

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3035 of 2017

Tulia @ Nigamananda Jena

....

Petitioner

Mr. Devashis Panda, Advocate

-versus-

State of Odisha

...

Opposite Party

Mr. Ishwar Mohanty, ASC

**CORAM:
THE CHIEF JUSTICE**

Order No.

**ORDER
16.12.2022**

08.

1. The prayer in the present petition is for the quashing of an order dated 27th July, 2017 passed by the learned Judicial Magistrate First Class (P), Kujang (Magistrate) in G.R. Case No.729 of 2016 arising out of Abhaychandpur P.S. Case No.112 of 2016 whereby on receipt of a supplementary charge-sheet against the Petitioner and two others, the Magistrate has observed that cognizance has already been taken on 21st December, 2016 and that the charge-sheet against the Petitioner and two others be attached to the case record.

2. While issuing notice in the present petition on 4th January 2018, there was stay granted by this Court of further proceedings in the aforementioned case. That stay has continued till now.

3. The main submission of Mr. Devashis Panda, learned counsel appearing for the Petitioner is that the impugned order is bad in law since the entire charge-sheet against the Petitioner is based only on the statements of the co-accused, which are *per se* inadmissible in law. In support of the submission, he relies on the

judgments of the Supreme Court of India in *Hari Charan Kurmi v. State of Bihar* AIR 1964 SC 1184, *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* (1988) 1 SCC 692 and the judgments of this Court in *Biraja Panda @ Butia v. State of Orissa* 1996 (I) OLR 85 and *Sunil Pandey v. State of Orissa*, Manu/OR/0233/2018.

4. The background facts leading to the present petition are that a written report was lodged on 13th August, 2016 by one Kshirasindhu Rout before the IIC, Abhaychandpur Police Station (PS) that when certain work assigned to one Gangadhar Jena by GDCL at Plastic Park was being undertaken; he proceeded to the site at around 12.40 pm when three young men aged 20 to 30 years came on a white TVS Apache motorcycle. Two of them walked into the work site. One of them was wearing jeans and a black banyan while the other one was wearing a T-shirt of cream colour. The person with the black banyan took out a gun from his waist and fired two rounds which hit Jitendra, the site supervisor, on his head. They are also stated to have thrown a bomb at the JCB—‘Poclaine’ on the site, and damaged it. They then ran towards the main road and went away on a motorcycle. The critically injured Jitendra was shifted to the hospital where he underwent treatment. An FIR was registered at PS Abhaychandpur under Sections 341/323/307/349 IPC read with Sections 25 and 27 of the Arms Act and Sections 4 and 5 of the Explosives Substances Act against unknown persons.

5. It is during the course of investigation that on the basis of the statement of the co-accused, ten of whom were already in custody,

that a prayer was made to the trial Court by the police on 31st January, 2017 for remand of the present Petitioner. Six months later, on 27th July 2017, a supplementary charge-sheet was filed against the present Petitioner.

6. Having carefully considered the submissions of Mr. Panda, the Court is of the view that the question of admissibility of the statements of the co-accused cannot be tested at this stage when the stage of charge has not even been reached. The trial Court would have at that stage the opportunity of testing the strength of the prosecution case on the basis of charge-sheet filed and to appreciate the arguments advanced in the present petition and before this Court by Mr. Panda.

7. The better course is to permit the Petitioner to urge all the pleas urged in the present petition and before this Court and any other pleas that the Petitioner may have in accordance with law before the trial Court at that stage. It is so ordered.

8. Accordingly, the Court vacates the interim order dated 4th January, 2018 and disposes of the present petition in the above terms. It would be open to the Petitioner to request the trial Court to expedite the proceedings. Issue urgent certified copy of this order as per Rules.

(Dr. S. Muralidhar)
Chief Justice

M. Panda