
(1991) 01 OHC CK 0013

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 630 of 1990

Rabi ' Rabindranath Biswal and Others

APPELLANT

Vs

Rankanath Pradhan and Others

RESPONDENT

Date of Decision : 01-01-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107

Citation : (1992) CriLJ 2888 : (1991) 2 OLR 75

Hon'ble Judges : L. Rath, J

Bench : Single Bench

Advocate : P.K. Nanda, for the Appellant; J.K. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

L. Rath, J.—Initiation of a proceeding u/s 107, Cr. P. C and issue of notice to the petitioners u/s 111 of the Code asking them to show cause as to why they would not execute bond for Rs. 1,000/- with one surety each for the like amount to keep peace in the locality for one year is impugned in this application u/s 482, Cr. P. C. The sole submission of the learned counsel for the petitioners is that on the petition of the opp. parties as the first party who are private complainants, no proceeding of the like could have been initiated nor the petitioners could have been called upon to show cause without an enquiry having been made by the learned Magistrate so as to satisfy himself regarding the justifiability of commencement of the proceeding.

2. The opp. parties filed the application u/s 107, Cr. P. C. before the learned Magistrate alleging that the petitioner No. 1 was the custodian of the Kotha fund of the village and when the opp. parties demanded accounts thereof, petitioner No. 1 formed a combination to suppress the opp. parties and that on 25-5-1990 the petitioners held a meeting and decided to take severe action against the" opp. parties. On 26-5-1990, 3-6-1990 and 5-6-1990 the petitioners entered into the houses of the opp. parties forcibly and committed theft for which a case had been registered against them by the police under Secs. 454/395, IPC. Again it

was alleged that on 24-6-1990 when the opp. parties were doing their agricultural work, the petitioners prevented the same and threatened them with serious consequences. The matter was also reported at the police station but as the police did not take any action, the opposite parties were compelled to initiate action u/s 107, Cr, P. C.

3. There is no dispute about the fact that the learned Magistrate, as the very order shows, recorded his satisfaction regarding apprehension of breach of peace and initiated the proceeding u/s 107, Cr. P. C. only upon perusal of the complaint petition, the copy of the FIR and examining the opp. party No. Ton oath. Such a question as is now raised was considered by the Supreme Court in the oft cited case of Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others, where analysing the provision of Section 107, Cr. P. C it was observed inter alia that there may be cases where the proceedings may be instituted at the instance of a private complainant who may be, apprehensive of the breach of the peace by the person complained against. In such cases the Mgistrate is bound either to hold an enquiry himself by examining witnesses on oath or to get the enquiry made by the police, so that he may be able to form the correct opinion as to the existence of sufficient grounds for proceedings in the case. It is only after the Magistrate has taken these steps th3t he can proceed to make orders u/s 112 of the Code This decision was later on relied upon in 1972 (2) CWR 1242 (Adikenda Sahu v. Kasiram Rout) where Hon"ble Mr Justice S. K Ray, as he then was, took the view that the language of Section 107 Cr. P.C. clearly indicates that the SDM is not to set 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, Cr. P. C. It is now settled by a series of decisions of this Court that before action u/s 107, Cr. P. C. is initiated, the Magistrate is obliged to hold an enquiry to satisfy himself regarding existence of materials justifying action and that he can neither act on a mere police report or only upon a private complaint. Undoubtedly, the checks to be applied for initiating action only upon a private complaint are more rigorous than when action is to be taken on police report. Since the apex Court has held before taking action on a private complaint under the Section the Magistrate has to hold an enquiry and examine witnesses and it was later on explained by this Court that the enquiry as contemplated is in the nature of the enquiry u/s 202, Cr. P. C. it would obviously mean that the Magistrate can initiate the proceeding not merely on perusal of the complaint or by only examining the complainant himself on oath. The complainant would have the added responsibility to bring in more materials fay way of examination of witnesses in support of his case so that on consideration similar to that u/s 202, Cr. P. C the Magistrate would have the satisfaction to issue process and call upon the opposite parties to show causes against execution of bond. In view of such exposition of law, I am not inclined to accept the submission of Mr. Mohanty that since the learned Magistrate had

relied upon the sworn statement of opp. party No. 1 alone, the requirement of law should be taken to have been complied with.

4. In that view of the matter, the petition is allowed and the notice issued to the petitioners is quashed. If there is still any apprehension of breach of peace and the learned Magistrate is moved properly, it is open to him to take action in accordance with law.