

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3847 of 2011

N. Mohini@ Mohin Dora and others *Petitioners*

Mr. Prabodh Kumar Patnaik, Advocate

-versus-

State of Orissa and another *Opposite Parties*

Mr. S.N. Das, Addl. Standing Counsel

CORAM:

THE CHIEF JUSTICE

Order No.

ORDER

13.05.2022

13. 1. The challenge in the present petition is to an order dated 15th July 2011, passed by the learned Sub-Divisional Judicial Magistrate, Khurda (SDJM) taking cognizance of the offences, *inter alia* under Section 3 of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1985 (POA Act) in ICC Case No.401 of 2010. While directing notice to issue in the present petition on 28th November 2011, this Court granted a stay of further proceedings in the aforementioned case before the S.D.J.M., Khurda.
2. This Court has heard learned counsel for the parties. As explained by the Supreme Court of India in *Gangula Ashok and another v. State of A.P.* 2000 CRI. L. J. 819 (SC), even the special Court under the POA Act cannot straightaway take cognizance. The case has to be committed to it by a Magistrate and then the

Special Court has to apply its mind on the question of taking cognizance.

3. Mr. S.N. Das, learned Additional Standing Counsel appearing for the State has drawn the attention of the Court to the recent decision in ***Shantaben Bhurabhai Bhuriya v. Anand Athabhai Chaudhari and others 2021 SCC OnLine SC 974***, where the Supreme Court has explained the position that existed prior to the amendment to the POA Act 2016 and the position thereafter.

4. On perusal of both the decisions, it appears to the Court that in the pre-amendment stage, which is what the present case is about, the Magistrate could not have straightaway taken cognizance of an offence under the POA Act. The Magistrate would have had to commit the case to the Special Court, which would then consider the question of taking cognizance. Post the amendment to Section 14, as explained by the Supreme Court in ***Shantaben Bhurabhai Bhuriya (supra)*** it is open to the Magistrate to take cognizance and then commit the case to the Special Court.

5. In the present case, since the situation is pre-amendment, in terms of the decision, the impugned order dated 15th July 2011 passed by the SDJM taking cognizance of the offence under Section 3 of the POA Act is hereby set aside and to that extent, the matter is remanded to the SDJM, Khurda to be proceed with afresh, vis-à-vis the said offence, in accordance with law.

6. The petition is disposed of in the above terms.

7. This order be delivered forthwith to the concerned Court of the S.D.J.M., Khurda through a Special Messenger.

(Dr. S. Muralidhar)
Chief Justice

S. Behera

