

(2011) 04 OHC CK 0020

In the Orissa High Court

Case No : TRP (Criminal) No. 32 of 2008

Sunakar Behera and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 407, 407(1), 407(2)

Penal Code, 1860 (IPC) — Section 294, 323, 34, 341, 342

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2011) 04 OHC CK 0020

Hon'ble Judges : B.K. Mishra, J

Bench : Single Bench

Judgement

B.K. Misra, J.—The petitioners being aggrieved with the order of the learned Additional Sessions Judge, Kendrapara dtd. 23.06.2008 in ST. Case No.37 of 2008 (corresponding to I.C.C. Case No.174 of 2003 have filed this case u/s 407 of the Code of Criminal Procedure (for short "Cr.P.C.) praying therein for transfer of G.R. Case No.390 and 391 of 2003 corresponding to Kendrapara P.S. Case No. 179 and 180 of 2003 pending in the court of learned S.D.J.M., Kendrapara to be transferred to the file of the Additional Sessions Judge, Kendrapara so that the case and cross

INDIAN LAW REPORTS, CUTTACK SERIES [2011]

cases to be tried by one Court in the best interest of justice and for proper appreciation of the cases of the parties.

2. Learned counsel for the petitioners contended that I.C.C. Case No. 174 of 2003 i.e. the complaint case was filed by one Bhramarbara Sethy alleging therein that on 10.07.2003 around 6.00 A.M. accused Ranjan Kumar Behera, the son of opposite party no.2-Muralidhar Behera was assaulted by the accused persons and on seeing that when the father of the said Ranjan Kumar Behera protested the accused persons also attempted to assault the said Murlidhar Behera, the

complainant and on seeing that the opposite parties, namely, accused Yudhistira Sethy, Brundaban Sethy, Raghunath Sethy and Babula Sethy and others protested and when intervened in the matter, accused Sunakar Behera and the other accused persons abused the complainant and others in obscene words by uttering the caste of the petitioners. It is further alleged that accused Ajaya Kumar Behera, Bijay Kumar Behera and Sunakar Behera indiscriminately went on assaulting the complainant and others and because of the lathi blow of Bijay Kumar Behera, the complainant sustained bleeding injuries on his neck and left hand fingers. Similarly, Yudhistir Sethy was assaulted by Bijay Kumar Behera and Sunakar Behera with lathi for which he sustained bleeding injuries on his right hand. Raghunath Sethy also sustained injuries on his chest because of thrust blow given by the accused Bijay Kumar Behera with lathi. On those allegations, learned S.D.J.M., Kendrapara took cognizance of the offences under Sections 341/323/342/294/354/452/506 of the Indian Penal Code (for short "I.P.C.") read with Section 34 of the I.P.C and u/s 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and the case was committed to the court of Additional Sessions Judge, Kendrapara which was registered as ST. Case No.37 of 2008. For the same occurrence on the F.I.R. lodged by the petitioner no.2, Bijaya Kumar Behera, Kendrapara P.S. Case No. 180 of 2003 corresponding to G.R. Case No.391 of 2003 was registered u/s 341/ 323/342/354/294/452 and 506 of the I.P.C. and read with Section 34 of the I.P.C and cognizance of the offences were taken and the case is pending before the S.D.J.M., Kendrapara. Similarly, for the same occurrence i.e. 10.07.2003 on the report of Murlidhar Behera, Kendrapara P.S. Case No.179(9) dtd. 11.07.2003 u/s 341/323/ 294/379 I.P.C. read with Section 34 of the I.P.C. was registered and on completion of investigation charge sheet has been placed against the accused persons u/s 341/323/294 and 506 of the I.P.C. read with Section 34 of the I.P.C.

3. On perusal of the certified copies of the F.I.Rs., the Charge Sheets in G.R. Case Nos.390 and 391 of 2003 and Annexure-1 i.e., complaint petition registered as I.C.C. Case No.174 of 2003, it is established that the

SUNAKAR BEHERA-V- STATE OF ORISSA [B.K. MISRA, J.]

accused persons in one case are the witnesses in other cases and vice-versa. As I have already stated above, the allegation and counter allegations relates to the same occurrence, the same day and the same time so also the place. It is not at all disputed that the accused persons in one case are the witnesses in other cases and persons have been injured from both the sides.

4. The Code of Criminal Procedure nowhere provides specifically the manner in which trial of cases and cross cases are taken up. The terms "cross-cases", "counter cases" or "case and counter cases" have not been defined in the Code of Criminal Procedure, but in common parlance when in a fight between the rival factions which culminates to registration of two cases one against each of the rival factions, those are termed as "cross cases", "counter cases", or "case and counter case".

5. It is no more res integral that if two cases are pending which arise out of the same occurrence, then interest of justice requires that one should be tried after the other by the same Judge. It is the settled position of law that in case trial of cross cases where one is triable by the court of sessions and other is triable in the court of Magistrate, the Sessions Court does not have the power to order for commitment of the second case and such orders can only be passed u/s 407 of the Cr.P.C. by the High Court, if it would appear do so in the greater ends of justice. In that context reliance can be placed on (2000) 18 OCR 174 in the case of Gundi Sahu and Others Vs. State of Orissa and Others, in the case of Gundi Sahu and others -v- State of Orissa and others. Thus in view of the such settled position of law, when the learned Additional Sessions Judge, Kendrapara declined to direct the S.D.J.M., Kendrapara to commit G.R. Case Nos.390 and 391 of 2003 on the ground that he has no jurisdiction to issue such direction to the S.D.J.M., Kendrapara, the same is perfectly justified in the eye of law and do not call for any interference.

6. Be that as it may, the petitioners are not remediless, as this Court can pass appropriate orders in exercise of powers conferred u/s 407 of the Cr.P.C.

Section 407 of the Cr.P.C. reads as follows:-

407. Power of High Court to transfer cases and appeals. (1) Whenever it is made to appear to the High Court -

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(c) 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.

It may order -

INDIAN LAW REPORTS, CUTTACK SERIES [2011]

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(iii) that any particular case be committed for trial to a Court of Session

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Section 407 (1) (c) of the Cr.P.C. relates to transfer of a case from one court to another if it tends to the general convenience of the parties or witnesses. It is true that convenience and expediency are factors to be considered in trial of a case and most important consideration is that justice should be done. The prayer of transfer is always to be considered with reference to the facts and circumstances of each case and no hard and fast rule can be laid down as a matter of principle. The High Court's power to pass an order u/s 407 (1)(c) (iii) is not limited in its scope only to cases triable by the court of Sessions. The wordings of the provision clearly show that the High Court can exercise the power of transfer in respect of any type of criminal cases. So the petition for

committing criminal case pending before a Magistrate to the court of sessions is clearly maintainable in law. There can be no controversy over the settled position of law that the High Court alone can exercise the power to the above effect and the court of Sessions has no power to direct the commitment of a case pending before a subordinate Magistrate to the Court of Sessions and therefore the proviso to Sub Section (2) of Section 407 of the Cr.P.C. does not apply to a matter of this nature.

7. In the circumstances I feel expedient in the interest of justice that S.T. Case No.37 of 2008 and its counter cases namely, G.R. Case Nos.390 and 391 of 2003 are to be tried in the court of learned Additional Sessions Judge, Kendrapara. Accordingly, I direct the learned S.D.J.M., Kendrapara to commit G.R. Case Nos.390 and 391 of 2003 pending before him to the court of learned Additional Sessions Judge, Kendrapara, so that those cases can be tried and disposed of with S.T. Case No.37 of 2008. On commitment, learned Additional Sessions Judge, Kendrapara shall pass appropriate orders for taking up trial of the three cases in his court one after the other.

Accordingly, the TRP (CRL) is disposed of.