
(1975) 04 OHC CK 0027

In the Orissa High Court

Gundi Sahu and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-04-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 323, 407, 408

Citation : (1975) 41 CLT 607 : (1975) CriLJ 1392

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Judgement

S. Acharya, J.—This is a petition u/s 407(1)(c) of the new Criminal Procedure Code, 1974 by which it is prayed that the G. R. Case No. 215 of 1972 now pending in the court of the Sub-divisional Judicial Magistrate, Khurda be committed to the Court of Session, Puri as this case is only a counter-case of the Sessions Trial No. 37 of 1973 now pending before the said Sessions Court.

2. Mr. Bohidar, the learned Counsel for the petitioners, submits that in the interest of justice and for the general convenience of the parties and the witnesses the abovementioned case pending before the Subdivisional Judicial Magistrate, Khurda should be committed to the Court of Session, so that both the cases can be tried by one and the same Judge and can be properly adjudicated and disposed of by the same court.

3. Mr. Mohanty, the learned Government Advocate appearing for opposite party No. 1 in this case, contends that this application is not maintainable in view of the fact that an application to this effect had not been made to the Sessions Judge as provided under the proviso to Sub-section (2) of Section 407 of the new Code. Mr. Bohidar submits that apart from the fact that a matter of this nature can be directly moved in the High Court, there is no provision in the new Criminal Procedure Code for the Sessions Judge to direct the commitment of a case pending before a Subordinate Magistrate to the Sessions Court, and so the proviso to Sub-section (2) of Section 407 does not apply to a matter of this nature. The Sessions Judge has power u/s 408 to transfer cases from one

criminal court to another criminal court in his own Sessions Division. That Section does not make any provision for a direction by the Sessions Judge to commit a particular case pending before a Magistrate subordinate to the Court of Session. The learned Counsel appearing for the opposite parties are not able to show any provision in the new Code by which a Sessions Judge can exercise jurisdiction, one way or the other, in a matter of this nature, Section 407(1)(c) read with Clause (iii) thereof provides that whenever it is made to appear to the High Court that an order under this Section is required by any provision of this Code or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, the High Court may order that any particular case be committed for trial to a Court of Session. Therefore according to the new Criminal Procedure Code the High Court only can exercise the power to the above effect and the Court of Session has no such power.

4. Counsel appearing for the opposite parties contend that the case which is now pending before the Subdivisional Judicial Magistrate, Khurda is exclusively triable by a Magistrate and therefore such a case cannot be committed to the Court of Session. The High Court's power to pass an order u/s 407(1)(c)(iii), Cr. P. C. is not limited in its scope only to cases triable by the Court of Session. The wordings of that section clearly show that the High Court can exercise that power in respect of any type of criminal cases. So this petition for committing the aforesaid G. R. case pending before the Subdivisional Judicial Magistrate, Khurda, to the Court of Session is maintainable in law. Moreover, it is wrong to say that a case triable by a Magistrate cannot be committed to a Court of Session. u/s 323 of the new Code, if in any inquiry into an offence or a trial before, a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that court under the provisions contained in the Code. Under this section a Magistrate can commit any type of criminal case to the Court of Session if he feels that the same ought to be tried by that court, and this power is in addition to his power u/s 209 of the Code to commit cases exclusively triable by the Court of Session to that court.

5. Admittedly, the abovementioned case pending before the Subdivisional Judicial Magistrate, Khurda is a counter case to the Sessions Case pending in the court of the Sessions Judge, Puri, as both the cases as alleged arise out of one and the same occurrence. In the case reported in (1962) 40 Mys LJ 134 (SC) (referred to in Kalandi Behera and Others Vs. The State, their Lordships have held that wherever the parties are prosecuted for attack on each other in the same occurrence and there are counter cases and versions, both trials should be held separately, but one after the other by the same Judge.

6. On hearing the counsel appearing for both the parties I am satisfied that in the interest of justice and for the general convenience of the parties and the witnesses the G. R. Case No. 215 of 1972 pending in the court of the Sub-divisional Judicial Magistrate, Khurda, should be committed to the court of

Session at Puri, so that this case and the abovementioned Sessions case may be duly tried by the same Judge one after the other in accordance with law.

7. I, therefore, direct that the G. R. Case No. 215 of 1972 pending before the Subdivisional Magistrate, Khurda be committed to the Court of Session, Puri, who shall try and dispose of this matter in accordance with law and the observations made above.

The Miscellaneous case is accordingly allowed.