

(2000) 03 OHC CK 0045

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 11730 of 2000

Republic of India

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 24-03-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 267
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 302

Citation : (2000) 18 OCR 567

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : Sanjit Mohanty, for the Appellant;

Judgement

L. Mohapatra, J.—Hearing of the case was concluded on 16.3.2000 and the matter was pending for delivery of orders. The learned Counsel appearing for the Petitioner mentioned on 22.3.2000 that some developments have taken place in the meantime, and produced a copy of the order dated 16.3.2000 passed by the learned Sessions Judge, Mayurbhanj, Baripada, in S.T. Case No. 32 of 2000 and prayed that the same may be taken into consideration. Accordingly, the same is taken into consideration and the following order is passed.

2. Graham Staines" murder case has been entrusted by the State of Orissa to the Petitioner for investigation which has been registered as CBI Case No. R.C.7/ S/99-Calcutta, corresponding to SPE Case No. 7/99(A) in the Court of the learned Additional C.J.M.-Cum-Special C.J.M. (CBI), Bhubaneswar. In this application, the Petitioner challenges the inaction of the learned Sessions Judge, Mayurbhanj and the Sub divisional Judicial Magistrate, Karanjia, in sparing accused Dara Singh alias Rabindra Kumar Pal for production in CBI Court at Bhubaneswar. From the averments made in the application it appears that the said accused Dara Singh alias Rabindra Kumar Pal (hereinafter referred to as "the accused") is in Baripada Jail at present and the following G.R. Cases have been registered against him in the Courts of S.D.J.M., Karanjia, as well as

Sessions Judge, Mayurbhanj at Baripada:

- (i) G.R. Case No. 218/98 in the Court of S.D.J.M., Karanjia.
- (ii) G.R. Case No. 271/98 in the Court of - do
- (iii) G.R. Case No. 282/99 in the Court of - do
- (iv) G.R. Case No. 304/98 (S.T. No. 32/2000) Pending in the Court of Sessions Judge, Mayurbhanj.
- (v) G.R. Case No. 385/98 (S.T. No. 33/2000) Pending in the Court of Sessions Judge, Mayurbhanj.

Apart from the aforesaid five cases, charge-sheet has been submitted against the accused and 17 others by the Petitioner in CBI Court at Bhubaneswar, for offences alleged to have been committed under Sections 147, 148, 149, 435, 436 and 302 read with Section 120B of the Indian Penal Code. On 22.6.1999 when charge-sheet was submitted by the Petitioner before the CBI Court, accused Dara Singh had not been arrested and he was arrested on 31.1.2000 and forwarded 01) 1.2.2000 to the Court of S.D.J.M., Karanjia in connection with the five cases mentioned above. After the said- accused was arrested, a prayer was made by the Petitioner before the CHI Court for issuing a production warrant u/s 267, Code of Criminal Procedure on 3.2.2000 and accordingly a production warrant was issued by the Court fixing the date of production to 5.2.2000. However, the production warrant could not be executed as the learned S.D.J.M., Karanjia, did not spare the accused and refused permission on 4.2.2000 on the ground that it may affect the investigation in G.R. Case No. 271 of 1998 and other cases pending against the accused. The Petitioner again obtained a second production warrant from the CBI Court which was granted by order dated 19.2.2000 directing production of the accused on 29.2.2000. However, the learned S.D.J.M., Karanjia was on leave up to 1.3.2000 and the Magistrate in charge did not pass any order on the petition filed by the Petitioner for sparing the accused. Since the period granted by the CBI Court was already over, a fresh production warrant was issued at the instance of the Petitioner by the CBI Court on 26.2.2000 finding the date to 16.3.2000. Learned S.D.J.M. on being approached, by order dated 3.3.2000 allowed the prayer for sparing the accused so far as G.R. Case No. 282/99, G.R. Case No. 218/98 and G.R. Case No. 271/98 are concerned. However, in respect of other two G.R. Cases the learned Magistrate expressed his inability as those cases have already been committed to the Court of the Sessions Judge, Mayurbhanj. Since the learned S.D.J.M., Karanjia, could not spare the accused in the other two G.R. Cases, as the same have been committed to the Court of Session, the Petitioner submitted an application on 7.3.2000/8.3.2000 before the Sessions Judge for sparing the accused. However, the learned Sessions Judge directed the matter to be placed at Baripada on 16.3.2000 for consideration. The grievance of the Petitioner is that in spite of three production warrants obtained by them they have not been able to obtain necessary permission from the Court of the learned Sessions

Judge, Mayurbhanj, for production of the accused in the CBI Court.

3. There are six cases pending against the accused, out of which three cases are pending in the Court of learned S.D.J.M., Karanjia, two cases in the Court of learned Sessions Judge, Mayurbhanj and one in the CBI Court at Bhubaneswar.

4. Difficulty is in relation to production of the accused in all the six cases at three different places. In my opinion, all the three Courts trying these cases as well as the investigating agencies involved in prosecuting the cases must cooperate each other in order to see that the accused is produced in appropriate Court at the time his presence is necessary so that trial is not affected for nonproduction of the accused and cases are disposed of as early as possible. I believe that the following arrangements will help the Courts as well as the investigating agencies to achieve the purpose as stated above:

(a) The CBI Court shall fix dates for production of the accused as well as for trial at Bhubaneswar in between 1st and 10th of each month and accordingly issue production warrant for the said purpose.

(b) Learned Sessions Judge, Mayurbhanj at Baripada who is to try two cases, shall fix the dates in both the cases in between 11th and 20th of each month.

(c) Learned S.D.J.M., Karanjia, who is trying three cases shall fix the dates in all the three cases in between 21st and 30th/31st of each month.

The said Courts should make an effort to fix the dates as stated above as far as practicable.

5. This arrangement is being made to see that the dates fixed by all the three Courts in six cases do not clash with each other and give sufficient time gap for bringing the accused from Baripada to Bhubaneswar and again sending him back to Baripada.

6. So far as the CBI Court at Bhubaneswar is concerned, for production of the accused before the said Court, the CBI shall make all arrangements for bringing the accused from Baripada Jail to Bhubaneswar and again take him back from Bhubaneswar to Baripada before 11th day of the month for production before the Sessions Court at Baripada. CBI may take help of the State Government for bringing the accused from Baripada to Bhubaneswar and vice versa in case of necessity. The investigating agency involved in prosecuting the cases at Karanjia and Baripada shall make all arrangements for production of the accused before the learned Sessions Judge, Mayurbhanj at Baripada as well as learned S.D.J.M., Karanjia.

7. Once the trial in one case starts and the case is required to be taken up on day to day basis, prior intimation should be given by the prosecuting agencies to other two Courts for accommodation of the dates. I hope that this arrangement will help all the three Court to dispose of the cases and they may not have to adjourn the cases for non-production of the accused. In the event any difficulty

arises, the Courts or the concerned prosecuting agencies may move this Court for appropriate modification of this order.

8. Copies of this order be communicated to the learned S.D.J.M., Karanjia, learned Sessions Judge, Mayurbhanj at Baripada and the learned Addl. C.J.M.-cum-Special C.J.M. (CBI), Bhubaneswar.