
(1998) 09 OHC CK 0024
In the Orissa High Court
Case No : Criminal Revision No. 367 of 1998

Shri Indrajeet Roy

APPELLANT

Vs

Republic of India

RESPONDENT

Date of Decision : 16-09-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 11, 14(3), 161, 173, 177
Penal Code, 1860 (IPC) — Section 354, 376, 511

Citation : (1998) 2 OLR 424

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : T.S. Arunachalam, J.K. Khuntia, S.S. Patra, S.C. Lal and B.K. Nayak, for the Appellant; Sanjit Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—This Criminal Revision has been filed by the accused in Sessions Trial No. 5 of 1998 of the Court of Assistant Sessions Judge-cum-C.J.M., Khurda at Bhubaneswar (in short, "A.S.J.") with the following prayer.

"PRAYER

"It is, therefore, prayed that this Honourable Court may graciously be pleased to admit this Revision application, issue notice to the opp. party, call for the Records of S.T, Case No. 5/1998-I from the Court of Additional Chief Judicial Magistrate-cum-Assistant Sessions Judge, Khurda Camp at Bhubaneswar and after hearing the Parties set aside the order dated 29.7.1998 passed by the said Court directing framing of the charge."

Thus this revision has been directed challenging the order dated 29.7.1998 passed by the A.S.J., (the impugned order).

2. A brief sketch of the facts and relevant circumstances and litigations are noted herewith for the sake of reference.

The informant-prosecutrix Smt. Anjana Mishra lodged a written complaint against her husband Sri Subash Chandra Mishra and some other in-laws alleging therein demand of dowry, ill-treatment and cruelty including attempt to murder. On the basis of that written report (F.I.R.) on 29.4.1997 Bidanasi P.S. Case No, 64 of 1997 under Sections 498A/307/34, IPC was registered. During the course of investigation of that case Sri Subash Chandra Mihra and his elder brother's wife Smt. Rajalaxmi Mishra were arrested. They filed separate writ applications, inter alia, complaining against police atrocities and vindictive investigation. Prayer was also made for directing the Central Bureau of Investigation (in short, "C.B.I.") to investigate into the case instead of the State Police. At the relevant time the present petitioner was functioning as the Advocate General of the State and it is stated that he came in contact with the prosecutrix during that period and that by then prosecutrix was staying in a destitutes' home at Cuttack known as "Basundhara". It is alleged that on 11.7.1997 which is the date of occurrence so far as the present case is concerned and which was a local holiday at Cuttack town, being asked by the petitioner the prosecutrix being accompanied by one social worker of Basundhara, namely, Miss Dolly alias Sanghamitra Das went to the official residence of the petitioner. It is alleged that Miss Dolly remained in the drawing room whereas petitioner took the prosecutrix inside the house for taking lunch. It is further alleged that at the time of taking lunch petitioner sympathised with the prosecutrix for her suffering and after the lunch took her to his bed room equipped with running air-conditioner machine on the pretext of the availability of the phone in that room. It is further alleged that from that bed room petitioner talked with father of the prosecutrix over phone who is staying at Bhubaneswar and thereafter in the process of making conversation with the prosecutrix he outraged her modesty and made attempt for committing sexual intercourse and that the prosecutrix not only resisted but could escape from the clutches and came out upto the drawing room. It is further alleged that simultaneously petitioner also entered into the drawing room and cautioned her not to disclose the incident to anybody. On 12.7.1997, however, the Secretary of the Basundhara, the D.I.G. of Police S. N. Swain and some other witnesses came to know about the incident on being told by the prosecutrix. On the advice of Sri Swain, on 14.7.1997 she met the Chief Minister of the State and submitted a written complaint and on 19.7.1.997 she filed the F.I.R. (Annexure-1) and the Cantonment P.S. Case No. 67 of 1997 under Sections 354 and 376/511, IPC was registered. The incident was flashed in the newspapers and several writ petitions were registered at the instance of the prosecutrix and other people who had filed the P.I.L.. In those writ petitions, inter alia, demand was made for investigation of the case by the C.B.I. on the allegation of partiality of the D.I.G. of Police Sri Swain in favour of the petitioner resulting in an unfair and motivated investigation.

3. O.J.C. No. 9929 of 1997 by Smt. Anjana Mishra (the prosecutrix) O.J.C.No. 8296 of 1997 by Sri Subash Chandra Mishra, OJC No. 9413 of 1997 by Smt. Rajlaxmi Mishra, OJC NO. 9788 of 1997 by Sri Janardan Pati, Secretary, CPI (M)

and others, OJC No. 9801 of 1997 by Sri Samir Dey, OJC No. 9806 of 1997 by Md. Siddique and OJC No. 10039 of 1997 by Nationalist Lawyers' Forum were heard and disposed of (except OJC No. 8296 of 1997) by a Division Bench of this Court vide the common order dated 8.8.1997. In paragraph 9 of that order, inter alia, the following direction was issued.

"(i) The Bidanasi Police-Station Case No. 64 of 1997 and Cantonment Police-station Case No. 67 of 1997 shall be investigated by the C.B.I. The first case was registered on the basis of FIR filed by Anjana against her husband Subash, sister-in-law Rajlaxmi, and others. The second case has been registered on the basis of the FIR filed by Anjana against Indrajit. The Director of C.B.I. shall constitute a special cell for the purpose and nominate an officer to carry on the investigation. If so found necessary, a supervising officer may be nominated.

(ii) The Director General of Police, Orissa shall immediately hand over the case diaries of the aforesaid two cases to the officer nominated by C.B.I. All connected papers, medical reports, documents seized, etc. shall also be handed over to the said officer."

In accordance with the above direction of this Court on 17.8.1997 CBI : SPE : SCB : Calcutta Case No. RC.7/S/97/Cal under Sections 354, 376/511, IPC was registered by the C.B.I, and in the Court of Special Magistrate, C.B.I.-cum-Addl. C.J.M., Bhubaneswar it was registered as S.P.E. Case No, 5 of 1997. On 19.11.1997, on completion of investigation and finding existence of a prima facie case, the Deputy Superintendent of Police, C.B.I., S.P.E. : SCB, Calcutta filed the charge-sheet against petitioner for the aforesaid alleged offences. It appears from the charge-sheet that a list of 43 witnesses and 27 items of documents have been filed upon by the investigating/prosecuting agencies. It may be noted here that names of Smt. Lopamudra Mohanty and Dr. D.C.Mishra is not there in the list of charge-sheet witnesses.

4. On 30.7.1997 petitioner's application in this Court u/s 438, Cr.P.C. vide Criminal Misc. Case No. 2803 of 1997 was disposed of on 15.9.1997. Similarly, petitioner's application u/s 439, Cr.P.C. filed on 4.10.1997 vide Criminal Mis. Case No. 3769 of 1997 was disposed of by this Court on 10.10.1997. After receipt of the charge-sheet on 21.11.1997 the Special Magistrate, C.B.I.-cum-Addl. Chief Judicial Magistrate, Bhubaneswar took cognizance of the offences and issued process against the petitioner and in that context passed the following order.

"F.F. received against Sri Indrajeet Roy u/s 354/376/511, IPC. Perused the original CD. As prima facie case u/s 354/376/511, IPC is made out against the accused, cog. taken thereunder. Issue summon against the accused fixing 16.12.1997 for app.

Sd - M.R. Hazar A. C. J. M., BBSR."

Petitioner filed Criminal Misc. Case No. 4544 of 1997 u/s 482, Cr.P.C. with the

prayer to quash the above quoted order dt. 21.11.1997, inter alia, on similar grounds which have been advanced in the present revision application (except the grounds relating to non-supply of copies of the statements and the grounds under Sections 227 and 228, Cr.P.C). In that case relevant portions from the orders dated 9.1.1998 and 31.7.1998 are quoted as herein below :

".....It is stated by the learned counsel for petitioner that learned Addl. Chief Judicial Magistrate, Bhubaneswar has already committed the matter to the Court of Session by order dated 16.12.1997 and that the date of appearance has been fixed to 27.1.1998. It is stated by the learned counsel for petitioner that petitioner shall take a plea before the said Court that charge is not to be framed and petitioner is to be discharged. If such a plea is raised, the same shall be considered in accordance with law. Pendency of the present application shall not stand on the way of consideration of the plea of petitioner. It is stated by learned counsel for petitioner that certain documents have not been supplied thereby causing prejudice to him. If a detailed application is filed before the concerned Court giving details of the documents which according to petitioner have not been supplied, the same shall be considered and disposed of by the concerned Court.

(from order dated 9.1.1998)

9. 31.7.1998 Heard. It is stated by Mr. Sanjit Mohanty, learned counsel appearing for CBI that charge has already been framed by the Chief Judicial Magistrate, Bhubaneswar on 29.7.1998. This position has been assailed by learned counsel for parties. By the present Criminal Misc. Case the order of cognizance has been assailed. Now that charge has been framed, the challenge to the order of cognizance has become academic. It is stated by learned counsel for the petitioner that the legality of order framing charge shall be challenged. If it is done, it is needless to say that the matter shall be considered in accordance with law. So far as the present petition is concerned, continuance is not necessary.

The Cri. Misc. Case is disposed of."

5. On 16.12.1997 the Special Magistrate, C.B.I.-cum-Addl. Chief Judicial Magistrate committed the case to the Court of Sessions Judge, Khurda at Bhubaneswar and it was registered as S.T. No. 5 of 1998. The petition filed by the petitioner on 29.4.1998 claiming for certain statements under Sections 161 and 164, Cr.P.C. and legible copy of documents, it was heard and disposed of by the learned Sessions Judge vide his order 12.3.1998. Keeping in view the order dated 31.10.1997 in O.J.C. No. 13998 of 1997 and order dt. 9.1.1998 Criminal Misc. Case No. 4544 of 1997 and the prayer in the petition dated 29.4.1998 learned Sessions Judge disposed of the petitions filed by the petitioner in allowing the prayer relating to supply of statements under Sections 164 and 161 and readable copy of documents save and except the statements under Sections 161 of Mrs. Lopamudra Mohanty and Dr. D.C.Mishra. Referring to the provision of

law in Sections 173 and 207, Cr.P.C. and the contention advanced by the prosecutor learned Sessions Judge rejected the prayer of the petitioner claiming for the statements of these two witnesses on the ground that those two persons are not the charge-sheeted witnesses and prosecution is not bound to supply copies of such statements. On the self-same day (12.6.1998) S.T. Case was transferred to the file of A.S.J. On 23.6.1998 petitioner filed a petition u/s 409, Cr.P.C. in the Court of Sessions Judge which was registered as Criminal Misc. Case No. 540 of 1998. It was stated in that petition that the sessions case be withdrawn from the Court of A.S.J. to consider other petition filed by the petitioner praying for supply of the copies of 161, Cr.P.C. statements of Mrs. Lopamudra Mohanty and Dr. D. C. Mishra. On 24.6.1998 those two petitions were heard and disposed of by the learned Sessions Judge and in that connection she passed the following order.

"2. 24.6.1998 P.P.C.B.I. and advocate for the petitioner are present. Heard. The S.T. Case No. 5/98 has been transferred to the file of C.J.M.-cum-Asst. Sessions Judge, Bhubaneswar and the petition filed earlier in that case has since been disposed of by this Court. As the case is triable by the Asst. Sessions Judge, accordingly it was transferred. Therefore I find there is no necessity to call for the said record and to entertain the petition now filed. Hence the petition is not maintainable and accordingly it is rejected and the Misc. Case is also rejected."

In the Court of A.S.J. again petition was filed claiming the statements of said Mrs. Lopamudra Mohanty and Dr. D.C. Mishra. Another petition was filed for adjournment on the ground that petition filed by the petitioner for supply of the statement of prosecution witnesses is pending. Both the petitions were rejected vide the impugned order. Learned A.S.J. rejected the first petition on the ground that in view of the provision u/s 207, Cr.P.C. petitioner is not entitled to the copies of such statements and besides that similar prayer of the petitioner was rejected by the Sessions Judge in her order dated 12.6.1998. The petition for adjournment was rejected on the ground of non-pendency of any other petition for supply of copies and that copies of police papers having already supplied long back. The next phase of the impugned order is hearing both the parties under Sections 227 and 228, Cr.P.C. and passing order in framing charge for the offence under Sections 354/376/511, IPC against the petitioner on the ground of existence of a prima facie case from the materials available in the case record.

6. Mr. T.S.Arunachalan, learned Senior Advocate and Mr. S.C. Lal, learned Advocate appeared and advanced argument for the petitioner. Mr. Sanjit Mohanty, learned Standing Counsel for C.B.I, appeared and advanced argument in favour of the Republic of India-opp. party. Lengthy and prolonged argument was advanced by the aforesaid learned counsel appearing for both the parties. Substance of the contentions raised on behalf of the petitioner in the order in which the argument was advanced is noted as follows :

(i) Learned A.S.J. without due application of mind to the statements and evidence available in the case diary mechanically accepted the statements and

documents relied upon by the prosecution for framing the charge against the petitioner which is illegal and against the spirit of law. The materials available in the case diary cast serious doubt about the truthfulness of the allegations of outraging the modesty and attempted rape and it is infested with improbability.

(ii) Finding recorded by the A.S.J. that no other application was pending consideration for supply of the statements before the Sessions Court is factually incorrect.

(iii) Without supplying the copies of statements of Mrs. Lopamudra Mohanty and Dr. D.C.Mishra, the A.S.J. should not have taken up the case for consideration of charge and should have afforded a reasonable opportunity of hearing to the petitioner at that stage. In that context it was further argued that petitioner should be given a reasonable opportunity of hearing relating to consideration of charge.

(iv) Occurrence having taken place at Cuttack (town) the Courts at Bhubaneswar have no jurisdiction to try the case. If it is held that the case could be validly committed to the Court of Session at Bhubaneswar then also the A.S.J. has no jurisdiction to try the case because the Court of Session does not include a Court of Assistant Sessions Judge and in accordance with the provision in Section 177, Cr.P.C. the case should be tried by either the Sessions Judge or Addl. Sessions Judge at Bhubaneswar or by an Assistant Sessions Judge at Cuttack.

While repelling the above contentions, argument advanced by Mr. Sanjit Mohanty is noted in substance in the order in which he advanced his contentions:

(i) The Sessions Court at Bhubaneswar has jurisdiction to receive the case on being committed to that Court by virtue of the provision u/s 14(3), Cr.P.C. and the A.S.J. has thus jurisdiction to try the case in accordance with the provision in Section 9(3), Cr.P.C. and that the aforesaid provisions are in the position of exception to the provision of law in Section 177, Cr.P.C.

(ii) From the beginning by his own conduct petitioner has submitted to the jurisdiction of the Special Magistrate, CBI the Sessions Judge, Bhubaneswar and the A.S.J. and at no point of time he has challenged the jurisdiction of any of such Courts, therefore, petitioner is estopped from raising that point when the A.S.J. is not without jurisdiction to take up the trial of the case.

(iii) In view of the provision under Sections" 173 and 207, Cr.P.C. petitioner is not entitled to the statements of Mrs. Lopamudra Mohanty and Dr. D.C.Mishra and he cannot insist for supply of those copies.

(iv) The materials in the case diary i.e. the statements of charge-sheet witnesses and the documents relied upon by the prosecution are sufficient to prove a strong prima facie case against the petitioner for the alleged offences. At the stage of framing of charge or considering the question of discharge under Sections 227 and 228, Cr.P.C. the trial Court is not required to make a detailed documentation save and except to peruse the record and to note his satisfaction

either in favour of existence or non-existence of a prima facie case and therefore, learned A.S.J. having followed the provision of law in proper manner to frame the charge against the petitioner, there is nothing to interfere with that order in this revision.

For the sake of convenience the argument and rival contention advanced relating to supply of the copy of statements of Mrs. Lopamudra Mohanty and Dr. D.C.Mishra is taken up first. It was the submission of Mr. Arunachalam that a crime is investigated by the investigating agency not with a view to show or others pin-up the alleged offender, but with a view to ascertain the facts and to find out the real culprits. Therefore, the investigating agency should stand on an independent footing while investigating into a crime and as such, all the materials collected during the investigation should be made available to the accused whether or not it favours the prosecution. In that context, he placed reliance in the observation of Lord Denning at pages 106-107 of the book titled "The Due Process of Law" (First Indian Reprint 1993), the relevant passage is quoted as hereunder:

"The duty of a prosecuting counsel or solicitor, as I have always understood it, is this : if he knows of a credible witness who can speak to material facts which tend to show the prisoner to be innocent, he must either call that witness himself or make his statement available to the defence. It would be highly reprehensible to conceal from the Court the evidence which such a witness can give. If the prosecuting counsel or solicitor knows, not of a credible witness, but a witness whom he does not accept as credible, he should tell the defence about him so that they can call him if they wish. Here the solicitor, immediately after the Court proceedings, gave the solicitor for the defence the statements of Mr. and Mrs. Stamp; and thereby he did his duty."

Mr. Arunachalan further argued that in spite of the language used in Sections 173 and 207, Cr.P.C. keeping in view the facts and the background in this case the technicalities of law may be avoided to render substantial justice by granting fair opportunity to the petitioner to meet the accusation. In that context, he referred to the case of Gurbachan Singh Vs. State of Punjab, and particularly to the following quoted passage from paragraph 7.

".....This Court in case Willie (William) Slaney Vs. The State of Madhya Pradesh, elaborately discussed the question of the applicability of Section 537 and came to the conclusion that in judging a question of a prejudice as of guilt, Courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself....."

It may be noted that in the above cited case the appellant was alleged to had killed the deceased by using a pistol and thereafter he absconded. On suspicion

he was caught in another village under another Police Station along with that pistol. Two separate cases were registered by the two separate Police Stations relating to the offence u/s 302, IPC and the offence u/s 19(f) of the Arms Act. After his conviction in the trial as well as in the appellate Court the appellant approached the apex Court and raised the question of prejudice on the ground of non-supply of the statement of witnesses recorded in the case registered against him under the Arms Act. Making ultimate analysis of the fact and the circumstances, in the result the apex Court held that in view of the provision in Section 173 and the provisions relating to commitment, the appellant was neither entitled to the copies of such statements nor he has been prejudiced due to non-supply of such statements.

8. On the point under discussion, Mr. S.C. Lal also relied upon the case of Ranjeet Singh Vs. State of U.P. and Another, . The facts and the ratio propounded therein are distinguishable. In that case a particular charge-sheeted witness was examined on different occasions and his statement under the 161, Cr.P.C. was recorded more than once, but only one statement was supplied to the accused. In that context, learned Single Judge of Allahabad High Court have been pleased to state that all such statements should have been supplied. At the risk of repetition it may be stated here that the two witnesses whose 161 statement is prayed for by the petitioner time and again, are not the witnesses in the charge-sheet.

9. Before dealing with the bare statutory provision relating to the point at issue, a decision referred to by Mr. Mohanty may be noted here. In the case of Mukund Lal Vs. Union of India (UOI) and Another, argued that as per the observation made by the apex Court accused has no access to the case diary save and except to the statement as provided in the statute. In that case constitutional validity of the provision in Section 172(3), Cr.P.C. was called in question and it was held that as the accused has no right of access to the case diary. The ratio has no direct application to the point at issue.

10. The matter relating to filing of charge-sheet i.e. the final form and supply of police papers to the accused is generally governed by the provision in Section 173, Cr.P.C. According to Sub-section (5), in the event of filing of charge-sheet, all the documents or relevant extracts thereof on which the prosecution proposes to rely along with the statements recorded u/s 161, Cr.P.C. of all the persons whom the prosecution proposes to examine as its witnesses shall be forwarded to the Magistrate along with the report. According to Sub-section (6) if the police officer is of opinion that any part of any such statement is not relevant or its disclosure to the accused is not essential in the interest of justice or is expedient in the public interest, he shall indicate that part of the statement appending a note with reasons requesting the Magistrate to exclude that part from the copies to be granted to the accused. According to Subsection (7), the Investigating Officer, if he finds if convenient may supply to the accused, copies of all or any of the documents referred to in Sub-section (5). In Chapter XVI of Cr.P.C. which

relates to commencement of the proceeding before a Magistrate Section 207, Cr.P.C. provides as hereunder:

"207. Supply to the accused of copy of police report and other documents - In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following :

(i) the police report;

(ii) the first information report recorded u/s 154;

(iii) the statements recorded under Sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under Sub-section (6) of Section 173;

(iv) the confessions and statement, if any, recorded u/s 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under Subsection (5) of Section 173 :

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in Clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused :

Provided further that if the Magistrate is satisfied that any document referred to in Clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

(Underlined by this Court to supply emphasis)

The above provision of law is not only unambiguous but also clear enough to avoid any scope of interpretation in a different manner than it is prescribed. According to the above-said provisions of law accused is entitled to the copies of statements recorded u/s 161, Cr.P.C. of the persons whom the prosecution proposes to examine as its witnesses. That being so, repeated prayer of the petitioner in claiming for the statements of Mrs. Lopamudra Mohanty and Dr. D.C.Mishra is wholly uncalled for when prosecution has not made them charge-sheeted witnesses and when there is nothing in the record to show or suggest that prosecution proposes to examine them as witnesses. Hence, the aforesaid contentions raised on behalf of the petitioner must fail and in that context, orders passed by the learned Sessions Judge as well as the learned A.S.J. is found to be neither illegal nor unjust or improper.

11. In that context, the further argument was advanced on behalf of the petitioner that the finding recorded by the A.S.J. that no other application was

pending for consideration before the Sessions Judge for supply of statements is factually incorrect. In that respect Mr. Arunachalam failed to satisfy this Court that any such application was/is pending for consideration before the Sessions Court. On the other hand, Mr. Mohanty, learned counsel on 7.9.1998 filed a memo giving the xerox copy of the petition registered as Criminal Misc. Case No. 540 of 1998 and the order dated 23.6.1998 and 24.6.1998 of the Court of Sessions Judge, Bhubaneswar to show that no application was pending for consideration before the Sessions Court by the date (29.7.1998) when the matter was considered under Sections 227/228, Cr.P.C. Hence, in that count petitioner has failed to show any prejudice or failure of justice.

12. The contentions of the parties relating to lack of jurisdiction of the A.S.J. is taken up next for the sake of convenience. The bone of contention on behalf of the petitioner is that the occurrence having taken place at Cuttack, in view of the provision in Section 177, Cr.P.C. the Court of Session at Cuttack and not the Court of Session at Bhubaneswar have the jurisdiction. This argument of Mr. Arunachalam was, however, amended by Mr. S.C. Lal while giving his reply after the argument was advanced from the side of the opposite party. Mr. Mohanty had argued that in accordance with the notification No. 51404 dt. 21.9.1998 of the Government of Orissa, Home Department made in accordance with the provision in the proviso to Sub-section (1) of Section 11, Cr.P.C. the State Government appointed the Additional Chief Judicial Magistrate, Bhubaneswar as the Special Magistrate for the purpose of trial of Delhi Special Police Establishment (C.B.I.) cases under the Delhi Special Police Establishment Act, 1946 having jurisdiction throughout the State of Orissa. He further argued that in view of the provision in Section 14(3), Cr.P.C. read with Section 9, Cr.P.C. not only the Court of Session at Bhubaneswar but also the Assistant Sessions Judge working in that Sessions Division have the jurisdiction to try such a case and such provisions have to be accepted as an exception to the provision in Section 177, Cr.P.C. In that connection, he relied upon the case of Prafulla Chandra Ghadei Vs. Union Republic of India, . He also advanced the argument that petitioner voluntarily surrendered to the jurisdiction of the Addl. Chief Judicial Magistrate, Bhubaneswar as well as to the jurisdiction of the Sessions Court at Bhubaneswar not only relating to bail but also in claiming for copies of statements of witnesses and therefore petitioner is estopped now from challenging that jurisdiction. At the stage of giving reply on behalf of the petitioner Mr. S.C. Lal modified his stance challenging the jurisdiction of the Assistant Sessions Judge and argued that even if the Sessions Judge, Bhubaneswar has jurisdiction, to receive the case after commitment, yet the Assistant Sessions Judge is not a Sessions Judge and therefore the present trial Court has no jurisdiction. His further contention was that either the Sessions Court or an Addl. Sessions Judge at Bhubaneswar should try the case or in the alternative the Sessions Judge, Bhubaneswar should transfer the case to a Court of Assistant Sessions Judge at Cuttack. He referred to the case of Abdul Manan and Ors. v. State of West Bengal: AIR 1996 SC 905, in support of his contention that a Court of Session includes a Court of Addl.

Sessions Judge and it does not include the Assistant Sessions Judge. He also relied upon the cases of State of Orissa v. Phulchand Agarwalla and Anr., : Vol. 31 (1965) CLT 140 and Debi Rani Choudhury and Anr. v. Rama Chandra Choudhury : Vol. 32 (1966) CLT 423. He also placed reliance on that decision in support of his contention that question of jurisdiction can be raised at any time.

13. The aforesaid problem relating to jurisdiction is rather simple though through the aforesaid argument it has been tried to be made complicated. Petitioner does not dispute existence of the aforesaid notification appointing the Addl. Chief Judicial Magistrate, Bhubaneswar as the Special Magistrate in accordance with the proviso to Subsection (1) of Section 11, Cr.P.C. and the corresponding law under the Delhi Special Police Establishment Act, 1946. Section 14(3) Cr.P.C. prescribes that :

"Where the local jurisdiction of a Magistrate appointed u/s 11 or Section 13 or Section 18, extends to an area beyond the district, or the metropolitan area, as the case may be, in which he ordinarily holds Court, any reference in this Code to the Court of Session, Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such Magistrate, throughout the area within the local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Session, Chief Judicial Magistrate, or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction in relation to the said district or metropolitan area."

The above quoted provision makes it explicitly clear that with respect to the Special Magistrate (CBI), who has jurisdiction throughout the State of Orissa the Court of Sessions Judge, Khurda at Bhubaneswar is the Court of Session for all practical purposes unless the context otherwise requires. Section 177 stands in the nature of the general provision relating to the ordinary place of enquiry and trial prescribes that every offence shall ordinarily be enquired into and tried by a Court within whose local jurisdiction it was committed. Thus, the above quoted provision in Section 14(3), Cr.P.C. stands as an exception to the provision in Section 177, Cr.P.C. According to the above discussion the Court of Session at Bhubaneswar is the Sessions Court and any case required to be committed by the Special Magistrate is to be committed to the Court of Sessions Judge, Khurda at Bhubaneswar in accordance with the provision under Section 14(3), Cr.P.C. A reference, at this stage, may be made to Section 9 which defines the term "Court of Session". The relevant portion from that section is quoted as hereunder:

"9. Court of Session - (1) The State Government shall establish a Court of Session for every sessions division.

(2) Every Court of Session shall be presided over by a Judge, to be appointed by the High Court.

(3) The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session.

(4) The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct.

(5)

(6).....

Explanation....."

According to above quoted Sub-section (3), the Additional Sessions Judge and Assistant Sessions Judges posted in a particular sessions division shall exercise jurisdiction in that Court of Session. That being so, the contention of Mr. Lal that a Court of Session does not include the Assistant Sessions Judge is legally not correct. The ratio in the case of Abdul Mannan (*supra*) also does not support his argument inasmuch as in that case contention was raised that Addl. Sessions Judge is not a Sessions Judge and therefore he could not proceed with the trial. In that context, referring to Section 9(3), Cr.P.C. the apex Court held that an Additional Sessions Judge duly appointed by the High Court shall exercise jurisdiction in a Court of Session. It was neither canvassed nor decided by the apex Court in that case that an Assistant Sessions Judge cannot exercise jurisdiction in a Court of Session.

14. The case of Phulchand Agarwalla (*supra*) was in the context as to whether an offence committed at Kantabanji within the jurisdiction of another Magistrate can be tried by the Magistrate Second Class, Nuapada having no jurisdiction over Kantabanji. Applying the provision in Section 177, Cr.P.C. this Court held that Magistrate at Nuapada had no jurisdiction. Similarly in the case of Debi Rani Choudhury (*supra*) after issuing process against the accused persons, a complaint case was dismissed by the S.D.J.M., Titilagarh on the ground of want of jurisdiction and this Court found that to be the correct approach keeping in view the provisions in Section 177, Cr.P.C. The said ratio, so far as the present case is concerned, is of no help. In the case of Prafulla Chandra Ghadei (*supra*) a bail application filed in connection with S.P.E. No. 44/94 was heard and rejected by the Second Addl. Sessions Judge at Bhubaneswar on the ground of want of jurisdiction. After making a thread bare discussion of the point of contentions and the leading judgments on the subject it was held by this Court that in view of the provision u/s 14(3) read with Section 9(3), Cr.P.C. the Court of Session at Bhubaneswar has the jurisdiction to entertain the bail application and therefore the 2nd Addl. Sessions Judge at Bhubaneswar had the jurisdiction to hear the bail petition.

15. On summerising the aforesaid discussions and findings it is held that in view of the provisions of law u/s 14(3), Cr.P.C. the Court of Session, Khurda at Bhubaneswar is the Sessions Court so far as the present case is concerned. In accordance with the provision in Section 9(3), Cr.P.C. Additional and Assistant Sessions Judges appointed in a sessions division shall exercise jurisdiction in the

Court of Session of that sessions division. Hence, the Chief Judicial Magistrate-cum-Assistant Sessions Judge at Bhubaneswar has jurisdiction to try the case if made over to his Court by the Sessions Judge. The alternative contention of Mr. Lal that the Sessions Judge at Bhubaneswar should transfer the case to a Court of Assistant Sessions Judge at Cuttack is legally not sustainable because there is no such provision in the Cr.P.C. empowering a Sessions Judge of one sessions division to transfer a case to a Court of Session or Assistant Sessions Judge functioning in another sessions division. Similarly, the contention of Mr. Lal that the Sessions Judge or the Addl, Sessions Judge at Bhubaneswar should try the case is not entertainable when the case has been made over to the A.S.J. for trial and disposal according to law and when no justifiable ground has been shown in support of that submission. In a nutshell it is recorded that the contentions relating to jurisdiction raised by the petitioner has no leg to stand and accordingly rejected.

16. Before considering the other point, it may be indicated here that this revision has been filed with the prayer to quash the order in framing charge. This revision application is not directed against the order passed in rejecting the petition for supply of the 161 statement of the aforesaid two witnesses or relating to the jurisdiction of the A.S.J. to try the case. At the stage of argument because of the business of the revision petition and at that stage without perusing the prayer portion this Court permitted the petitioner to advance argument on the aforesaid two points. At that stage no objection was raised on behalf of the Republic of India and that was the other reason for allowing such argument to be advanced by the petitioner. If at all the petitioner was aggrieved by the first part of the order in rejecting the petition in which petitioner had claimed for supply of statement of the aforesaid two witnesses he should have filed appropriate application because such an order being an interlocutory order is not revisable in view of the provision in Section 397(2), Cr.P.C. However, notwithstanding the aforesaid deficiencies the aforesaid two points raised on behalf of the petitioner and countered by the opposite party has been discussed and decided on merit but this may not be regarded as precedent that several such contentions can be taken up in one revision where the prayer is otherwise. This passage is stated for the sake of clarity.

17. Coming to the relevant issue relating to the prayer of the petitioner to quash the charge, the contention of the petitioner is that a false and fabricated case has been foisted against him because of enmity of several persons at whose instance the FIR was lodged. The statements of several witnesses examined under Sections 161 and 164, Cr.P.C. leads to the sequence of rendering the case to be improbable if not unreal one and therefore while the trial Court was taking up the case at the stage of Sections 227 and 228, Cr.P.C. he should have applied his mind to the materials in the case diary and should not have mechanically accepted the contention of the prosecution to frame the charge for the alleged offences. It is further contended that because petitioner was persistently making effort to collect all the materials which are in his favour and against the

prosecution, therefore, by 29.7.1998 he was not ready to participate in the hearing to substantiate his prayer for a discharge and therefore a reasonable opportunity should be given to the petitioner in that regard. On the other hand, Mr. Mohanty, learned Standing Counsel contended that at the stage of consideration of charge, the trial Court is required to look to the record to find out if a prima facie case is made out against the petitioner and if so charged should be framed and that at that stage no extraneous material should be considered. According to him, so far as the present case is concerned, there is not only a prima facie case but a strong prima facie case exists in support of the prosecution. Both the parties in details went through the several statements as well as relied upon several citations.

18. Keeping in view the aforesaid argument it is to be seen whether petitioner has been afforded with a reasonable opportunity of hearing at the stage of consideration of charge. As it reveals from the whole of the contentions advanced on behalf of the petitioner, he has not been supplied with the statements of Mrs. Lopamudra Mohanty and Dr. D.C.Mishra. It is already seen that petitioner applied for more than once praying for the copies of such statements and such prayer was rejected more than once before transferring the case to the file of A.S.J. On the other hand, it reveals from the impugned order that copies of all the relevant documents and statements had been supplied to the petitioner well in time. When petitioner is not entitled to the statement of those two witnesses, on the ground of non-availability of those two statements alone, it cannot be held that reasonable opportunity was deprived. In addition to that it reveals from the impugned order that the petitioner participated in the hearing and prayed for discharge. No other facts and circumstances has been brought to the notice of this Court to show or suggest that reasonable opportunity of hearing was not granted to the petitioner. Under such circumstances, re-opening the case again for fresh consideration of the question of framing charge on the ground of not affording reasonable opportunity of hearing is not acceptable.

19. Petitioner has relied upon the cases of Satish Mehra Vs. Delhi Administration and Another, ; Janaki Ballav Patnaik v. State of Orissa (1994) 7 OCR 867 and Union of India (UOI) Vs. Prafulla Kumar Samal and Another, in support of the contention that the materials in the case record disclose non-existence of a prima facie case against the petitioner inasmuch as the sequence of events as narrated by the prosecutrix in the FIR and in her statement are found thoroughly contradicted by other witnesses making her allegations as improbable and unreal one and that the A.S.J. while considering the question of framing of charge should not have lost sight of such glaring circumstances available in favour of the petitioner and should not have mechanically accepted the prosecution version to frame the charge against the petitioner.

20. On the other hand, Mr. Sanjit Mohanty relied upon the cases of State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., : Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, :

State of Maharashtra Vs. Priya Sharan Maharaj and Others, : Hrushikesh Sarangi v. State of Orissa and Ors. (1998) 14 OCR 399; State of Jammu and Kashmir Vs. Sudershan Chakkar and another, : State of Bihar and Another Vs. P.P. Sharma, IAS and Another, and Dalip Singh Vs. State of Punjab, in support of his contention that at the stage of consideration of charge the trial Court is to confine itself to the materials in the case diary and to frame charge if a prima facie case is made out of the offences complained of. At that stage, the trial Court is not required to consider any extraneous material and confined himself to the materials in the case diary. At that stage a detailed documentation of the materials and shifting and weighing of evidence is not required to be done.

21. After perusal of the above noted citations this Court finds that in the case of Satish Mehra (supra) his wife, who was the complainant, made several attempts with false allegations of outraging the modesty and attempt of committing sexual offence by the petitioner on their minor daughter. The matter was investigated into by the American Police when they were residing in the United States and found the said allegation to be false. Apart from that, the materials in the record were sufficiently indicating that the petitioner Satish Mehra could not have committed the alleged offences. On the ground the apex Court held that learned Sessions Judge should have taken into consideration such materials to discharge the petitioner. In the case of Janaki Ballav Pattnaik (supra) a Division Bench of this Court found that the materials in the record justify the stand of the accused against the allegation of disproportionate assets. Therefore, this Court held that the Special Court failed to consider that aspect while considering the question of framing of charge. In the case of Prafulla Kumar Samal (supra) the apex Court held that the allegation of obtaining pecuniary advantage by abusing his official position and by making false statement was factually incorrect on the basis of the materials available in the case record and on that ground passed order to discharge him. In the decision relied upon on behalf of the opposite party (supra) the apex Court has been pleased to repeatedly propound that at the stage of consideration of charge, trial Court is required to afford an opportunity of hearing to the petitioner, trial Court is required to peruse the materials in the case diary and to satisfy if there exists a prima facie case against the accused for the offence complained of or any other offence. At that stage there should not be a meticulous examination of the material in record which is required to be done at the time of trial and only prima facie view of such statements and evidence be taken into account. It has further been propounded that at that stage shifting and weighing of evidence or taking aid of extraneous materials is wholly uncalled for.

22. The aforesaid citations from both the sides are neither conflicting nor contradictory. The ratio in all such cases are in accordance with the above noted proposition of law propounded by the apex Court, but keeping in view different facts and circumstances and different nature of materials and divergent nature of allegation different result has come out in such cases. Thus, following the above noted principle if the material in the case record is perused then this Court does

not find absence of a prima facie case against the petitioner. In that context, the statement of the prosecutrix alone is sufficient to presume regarding existence of a strong prima facie case against the petitioner. The contention of the petitioner that the other statements of other witnesses makes the allegations by the prosecutrix improbable or unreal is prima facie not acceptable. However, no opinion is expressed in that regard and the recorded evidence, at the time of trial may be considered appropriately by the trial Court in consideration of such contention if that will be advanced. When there exists a prima facie case and that has been duly taken into consideration by the A.S.J. after affording an opportunity of hearing to the petitioner, there is nothing to interfere with that order. Hence, the petitioner's prayer to quash the order in framing charge is also rejected and in the result, the criminal revision is dismissed.

23. When this matter was taken up for hearing an interim order of stay was granted as a result of which the trial of the case could not be taken up. As per the submission of petitioner he may be afforded with reasonable opportunity for making proper defence. In that context, no counter argument was advanced by Mr. Mohanty appearing for the Republic of India. Under the given circumstance, the petitioner is directed to appear before the trial Court on 12.10.1998 and thereafter the trial Court shall fix a date of hearing and at that time he may afford a reasonable time to the petitioner while fixing the date/dates for trial.

The criminal revision is thus dismissed.