

(1987) 11 OHC CK 0030

In the Orissa High Court

Case No : Criminal Miscellaneous No. 801 of 1987

Sk. Dora and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 06-11-1987

Acts Referred:

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

Citation : (1988) 1 OCR 57

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

Bench : Single Bench

Advocate : Sk. Aziz, A.K. Kanungo and S.M. Dutta, for the Appellant; Jairaj Behera, Addl. S.G., for the Respondent

Judgement

K.P. Mohapatra, J.—In this case, the Petitioners are delinquents in a proceeding u/s 107, Code of Criminal Procedure) before the Executive Magistrate, Cuttack. They have challenged the notice as being not in accordance with law and have prayed for quashing the same. The substantial part of the impugned notice is quoted below for easy reference:

Whereas it has been made to appear to me from the report of the O.I.C. Purighat P.S. Non F.I.R. No. 143/87 that due to ill-feeling between the parties the members of the 2nd. Party have combined together and with a view to putting the members of the 1st. Party to trouble and loss have been committing various overtacts vide SDE No. 434 dt. 13-8-87, leading to breach of the peace.

2. It will appear therefrom that description of specific overt acts alleged to have been committed by the Petitioners were not mentioned. It was also not indicated as to how and in what manner they had combined together With a view to put the first party or the members of his family into trouble and loss. As a matter of fact, it seems that the learned Executive Magistrate did not apply his judicial mind to the facts of the case and did not even hold the slightest enquiry to satisfy himself before initiating the proceeding. His order in issuing the impugned notice is the very negation of the legal principles laid down in Bairagi Charan

Jena and Others Vs. State of Orissa and Another, , which is quoted below 90 that in future Executive Magistrates shall take advantage of it before initiating such proceedings,

Section 111, makes it imperative for the Executive Magistrate to set forth the substance of the information received before passing an order u/s 107 of the Code. The intendment of the legislature is that before any action is taken against a person to bind him down and restrict his freedom under the provisions of Section 107 of the Code, the Executive Magistrate must apply his judicial mind and should not pass an order mechanically simply because he has received an information from a police officer;

In a case u/s 107 of the Code unless the notice should contain the substance of the information, it will be difficult on the part of the delinquent to meet the allegations brought against him. Therefore, not only in the order but also in the notice substance of the information received by the Executive Magistrate should, as a general rule, be mentioned so as to give sufficient notice to the delinquent to meet the allegations.

(quoted from Head note)

3. I am satisfied that the impugned notice cannot be supported according to law. It is accordingly quashed.