

(2001) 05 OHC CK 0014

In the Orissa High Court

Case No : Criminal Miscellaneous Case No's. 532 of 1996 and 3183 of 1997

Kalia alias Kasia Chouhan and Others

APPELLANT

Vs

Prafulla Kumar Jena
 Prafulla Kumar Jena Vs Hemanta
Chauhan and Others

RESPONDENT

Date of Decision : 03-05-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2001) 21 OCR 400 : (2001) 2 OLR 123

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : D. Nayak, S. Swain, D.P. Pradhan, M. Mohanty and R.K. Pradhan in Crl.M.C. No. 532/96 and S.K. Mund, D.P. Das and J.K. Panda in Criminal M.C. 3183/97, for the Appellant; D. Nayak, S. Swain, D.P. Pradhan, M. Mohanty and R.K. Pradhan in Crl. M.C. No. 3183/97 and S.K. Mund, D.P. Das and J.K. Panda in Crl. M.C. 532/96, for the Respondent

Judgement

L. Mohapatra, J.—Criminal Misc. Case No. 532 of 1996 has been filed by the accused persons challenging the order taking cognizance as well as judgment and order passed by the learned Sessions Judge, Balasore, in Criminal Revision Nos. 46 and 47 of 1993 and Criminal Misc. Case No. 3183 of 1997 has been filed against the judgment and order of the learned Sessions Judge in Criminal Revision No. 50 of 1993.

2. From the records it appears that on 16.11.1992 the petitioner in Criminal Misc. Case No. 3183 of 1997, namely Prafulla Kumar Jena, was assaulted and an FIR was lodged by the brother of the injured and accordingly a case alleging offences Under Sections 341, 323, 324 and 325 read with Section 34 of the Indian Penal Code was registered against the accused persons numbered as G.R.Case No. 278 of 1992 in the file of the learned Judicial Magistrate, First Class, Jaleswar. After investigation on 19.1.93 charge-sheet was submitted against two of the accused persons, namely, Hemanta Chouhan and Jayanta alias Benga Chouhan Under Sections 341, 323 and 325 read with Section 34, IPC.

Since charge-sheet was not submitted against the other accused persons, Prafulla Kumar Jena, the injured, filed the complaint case, i.e. I CC No. 17 of 1993 before the learned Judicial Magistrate, First Class, Jaleswar against 14 accused persons, including Hemanta Chouhan and Jayanta Chouhan, who had been charge-sheeted after investigation. On 7.5.1993 after conducting inquiry u/s 202, Cr.P.C. in the complaint case the learned Magistrate took cognizance of the offences Under Sections 147, 148, 323, 324, 325, 326, 341 and 307 read with Section 149, IPC. In the G.R.Case also the learned Magistrate took cognizance against the accused Hemanta and Jayanta. Challenging the order taking cognizance in the G.R.Case the two accused persons filed Criminal Revision No. 46 of 1993 before the learned Sessions Judge, Balasore. The other accused persons challenging the order of cognizance dated 7.5.93 passed in the complaint case filed Criminal Revision No. 47 of 1993 before the learned Sessions Judge, Balasore. The injured filed criminal Revision No. 50 of 1993 before the learned Sessions Judge, Balasore, for a direction to try both the cases together. All the three Revisions were heard together and were disposed of by a common judgment dated 21.1.96 by the learned Sessions Judge, Balasore. While deciding the Revisions the learned Sessions Judge observed that cognizance having been taken against the two accused persons, namely, Hemanta and Jayanta in G.R.Case No. 2/78 of 1992, there was no scope for the learned Magistrate to take cognizance against the very same two accused persons in the Complaint Case, but maintained the order taking cognizance so far as the other accused persons are concerned. So far as the prayer made on behalf of the injured for trial of both the cases together is concerned, the learned Sessions Judge rejected the prayer and directed that both the cases would be tried separately. Challenging the orders of the learned Sessions Judge the aforesaid two Criminal Misc. Cases u/s 482, Cr.P.C. have been filed. So far as Criminal Misc. Case No. 532 of 1996 is concerned a prayer has been made to quash the order of the learned Sessions Judge refusing to interfere with the order taking cognizance against the accused persons. From the discussions made in paragraph 4 of the judgment by the learned Sessions Judge I find that the learned Sessions Judge has taken into consideration all the relevant factors and rightly came to a conclusion that so far as accused Hemanta and Jayanta are concerned, the learned Magistrate could not have taken cognizance in the complaint case as they had already been charge-sheeted in the G.R.Case and the learned Magistrate was aware of such fact. Holding as such, the learned Sessions Judge set aside the order taking cognizance in the Complaint Case so far as it relates to accused Hemanta and Jayanta who had been charge-sheeted in the G.R.Case after investigation. So far as the other accused persons are concerned, in paragraph 6 of the judgment the learned Sessions Judge has discussed the materials available and held that he did not want to interfere with the order taking cognizance. I also after perusal of the judgment do not find any reason to differ with the findings of the learned Sessions Judge.

3. So far as Criminal Misc. Case No. 3183 of 1997 is concerned it appears that

the prayer of the injured for trial of both the G.R.Case and the Complaint Case together has been rejected by the learned Sessions Judge on the ground that the Complaint Case is exclusively triable by the Court of Session and the direction of the learned Magistrate for clubbing the Complaint Case with the G.R.Case was set aside. The learned Sessions Judge directed both the cases to proceed separately.

4. There is no dispute that the G.R.Case and the Complaint Case arise out of the same incident and two of the accused persons have been charge-sheeted in the G.R.Case, whereas in the Complaint Case against rest of the accused persons, cognizance has been taken. The offence alleged in the Complaint Case is triable by the Court of Session, whereas the offence alleged in the G.R.Case is triable by a Magistrate of the First Class. Since both the cases arise out of the same incident, it is desirable that both the cases should be heard together or one after the other, but by the same Court to avoid conflicting decisions by two different Courts. It is also desirable that both the cases should be heard one after the other as witnesses in both the cases are same.

5. I, therefore, direct that the Complaint Case if not already committed to the Court of Session, be immediately committed for trial and the G.R.Case shall also be committed to the Court of Session for trial alongwith the Complaint Case. To this extent the prayer in Criminal Misc. Case No. 3183 of 1997 is allowed. Since I do not find any merit in Criminal Misc. Case No. 532 of 1996, the same is dismissed.

6. While disposing of the aforesaid cases in the manner stated above, I further direct that in the event the petitioners surrender before the learned Judicial Magistrate, First Class, Jaleswar, in connection with I CC No. 17 of 1993, they shall be released on bail on furnishing bond of Rs. 10,000/- (Rupees ten thousand) with two sureties each for the like amount to the satisfaction of the learned Magistrate. Learned Magistrate may also impose any other condition which he deems just and proper.