
(1991) 05 OHC CK 0009

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 192 of 1991

Muralidhar Baral and Others

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 02-05-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 407

Citation : (1991) 2 OLR 374

Hon'ble Judges : A.K. Padhi, J

Bench : Single Bench

Advocate : Brahmananda Panda, Devasis Panda, G.C. Mohapatra and D.R. Nanda, for the Appellant; B.K. Sahu, Dilip Kumar Sahu, Gopinath Sahu, S. Singh Samanta and K.K. Jena, for the Respondent

Final Decision : Allowed

Judgement

A.K. Padhi, J.—Praying for transfer of G. R. Case No. 474 (R) 1989 pending before the Judicial Magistrate First Class, Rural, Cuttack to the Court of Smt. B. Devi, Assistant Sessions Judge, Cuttack before whom Sessions Trial No. 5 of 1991 is pending, this application has been filed invoking the inherent jurisdiction of the High Court u/s 482 read with Section 407 Cr. P. C.

2. The petitioners are accused persons in Sessions Trial No, 5 of 1991 which relates to an occurrence dated 11-4-1989 at 7:00 p. m. Charge has been framed under Secs. 147, 148, 149, 307, 323, 324 and 325, IPC. It is contended by the petitioners that an F. I. R. was lodged by one of the accused persons relating to the same occurrence though the time of occurrence has been stated to be at about 6.30 p. m. giving rise to G. R. Case No. 474 (R) of 1989. After completion of investigation, charge sheet has been submitted against opp. parties 2 to 9 for commission of offence under Secs, 147, 148, 149, 324 and 294, IPC vide G. R. Case No. 474 (R) of 1989 which is pending before the Judicial Magistrate First Class, Rural, Cuttack for trial. Since G. R. Case No. 474 (R) of 1989 and Sessions Trial Case No. 5 of 1991 arise out of the same occurrence, both the cases should

be tried one after the other.

3. Learned advocate for the opp. parties vehemently opposes the the prayer for transfer of G. R. Case No. 474 (R) of 1989 to the Court of the Assistant Sessions Judge on the ground that one occurrence is retaliation of the other, but both the cases do not arise out of the same occurrence, The time of occurrence in the Sessions case is stated to be as 7.00 p. m. while in the FIR of the G. R. Case the time of occurrence is described differently though the place of occurrence of both the cases may be in the same vicinity, but not at the same place and therefore both the Sessions Trial Case and the G. R. Case need not be tried one after the other.

4. It is no more res Integra that if two cases are pending which arise out of the same occurrence, then the interest of justice requires that one should be tried after the other by the same Judge. [Section Kalandi Behera and Others Vs. The State, , 41 (1975) CLT 607 : Gundi Sahu and Anr. v. State of Orissa 1987 (II) OLR 458 (1987) 64 CLT 475 : Ashok Kumar Panigrahi and two others v. State of Orissa and Ors. and Maheswar Lenka and Ors. v. The State].

5. From the case diary it appears that the FIR lodged in the G. R. Case relates to the same occurrence which is the subject-matter of the Sessions Case though the occurrence has been stated to have occurred at about 6.30 p.m. in G.R. Case and 7.00 p. m. in the Sessions Case. The accused persons in one case are the injured eye witnesses in the other case and vice versa. I find that the Investigating Officer also treated the G. R. Case as well as the case pending before the Assistant Sessions Judge as counter cases An examination of the case diary would show that in fact the allegation of the G. R. Case relates to the same occurrence as stated in the FIR in the Sessions Case. It is not disputed that the accused persons in one case are the witnesses of the other. Persons have been injured from Both the sides. It is therefore necessary for convenience of parties and also expedient in the interest of justice that both the G R. Case and the Sessions Case are to be tried by the Sessions Judge. Since this is a case in which the Magistrate has to be directed to commit the G. R. Case to the Court of Session, the power is only conferred on the High Court. After examining the records, I am satisfied that the G.R. Case and the Case for Sessions Trial arise out of one occurrence and as such the G. R. Case ought to be transferred to the Sessions judge for trial.

6. In the result the Criminal Misc. Case is allowed, the Judicial Magistrate First Class, Rural, Cuttack is directed to commit G. R. Case No. 474 (R) of 1989 pending in his Court to the Court of Smt. B. Devi, Assistant Sessions Judge, Cuttack before whom Sessions Trial No. 5 of 1991 is pending for trial and the Assistant Sessions Judge should dispose of both the cases one after the other. A copy of this judgment be sent to the Court of Smt. B. Devi, Assistant Sessions Judge, Cuttack and the Judicial Magistrate First Class Rural, Cuttack for taking necessary action at their level.