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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC Nos.2817 of 2003 and batch

In CRLMC No.2817 of 2003

Mama @ Bidyut Prava Khuntia ***Petitioner***

Mr. Gourisankar Pani, Advocate

-versus-

State of Orissa ***Opposite Party***

Mr. J. Katikia, Additional Government Advocate

In CRLMC No.2407 of 1999

Sucheta Kanungo and another ***Petitioners***

Mr. D. Nayak, Senior Advocate

-versus-

State of Orissa ***Opposite Party***

Mr. J. Katikia, Additional Government Advocate for the State

Mr. Devashis Panda, Advocate for the Informant

In CRLREV No.217 of 2006

Babu @ Sk. Raban Tarafdar and others ***Petitioners***

Mr. Devashis Panda, Advocate

-versus-

State of Orissa ***Opposite Party***

Mr. J. Katikia, Additional Government Advocate for the State

Mr.D.P. Dhal, Senior Advocate for the Informant

In CRLREV No.446 of 2006

Bipin Sahoo and another ***Petitioners***

Mr. Devashis Panda, Advocate

-versus-

State of Orissa ***Opposite Party***

Mr. J. Katikia, Additional Government Advocate for the State

Mr.D.P. Dhal, Senior Advocate for the Informant

In CRLMC No.625 of 2008

Suratha Sethi and another

Petitioners

None

-versus-

State of Orissa

Opposite Party

Mr. J. Katikia, Additional Government Advocate

In CRLMC No.1521 of 2010

Biswanath @ Basanta Sethi and others

Petitioners

None

-versus-

State of Orissa and another

Opposite Parties

Mr. J. Katikia, Additional Government Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH**

**JUDGMENT
14.09.2022**

Dr. S. Muralidhar, CJ.

1. The present batch of cases raises an interesting question of law concerning the power of a Judicial Magistrate to take cognizance of an offence essentially and exclusively triable by the court of sessions vis-à-vis an accused person who has not been charge sheeted.

2. The reference to the present Division Bench of two Judges is pursuant to an order dated 9th July 2004 passed by learned Single Judge of this Court in CRLMC No.2817 of 2003 (***Mama @ Bidyut Prava Khuntia v. State of Orissa (2004) 29 OCR 329***). In the said order, it was noted by the learned Single Judge of this Court that although the earlier judgments of the Supreme Court of India in ***Raj***

Kishore Prasad v. State of Bihar AIR 1996 SC 1931, Ranjit Singh v. State of Punjab (1998) 7 SCC 149 and Kishori Singh v. State of Bihar (2000) 19 OCR (SC) 647 had held that when an offence exclusively triable by the Court of Sessions is alleged to have been committed and the matter is investigated, the Magistrate has to go by the person named in the charge sheet and cannot add or subtract to that list since he has no jurisdiction in that respect, a contrary view was taken by the Supreme Court in *M/s. SWIL Ltd. v. State of Delhi AIR 2001 SC 2747* and *Rajinder Prasad v. Bashir (2002) 23 OCR (SC) 404* where it was held that the Magistrate has the power under Section 190 Cr PC not only to add offences but also accused persons on the basis of the evidence collected by the police. It is as a result of the conflict of the decisions of the Supreme Court as noted hereinbefore that the reference has been made to this Division Bench.

3. More or less, a similar question arises in each of the other five connected petitions in this batch.

4. In *Raj Kishore Prasad v. State of Bihar (1996) 4 SCC 495* which is a by a Bench of two Judges, the question that arose for consideration was as under:

“2. Can a Magistrate undertaking commitment under Section 209 Cr.P.C. of a case triable by a court of session, associate another person as accused, in exercise of the power under Section 319 Cr.P.C., or under any other provision?”

The above question was answered in the negative. In other words, it was held that the Magistrate has no power to add a person as an

accused under Section 319 Cr PC when handling a matter under Section 209 Cr PC.

5. Next, in ***Ranjit Singh v. State of Punjab (1998) 7 SCC 149***, the aforementioned view in ***Raj Kishore Prasad (supra)*** was reiterated and it was held that from the stage of committal till the sessions court reaches the stage of evidence collection indicated under Section 230 Cr PC, that court can deal with only the accused referred to it in Section 209 Cr PC. The same view has been reiterated in ***Rajinder Prasad v. Bashir (2001) 8 SCC 522*** and ***Kishori Singh v. State of Bihar (2004) 13 SCC 11*** (order dated 27th January 2000).

6. However, a different view was taken earlier in ***Kishun Singh v. State of Bihar (1993) 2 SCC 16*** which was disapproved in ***Ranjit Singh v. State of Punjab (supra)***. The view in ***Ranjit Singh v. State of Punjab (supra)*** was doubted by the Supreme Court in its order in ***Dharam Pal v. State of Haryana (2004) 13 SCC 9*** and accordingly, the matter was referred to a Constitution Bench of five Judges.

7. The Constitution Bench of the Supreme Court in ***Dharam Pal v. State of Haryana (2014) 3 SCC 306*** overruled the decisions in ***Raj Kishore Prasad v. State of Bihar (supra)***, ***Ranjit Singh v. State of Punjab (supra)*** and ***Kishori Singh v. State of Bihar (supra)*** and agreed with the view in ***Kishun Singh (supra)***. Referring to the role of the Magistrate under Section 190 (1) (b) on submission of a Police Report under Section 173 (2) of Cr PC vis-à-vis the persons shown in Column 2 of the charge-sheet i.e., not as an accused, the Supreme Court held as under:

“35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) Cr.P.C. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.”

8. The above view in *Dharam Pal (supra)* which was by a Bench of five Judges of the Supreme Court continues to hold the field. Importantly, in *Nahar Singh v. State of Uttar Pradesh (2022) 5 SCC 295*, it was noted in para 25 that “jurisdiction of the Magistrate to take cognizance of an offence triable by a Court of Sessions is not in controversy before us”. It must be noted at this stage that in *Jile Singh v. State of Uttar Pradesh (2012) 3 SCC 383*, a two judge Bench of the Supreme Court, following *Ranjit Singh v. State of Punjab (supra)* and *Kishori Singh v. State of Bihar (supra)*, quashed the summons issued by a Magistrate to a person not named as an accused in the charge sheet on a private complaint after committal of the case to the sessions court.

9. In *M/s. SWIL Ltd. v. State of Delhi (supra)*, a two judge Bench of the Supreme Court was dealing with the situation of a Magistrate issuing summons to accused not shown in the column of the accused in charge sheet. However, that decision did not deal with a case exclusively triable by a court of sessions.

CRLMC No.2817 of 2003

10. As far as the referral order in the present cases is concerned, the offences are those exclusively triable by that of the court of sessions. To recapitulate, in ***Dharam Pal*** (*supra*) a Bench of five Judges of the Supreme Court has overruled the view in ***Rajkishore Prasad*** (*supra*) and ***Ranjit Singh*** (*supra*) and ***Kishori Singh*** (*supra*) and affirmed the view in ***M/s. SWIL Limited*** (*supra*) and ***Kishun Singh*** (*supra*). Consequently, the order under challenge in CRLMC No.2817 of 2003 is hereby affirmed and the interim order is vacated. The CRLMC No.2817 of 2003 is accordingly dismissed.

CRMC No.2407 of 1999

11. As far as CRMC No.2407 of 1999 is concerned, the challenge was to an order passed by the SDJM, Bhubaneswar in G.R. Case No.3357 of 1998 on 20th May 1999 taking cognizance of the offence under Sections 498-A IPC and other provisions against the Petitioners who are not shown in the accused column in the charge sheet.

12. The learned Single Judge of this Court had stayed the said order on 8th December, 1999. In the present case, on 10th March 2006, a fairly detailed order was passed by the learned Single Judge of this Court noting that reference had been made by another learned Single Judge of this Court in ***Mama @ Bidyut Prava Khuntia v. State of Orissa*** (2004) 29 OCR 329. The present case was also therefore referred to the larger Bench.

13. In view of the order as aforementioned, the challenge to the impugned order of the learned SDJM has to fail. Accordingly, CRLMC No.2407 of 1999 is dismissed. The interim order passed therein stands vacated.

CRLREV No.217 of 2006

14. As far as CRLREV No.217 of 2006 is concerned, the challenge is to an order dated 12th April 2006 passed by the learned SDJM, Dhenkanal in CT No.1080/2006/GR No.1124 of 2005 taking cognizance of the offences under Sections 147,148,341,294,302,379,212/149 IPC and Sections 25/27 of the Arms Act vis-à-vis persons who were not named in the charge sheet in the accused column.

15. For the reasons already explained above, the challenge to the said order should fail. The CRLREV No.217 of 2006 is accordingly dismissed and the interim order passed therein stands vacated.

CRLREV No.446 of 2006

16. In CRLREV No.446 of 2006, the challenge is to the same order dated 12th April 2006 passed by the SDJM, Dhenkanal in CT No.1080 of 2006/GR No.1124 of 2005. For the reasons already mentioned above, CRLREV No.446 of 2006 is dismissed. The interim order passed therein stands vacated.

CRLMC No.625 of 2008

17. In CRLMC No.625 of 2008, the challenge is to an order dated 25th August 2007 passed by learned SDJM, Bhadrak in GR Case

No.466 of 2007 taking cognizance under Sections 147, 148, 294, 506, 307, 427, 354/149 IPC against the present two Petitioners who were not named as accused in the charge sheet. For the same reasons as aforementioned, the challenge to the said order should fail. CRLMC No.625 of 2008 is accordingly dismissed. The interim order passed therein stands vacated.

CRLMC No.1521 of 2010

18. As far as CRLMC No.1521 of 2010 is concerned, the challenge in the present petition is to an order dated 25th August 2007 passed by the SDJM, Bhadrak in GR Case No.466 of 2007 arising out of Chandbali PS Case No.22 of 2007 taking cognizance of the offences against the Petitioners on the basis of private complaint after committal of the case to the sessions court. For the reasons already explained, the challenge to the said order should fail. The present CRLMC No.1521 of 2010 is accordingly dismissed.

19. The LCRs be returned forthwith. Copies of this judgment be sent to each of the concerned trial courts forthwith through special messengers. The respective proceedings in each of the trial courts will now continue in accordance with law from the stage at which they were when they were stayed by this Court.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S.K. Guin/ PA