

(2008) 12 OHC CK 0017
In the Orissa High Court
Case No : BLAPL No. 9519 of 2008

Biranchi Narayan Mishra and Another	APPELLANT
Vs	
State of Orissa	RESPONDENT

Date of Decision : 24-12-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 299, 82, 83
Penal Code, 1860 (IPC) — Section 134, 34, 489D

Citation : (2009) CLT 205 (Suppl CrI)

Hon'ble Judges : L.K. Mishra, J

Bench : Single Bench

Advocate : A.K. Behera, M. Balabantray and S. Mohanty, for the Appellant; S. Behera, Addl. Gov. Advocate, for the Respondent

Judgement

L.K. Mishra, J.—The Petitioners are accused persons in G.R. Case No. 1314 of 1990 pending in the Court of Learned S.D.J.M., Jajpur involving offence u/s 489D 134 of the I.P.C.

2. Heard Learned Counsel for both sides on the question of bail.

3. The facts necessary for the decision of the case are as follows: On getting information about suspicious activities of some persons, police raided the house of Biranchi Narayan Mishra (Petitioner No. 1) on 21.12.1990 and recovered and seized chemicals, papers and many other articles used for printing fake currency notes. Four persons including Petitioner No. 1 were arrested and forwarded to the Court. After investigation charge sheet was placed against six persons including Petitioner No. 1 namely Ani @ Laxmidhar Sahoo and Petitioner No. 2, who was shown as an absconder. On the basis of charge-sheet, cognizance of offence was taken u/s 489-D/34 of the I.P.C. against all the accused persons and N.B.W. was issued against Petitioner No. 2. It may be noted here that due to delay in filing of charge-sheet, Petitioner No. 1 Biranchi Narayan Mishra had been granted bail on 28.03.1990. Thereafter all the accused persons were available before the Court at one time or other, but as it appears all of them were not

available at any particular time. One after the other jumped bail on different dates and after their apprehension/ appearance were granted bail by either the Learned S.D.J.M. or Addl. District Judge. The present Petitioners jumped bail and remaining absconders for a period of about 4 years were produced before the Learned S.D.J.M. on dated 19.06.08 on being arrested on the strength of N.B.W. On the same day their prayer for bail was rejected by the Learned S.D.J.M. and on 17.07.08 the Learned Sessions Judge, Cuttack rejected their prayer for bail in BLAPL No. 1105 of 2008 occasioning the present application.

4. Bail is prayed for on the ground that the Petitioners were released on bail prior to the submission of charge sheet and they were not intimated by their advocate that charge sheet was filed against them and they were required to attend the Court. Therefore, under the impression that their names had been deleted from the charge-sheet they did not attend in the Court. Learned Addl. Government Advocate for the State has resisted the prayer for bail vehemently.

5. A perusal of the record shows that the sale plea taken by the Petitioners is false and misconceived. Petitioner No. 1 was released on bail since charge sheet was not filed in time and the Petitioner No. 2 remained absconder and was also granted bail after he was apprehended. Not only that after submission of charge-sheet on many dates both the Petitioners had appeared in the Court and also on several occasions they had defaulted and later were granted bail. Thus till the year 2004 both of them had taken part in the proceeding.

6. As per scheme of the Code of Criminal Procedure, 1973 (here-in-after called "the Code") offences of higher magnitude, usually requiring greater punishment are made exclusively treble by the Court of Session which are otherwise loosely called Sessions cases. Sessions cases are to be tried by Senior Judicial Officers having greater experience such as Sessions Judge and Addl./Asst. Sessions Judge. It is a social requirement that such offences are tried as expeditiously as possible. Delay in trial defeats the ends of justice. Delay obliterates or weakens the evidence and more often than not results in acquittal of a case. Conversely the accused is also made to undergo prolonged harassment by running to the Court unnecessarily. Commitment to the Court of Session being an essential part of the Sessions trial a committing Court can effectively stall the disposal of the case for a prolonged period knowingly or inadvertently. If a case treble by a Court of Sessions is not committed to the Court of Session with promptitude then interest of justice suffers greatly since there is every possibility of the witnesses being dead or not being available and other evidence being obliterated. Memory of witnesses is also liable to failure and ultimately the case may end in acquittal because of such reasons which are extraneous and not intrinsic to the case. The accused who deserves to be punished is unjustly acquitted sometimes only due to delay in trial. On the other hand if the accused is made to run to the Court for years together without the trial commencing then his entire life gets upset. Not only he remains under the stigma of the case with threat of conviction looming large over his head like the proverbial "Damocles sword", but also he

cannot perform his day to day affairs and his entire life becomes upset. He also cannot take up a job or remain at a distance place, cannot travel abroad, nor can he take up any gainful employment necessitating prolonged absence. In this process the judiciary also earns a bad name for delay which is entirely avoidable.

7. In the present case though the case is treble by the Court of Session, no sincere step has ever been taken for commitment of the case to the Court of Session. Time and again one or the other accused remained absconder but the case suffered adjournments for years together for execution of N.B. Ws. without any effective steps being taken under the law to pursue the matter. There was absolutely no reason as to why the case was not split up and the accused persons who were before the committing Court were not sent up for trial before the Court of Session. Even copies of police papers were not directed to be prepared till 08.08.08, though as per instruction issued by the High Court as many copies of police papers as require are to be prepared at the first instance and to be tagged with the record not waiting for appearance/apprehension of the accused persons.

8. In short, the case has remained pending with the Learned S.D.J.M., Jajpur without being committed to the Court of Session for all of these 18 years without any lawful and valid reason. While the cavalier attitude shown by the successive S.D.J. Ms is deprecated the Inspecting Authorities i.e. the Chief Judicial Magistrate and the District & Sessions Judge also cannot escape their liabilities lightly. During these 18 years the Court of the S.D.J.M., must have been inspected innumerable times. It was incumbent upon their part to have found out about the pendency of the record on inspections of the Court and particularly on inspection of connected registers in which the relevant entries are made. This case must have been one of the oldest cases in the file of the Learned S.D.J.M., Jajpur which does not seem to have attracted the seriousness either of the committing Court or the inspecting authorities. I wonder how many cases of this nature must be pending in different Courts of the State for commitment owing to the negligence of the concerned Courts.

9. After cognizance of a Sessions treble offence is taken all effort should be made to commit the case to the Court of Session as Soon as possible after complying with all necessary requirements. In case there are more than one accused and if the attendance of all the accused persons could not be procured after making reasonable effort and exhausting the procedures of law with regard to issuance of N.B.W. and issuance of process under Sections 82 and 83 of the Code, the case should be split up and committed to the Court of Session along with available accused persons for trial. If an accused is not available despite all reasonable efforts then evidence of all necessary witnesses should be recorded by the Committing Court as provided u/s 299 of the Code and thereafter the case should be placed in the dormant file. The inspecting authorities should periodically monitor the situation to ensure commitment of every case involving offence exclusively treble by the Court of Session within a stipulated period.

While inspecting the committing Court, the inspecting authorities should bestow their personal attention to the regular and up-to-date maintenance of the connected register and to cross-check the same by actual verification of the pending records.

10. It is directed that the registry shall take appropriate steps for circulation of this judgment to all the Sessions Judges of the State who shall in their turn circulate the same to the C.J. Ms and all the committing Courts for guidance. Since the existing administrative instructions have not been able to take care the situation effectively, it is necessary to examine this aspect and issue further guidelines/instructions in the matter to ameliorate the situation. In that view the registry shall do well to place the matter in the administrative side.

11. Coming to the case at hand, it is seen that the Petitioners remained absconders for a period of four years. At the same time it cannot be lost sight of that they had been running to the Court for a prolonged period of 14 years without the case proceeding an inch. Right now they are in jail for a period of about six months continuously.

12. Having regard to the facts and circumstances of the case, I feel that the Petitioners should be enlarged on bail. Let the Petitioners be released on bail of Rs. 20,000/- (rupees twenty thousand) with two solvent sureties for the like amount each to the satisfaction of the Learned S.D.J.M., Jajpur in the aforesaid case.

13. The Learned committing Court shall take steps for commitment of the case with promptitude and the Trial Court shall conclude the trial with all immediate dispatch.

14. The BLAPL is disposed of accordingly.