criminal Procedure was not in accordance with law His contention is supported by facts. Relying upon the principles laid down in the case of Madhu limaye and Anr. v. Sub-Divisional Magistrate Monghyr (supra) this Court in 1972 (2) C.W.R. 1242 Adikanda Sahu and Anr. v. Kasiram Rout held as follows:

The Magistrate is not to act automatically on receiving an information but is vested with the discretion to satisfy himself that there is sufficient ground for proceeding. The method and manner of reaching such satisfaction is also left to his judicial discretion and the most obvious method is to hold a preliminary fact finding enquiry like the one envisaged in Section 202 Code of Criminal Procedure.

As already stated above the initiation of the proceeding was not preceded by a fact finding enquiry at the nature as observed by the Supreme Court. So I am bound to hold that the initiation of the proceeding u/s 107 Code of Criminal Procedure was not in accordance with law.

2. In the result, the Criminal Misc. Case is allowed and the impugned order of the Executive Magistrate, Khurda is set aside.

Misc. Case allowed.