
(1990) 10 OHC CK 0023

In the Orissa High Court

Case No : Criminal Revision No. 692 of 1987

Surendra Kumar Patjoshi and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 23-10-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116(3)

Citation : (1991) 71 CLT 453 : (1991) CriLJ 1175

Hon'ble Judges : V. Gopalaswamy, J

Bench : Single Bench

Advocate : P. Mohanty and S.K. Padhi, for the Appellant; A.N. Misra, for the Respondent

Final Decision : Allowed

Judgement

V. Gopalaswamy, J.—This revision is preferred against the order dated 16-12-1987 passed by the S. D.M., Dharamgarh, directing the delinquents petitioners in Criminal Misc. Case No. 281 of 1987, a proceeding u/s 107 (sic) Cr. P.C. to execute interim bonds for keeping peace.

2. u/s 116(3), Cr. P.C. the Magistrate may direct the delinquent to execute interim bond only after the commencement of the inquiry if the other requirements of that sub-sec. are fulfilled. The learned counsel for the petitioners, Mr. Mohanty, submits that the impugned order passed by the Magistrate is without jurisdiction in that by the date of the passing of the impugned order the inquiry has not yet commenced. In this context he relied on Sona Khan and Others Vs. State of Orissa, . In that decision the following observations of the Supreme Court in Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others,), were referred to and relied on (para 43):

".....Therefore, as the liberty of a person is involved, and that person is being proceeded against on information and suspicion, it is necessary to put a strict construction upon the powers of Magistrate..... It cannot be described as an

inquiry within an inquiry as has been said in some cases. Some inquiry has to be made before the bond can be ordered. We, therefore, approve of those cases in which it has been laid down that some inquiry should be made before action is taken to ask for an interim bond or placing the person in custody in default....."

On a perusal of the record, it is seen that in the present case no inquiry was made by the Magistrate and the Magistrate made no attempt in a legal way to put the allegations to test for finding out whether they are the facts. Hence the impugned order passed by the learned Magistrate is without jurisdiction.

3. In the result, I hereby quash the impugned order directing the petitioners to executs interim bonds and accordingly allow the revision.