

S.173(8) CrPC | Magistrate Not Barred To Order Further Investigation After Taking Cognizance, Until Trial Commences: Orissa HC Reiterates

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IN THE HIGH COURT OF ORISSA AT CUTTACK

Dr. S. Muralidhar; CJ.

CRLMC No. 1794 of 2017; 02.12.2022

Manoj Kumar Agarwal *versus* State of Odisha

Petitioner Mr. Partha Sarathi Nayak, Advocate

Opposite Party Mr. Ishwar Mohanty, Addl. Standing Counsel

ORDER

- 1.** The challenge in the present petition is to an order dated 10th April, 2017 passed by the S.D.J.M., (P), Rourkela in G.R. Case No.663 of 2012 declining the prayer of the present Petitioner for further investigation of the case.
- 2.** A perusal of the said order reveals that S.D.J.M. rejected the prayer only because cognizance had already been taken of the offence under Section 363 IPC on 4th November, 2014.
- 3.** This Court has heard the submissions of learned counsel for the parties.
- 4.** Learned counsel for the Petitioner has placed reliance on the decision of the Supreme Court in ***Vinubhai Haribhai Malaviya v. The State of Gujarat (2019) 17 SCC 43*** where the Supreme Court has held, overruling certain earlier judgments, that the power of the Magistrate to order further investigation under Section 173(8) Cr PC is not taken away only because cognizance has already been taken of an offence.
- 5.** In that view of the matter, the impugned order of the trial Court is hereby set aside. The effect of the present order would be that the prayer of the Petitioner would stand allowed and the Magistrate will pass appropriate orders regarding further investigation under Section 173(8) Cr PC.
- 6.** The matter will now be listed before the S.D.J.M., (P) Rourkela on 16th January, 2023. A copy of this order be sent to the said Court forthwith.
- 7.** The petition is disposed of in the above terms. An urgent certified copy of this order be issued as per rules.

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