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**(2014) 08 CAL CK 0066**

**Calcutta High Court**

**Case No:** Writ Petition No. 22089 (W) of 2014

Naba Kumar Khan

APPELLANT

Vs

The State of West Bengal

RESPONDENT

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**Date of Decision:** Aug. 12, 2014

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 107, 110, 116(C)

**Citation:** (2014) 4 WBLR 778

**Hon'ble Judges:** Nadira Patherya, J

**Bench:** Single Bench

**Advocate:** Uday Sankar Chattopadhyay and Suman Sankar Chattopadhyay, Advocate for the Appellant; Suman Sengupta, Advocate for the Respondent

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### **Judgement**

Nadira Patherya, J.

By this application, the petitioner prays for setting aside the prosecution report initiated under Section 110 of the Criminal Procedure Code. The case of the petitioner is that a complaint was lodged with the Officer-in-Charge, Kanksa Police Station on 31st March, 2014. On the basis of such complaint, an enquiry was held. On enquiry it was submitted that the prosecution under Sections 107/ 116(C) of the Criminal Procedure Code ought to be initiated against the writ petitioner herein.

2. A show cause notice was issued and this was made returnable on 16th April, 2014.

3. The proceeding under Section 107 of the Criminal Procedure Code was initiated. A note was made by the Executive Magistrate, Durgapur, on the basis whereof instruction was given to initiate proceeding under Section 110 in stead of Section 107 as the petitioner is a habitual offender. Accordingly, permission was sought for initiating the proceeding under Section 110 of the Criminal Procedure Code.

4. While making enquiry, it was found by the Officer-in-Charge, Kanksa Police Station, Burdwan that there was no case or Q.D. Entry or any reference made

against the petitioner for the purpose of initiating the proceeding under Section 110 of the Criminal Procedure Code. In spite thereof a prosecution report was submitted as the Executive Magistrate, Durgapur had directed initiation of proceeding under Section 110 of the Criminal Procedure Code. This is the only reason for initiating such proceeding. Therefore, the prosecution report be set aside and order be passed as sought for.

5. Counsel for the State respondent submits that time be given to take instruction in the matter.

6. Having considered the facts of the case, there is no doubt that the complaint was lodged against the writ petitioner and an enquiry was made against him and a report was submitted. On the basis of the said report, proceeding under Section 107 of the Criminal Procedure Code was to be initiated. Such proceeding was initiated. So far as so good, but the Executive Magistrate, Durgapur directed that the proceeding under Section 107 of the Criminal Procedure Code be converted into Section 110. On such conversion, an enquiry was made and while making such enquiry, it was found by the Sub-Inspector of Police, Kanksa Police Station, that from the available records, no case, no G.D. Entry or any reference against the petitioner could be found to initiate the proceeding under Section 110 of the Criminal Procedure Code, but in view of the direction given by the Executive Magistrate, Durgapur, the direction had to be complied with even though, no evidence could be found. Therefore, prosecution report under Section 110 of the Criminal Procedure Code was directed to be submitted. The reason given by the concerned authority for initiation of the said proceeding is, therefore, bad and perverse. There is no doubt that during enquiry no record was found, no case was registered, no G.D. Entry or any reference made against the petitioner for initiation of the prosecution under Section 110 of the Criminal Procedure Code.

7. In view of the said finding, the concerned authority ought to have proceeded accordingly. But the concerned Officer-in-Charge believing that he had to carry out the direction of the Executive Magistrate has committed a grave error, which has rendered his report perverse.

8. No reason has been assigned by the Executive Magistrate for directing initiation of proceeding under Section 110 of the Criminal Procedure Code. Therefore, an independent decision ought to have been taken by the concerned police officer and it is for this reason that his report dated 22nd April, 2014 is bad and perverse.

9. Accordingly, the report dated 22nd April, 2014, so also the prosecution report on the basis of which prosecution under Section 110 Criminal Procedure Code has been initiated is set aside.

10. This, however, will not prevent the S.I. of Police from taking an independent decision in accordance with law.

11. With the aforesaid direction, this application is disposed of. As no affidavit-in-opposition has been filed, the allegations contained in the petition are not admitted.