

IN THE HIGH COURT OF ORISSA AT CUTTACK

TRPCRL No.8 of 2022

Pramod Kumar Panda @ Tuna ***Petitioner***

-versus-

Bharat Nayak and others ***Opposite Party***

CORAM: JUSTICE S. PUJAHARI

ORDER

10.05.2022

Order

No.

02.

1. This matter is taken up through hybrid mode.
2. This petition has been filed by the Petitioner for transfer of S.T. Case No.32 of 2020, arising out of Narsinghpur P.S. Case No.100 of 2019, from the file of the learned Additional Sessions Judge, Athagarh to the Court of P.O., Special Court under the S.C. & S.T. (PoA) Act, Cuttack.
3. Heard Mr. Soura Chandra Mohapatra, learned counsel appearing for the Petitioner, Mr. S.S. Pattanaik, learned counsel appearing for the Opposite Parties No.1 and 3 to 6 and learned counsel appearing for the State-Opposite Party No.7.
4. It appears that the Petitioner seeks transfer of the aforesaid case, which is a counter case for the offence under Section S.C. & S.T. (PoA) Act pending in the Court of Additional Sessions Judge, Athagarh, to the Court of P.O., Special Court under the S.C. & S.T. (PoA) Act, Cuttack.

5. It is submitted by learned counsel for the Petitioner that S.T. Case No.32 of 2020 pending in the Court of Additional Sessions Judge, Athagarh is a counter case to the case, i.e., C.T. Case No.88 of 2019 pending in the Court of P.O., Special Court under the S.C. & S.T. (PoA) Act, Cuttack. He has also submitted that it is well settled in law that a case and counter case is required to be tried in the same court one after the other and the judgment be pronounced by the same judge for better appreciation of the materials and also to avoid conflicting finding. Therefore, he seeks transfer of the same.

6. Mr. S.S. Pattanaik, learned counsel appearing for the Opposite Parties No.1 and 3 to 6 though does not dispute the fact that the aforesaid are case and counter case, but submits that instead of transfer S.T. Case No.32 of 2020 pending in the Court of Additional Sessions Judge, Athagarh to the Court of P.O., Special Court under the S.C. & S.T. (PoA) Act, Cuttack, the Court may be directed to transfer C.T. Case No.88 of 2019 pending in the Court of P.O., Special Court under the S.C. & S.T. (PoA) Act, Cuttack to the Court of Additional Sessions Judge, Athagarh, as the same is convenient to the parties. But, he fairly submits that learned Additional Sessions Judge, Athagarh has not been conferred with the power of Special Act under the S.C. & S.T. (PoA) Act. As such, he has no jurisdiction to try the case, which is stated to be pending before the P.O., Special Court under the S.C. & S.T. (PoA) Act, Cuttack.

7. In the case of ***Nathilal and Others v. State of U.p. and Another, reported in 1990 (Supp) SCC 145*** wherein the Apex Court at Paragraph-2 have held as follows:-

"2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other"

8. The same has been reiterated in the case of ***Sudhir and Others v. State of M.P., reported in (2001) 2 SCC 688***. Therefore, for the aforesaid reasons, the aforesaid cases are required to be tried together by the same court.

9. Since P.O., Special Court under the S.C. & S.T. (PoA) Act, Cuttack is having jurisdiction to try both the cases where the learned Additional Sessions Judge, Athagarh has no such jurisdiction to try the offence under the S.C. & S.T. (PoA) Act, this Court allows the transfer petition and consequently directs

that S.T. Case No.32 of 2020 pending on the file of the learned Additional Sessions Judge, Athagarh be transferred to the Court of P.O., Special Court under the S.C. & S.T. (PoA) Act, Cuttack. Learned Additional Sessions Judge, Athagarh on receipt/production of the certified copy of this order shall transmit the record to the transferee court expeditiously and ensure that the record is received there. Needless to say that on receipt of the S.T. Case No.32 of 2020, the learned Presiding Officer, Special Court under the S.C. & S.T. (PoA) Act, Cuutack shall try both the cases in the manner indicated in the case of *Nathilal and Others* (supra).

10. With the aforesaid order, this transfer petition stands disposed of.

11. Urgent certified copy of this order be granted on proper application.

(S. Pujahari)
Judge

DA