

Bhimasen Mallik Vs. State

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Court : Orissa

Decided On : Jan-13-2014

Appellant : Bhimasen Mallik

Respondent : State

Judgement :

CRLMC No.1667 of 2013 & Misc.

Case No.1143 of 2013 07.

13.1.2014 Heard learned counsel for the parties.

This application under Section 482 Cr.P.C.has been filed praying for quashing of the notice dated 07.5.2013, issue by the Executive Magistrate, Mahakalpada, in Crl.

Misc.

Case No.04 of 2013, initiating a proceeding against the petitioners under Section 107 Cr.P.C.and directing them to show-cause as to why they should No.be ordered to execute a bond of Rs.1000/- each with solvent surety to keep peace for a period of one year.

The case of the petitioners is that the impugned notice has been issued by the Executive Magistrate, Mahakalpada, in Crl.

Misc.

Case No.04 of 2013, without complying the procedure prescribed under Section 111 Cr.P.C. and without conducting independent enquiry in the matter.

In this regard, learned counsel for the petitioners has relied upon a decision of this Court in Harekrushna Singh and others vRs. Kailash Ch.

Beura and others. 1987 (I) OLR-448, where in a similar case this Court had come to hold that the position of law is well settled that though the matter of initiation of proceeding under Section 107 of the Code is at the discretion of the Magistrate, such discretion should not be exercised mechanically and should not be based solely on police report.

The Magistrate should conduct some independent enquiry or receive some information from an independent source before recording his opinion about the existence of sufficient grounds for proceeding.

mp 2 Learned counsel for the petitioners has also relied upon a decision of this Court in Dibakar Bhoi VRs. State of Orissa and three others. 2009 (I) OLR-935, in support of his contention that the Magistrate is under legal obligation to conduct an enquiry to satisfy himself that there is necessity of initiating a proceeding under Section 107 Cr.P.C. and that he cannot initiate such a proceeding simply basing on a police report.

In the present case, the impugned notice, under Annexure-4, issued by the Executive Magistrate, Mahakalpada, in CrI.

Misc.

Case No.04 of 2013 is solely based on the report of O.I.C., Marshaghai P.S. and no independent enquiry appears to have been undertaken by the Magistrate to satisfy himself that there is necessity of initiating a proceeding under Section 107 Cr.P.C. Therefore, the impugned order and notice under Annexure 4 cannot be sustained and the same is accordingly quashed.

It is open for the learned Magistrate to initiate proceeding under Section 107 Cr.P.C.against the petitioners after complying with the procedure prescribed under law.

CRLMC is accordingly allowed.

Misc.

case stands disposed of accordingly.

Issue urgent certified copy as per rules.

. S.C.Parija, J.

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