

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPCRL No. 78 of 2022

Raju Nayak

.....

Petitioner

Mr. Amitav Tripathy, Advocate

-versus-

State of Odisha and Ors.

.....

Opposite Parties

Ms. S. Patnaik, AGA

CORAM:

JUSTICE S. TALAPATRA

JUSTICE M.S. SAHOO

ORDER

08.08.2022

Order No.

04.

1. This matter is taken up through hybrid mode.
2. Heard Mr. A. Tripathy, learned counsel appearing for the Petitioner as well as Ms. S. Patnaik, learned Additional Government Advocate appearing for the Opposite Parties No.1, 2 and 3.
3. There is no representation for the Opposite Party No.4. This Court has preferred not to issue further notice on the Opposite Party No.4 since the State has taken care of his interest.
4. It is an admitted fact that based on the complaint filed by the Opposite Party No.4 to the IIC, Ranpur P.S. on 21.04.2021, Ranpur P.S. Case No.70 of 2021 was registered under Section 376AB (2)(f)(n) of the IPC. According to the said information, as lodged by the Opposite Party No.4, his

daughter, whose name is withheld for protecting her identity as the victim of sexual offence was violated by the Petitioner.

5. The Petitioner herein, the named accused in the F.I.R. was engaged as Security Guard in an Industrial Estate in Zuarinagar, South Goa. The Petitioner used to reside with the family of the informant in the same rented house. On 26.08.2020, the informant's wife and his son came to Odisha and stayed back till 19.12.2020. His daughter used to be with the Petitioner for seeing mobile phone materials till late night. Taking advantage, in one night, the Petitioner played some sexual act by inserting his tongue into the vagina of the victim. He used to insist her to have sexual intercourse. It has been alleged in the First Information Report that the victim was put under threat. On 31.01.2021, the Informant's son Aditya located the Petitioner [the accused] and his daughter having sex in the undressed condition. As the daughter of the Opposite Party No.4 was of tender age, she did not realize the consequence. The Opposite Party No.4 had initially established communication with the family of the Petitioner, but the writ Petitioner left Goa on 02.02.2021 by leaving behind his belongings. It had been told by one cousin sister of the Petitioner that the Petitioner had admitted his mistake. The parents of the Petitioner had requested the parents of the victim to come down to Odisha to settle the matter. The informant had recorded the said conversation on his mobile phone. When the Opposite Party No.4 and the other companions reached to the house of the accused, they were

informed that the accused had left for Delhi. The discussion between the families could not bring any 'settlement'. Those are shown as the reasons for delay in lodging the First Information Report of an occurrence that took place on or before 31.01.2021.

6. Mr. A. Tripathy, learned counsel appearing for the Petitioner has submitted that, the IIC, Ranpur P.S. had no jurisdiction to register the case and to take up the investigation in as much as, there cannot be any uncertainty that the entire transaction of the offence had taken place in the State of Goa. It has been asserted in this writ petition by which the legality of the investigation and the jurisdiction of the Additional Sessions Judge-cum-Special Judge under POCSO Act, Nayagarh have been challenged in order to contend that the detention is illegal and arbitrary. Section 156 of the Cr.P.C. prescribes that any officer in charge of the police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station, would have power to inquire into or try under the provisions of Chapter XIII of the Cr.P.C. It has been further asserted that, Section 177 of the Cr.P.C. postulates that *every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed*. Mr. Tripathy, learned counsel has contended that a bare perusal of the First Information Report, Annexure-1 to the writ petition, demonstrates that, the entire transaction of the alleged offence had taken place at Goa. Therefore, in terms

of Section 156 of the Cr.P.C., the IIC, Ranpur P.S. had no jurisdiction to investigate into the F.I.R. lodged by the informant.

7. Notwithstanding the above factual matrix, the Additional Sessions Judge-cum-Special Judge under POCSO Act, Nayagarh has authorized the detention of the accused in custody. It is therefore asserted that, the said Special Court ought to have directed to forward the Petitioner to the Court of a Magistrate having the jurisdiction. But that has not been done. As a result, since 19.01.2021 till date, the Petitioner is in custody. Finally, having completed the investigation the police report [the charge-sheet] under Section 173(2) of the Cr.P.C. has been filed by the Investigating Officer of Ranpur P.S. on 21.03.2022. According to the Petitioner, this investigation report is illegal, as the Ranpur Police Station did not have any jurisdiction to investigate a crime which had taken place within the State of Goa. Thus, it has been urged by Mr. Tripathy, learned counsel for the Petitioner that, the detention of the Petitioner is grossly unlawful and be brought to an end by issuance of a writ of *Habeas Corpus*. According to Mr. Tripathy, learned counsel the valuable right to life and liberty has been curbed unlawfully by the Opposite Parties No.1, 2 and 3. Therefore, the Petitioner be released from the illegal detention and consequential orders, authorizing the detention of the Petitioner, be set aside.

8. Mr. Tripathy, learned counsel has placed before us the order dated 21.06.2022 passed by the Additional Sessions Judge-cum-Special Judge under POCSO Act, Nayagarh. It appears from the said order that, a petition was filed by the Investigating Officer on 31.05.2022 seeking permission to reopen the said case in exercise of power, as conferred under Section 173(8) of the Cr.P.C., for carrying out further investigation. It has been observed by the said Special Court as follows in its order dated 21.06.2022:

“This Court has already taken the view that as the occurrence was taken place in the state of Goa, hence this court has no jurisdiction of the same. In view of the order No.12 dtd.14.03.2022, passed by this court, the petition of the I.O. is allowed. The I.O. is permitted to reopen the case under Section 173(8) Cr.P.C for the purpose of further investigation. Copy of the extract of this order be communicated to the I.O. immediately, with a copy to S.P. Nayagarh for information.”

9. Mr. Tripathy, learned counsel for the Petitioner has also referred to the order dated 23.02.2022 (Annexure-2 to the writ petition) wherein the Special Judge under POCSO Act, Nayagarh had observed as under:

“While perusing the case record, it is found that under Case diary no.x, on dtd:30/5/21 the I.O. has written that as the entire occurrence took place at Goa where the informant, victim, and his family members are permanently remaining, hence, the case

record needs to be transferred to the concerned P.S. of Goa State for investigation and legal action. He has also taken reference of the supervision note of SDPO vide letter no.7522/DCRB(SR), dtd:22/5/21 from S.P., Nayagarh. But, despite that the I.O. continued the investigation without transferring the record to the concerned P.S. of Goa State. Hence, extract of this order be sent to the I.O. concerned with a direction to submit a report as to why and under what circumstances the investigation of this case record is being continued without the case being transferred to the concerned P.S. of Goa State. He is also directed to submit the supervision note as above along with his report for reference and necessary order. He is further directed to submit his report by 26/2/22 positively.”

Even the Petitioner has approached this Court only on 24.06.2022.

10. From Annexure-3, it appears that the Final Report [the charge-sheet] has been filed before the said Special Court with the preliminary observation that sufficient evidence has been gathered that the accused [the writ Petitioner] has committed the offence punishable under Section 376AB (2)(f)(n)/506 of IPC read with Sections 4/6 of the POCSO Act. Mr. Tripathy, learned counsel expressed his dismay, as regard the violation of the direction of the Special Judge under POCSO Act, Nayagarh. He has also pointed out that, the statement of the victim has been recorded under Section 164

of the Cr.P.C. From the multiple orders passed by the Special Judge under POCSO Act, Nayagarh it will be apparent that, having alive of lack of jurisdiction no action against the police for violation of his specific order has been initiated. By the orders passed on 14.03.2022 to 21.06.2022, the Special Judge has made elaborate exposition of law and directed the Investigating Officer to take step for transferring the case to the jurisdictional police station under whose territorial limit the crime has been committed. Despite such orders, as is evident from the subsequent order dated 21.03.2022, the Charge-sheet No.31 dated 17.03.2022 was filed by the Investigating Officer. On 09.05.2022, the Special Judge has expressed his annoyance for not complying the order dated 14.03.2022, as referred, and the subsequent order passed on 21.05.2022. Finally, the said order dated 21.06.2022 was passed by the Special Judge under POCSO Act, Nayagarh.

11. The Opposite Party No.3-IIC, Ranpur P.S. filed the counter affidavit on 02.08.2022 and averred in details their version as regards the police case under reference. It has been illustrated that the Opposite Party No.3 conducted the investigation by recording the evidence, causing seizures of material objects and also by arranging the medical examination of the victim. Reference has also been made to the Charge-sheet filed against the Petitioner by Mr. B.R. Parida, Investigating Officer and also to the order dated 08.04.2022 where it had been clearly observed as follows:

“If the Court under whose jurisdiction the crime has not been committed take cognizance of an offence, the same would be void and as a result would liable to be quashed.”

12. In the present case as stated earlier, the I.O. has ascertained that the crime has not been committed under the jurisdiction of Ranpur Police Station. The I.O. as well as the supervising authority have clearly opined that the crime had been committed at Goa. According to the Opposite Party No.3, F.I.R. has been rightly registered at Ranpur P.S. It has been urged that this Court may not question the registration of F.I.R. and subsequent investigation thereupon till the I.O came to a conclusion that the crime had been committed under the jurisdiction of the another police station, outside Odisha.

13. In view of the settled principle of law, the I.O. was directed to take necessary steps for transferring the case to the competent police agency, meaning under whose jurisdiction the crime was committed. It has been asserted by the Opposite Party No.3 in his counter affidavit that, in view of the said order passed by the Special Judge, he had taken up the matter with the authority and filed an application under Section 173(8) of the Cr.P.C. for further investigation. The Opposite Party No.3 has prayed for dismissal of the writ petition denying any allegation of illegality. It may be noted that, the writ Petitioner had filed a special petition having referred to Section 167 (2) of the Cr.P.C. for releasing him on bail, as

there was no valid charge-sheet within the time as prescribed under Section 167(2) of the Cr.P.C.

14. Ms. S. Patnaik, learned Additional Government Advocate and Mr. S.S. Kanungo, learned Additional Government Advocate appearing for the State have submitted that there cannot be any different opinion that as the entire transaction of offence had taken place within the State of Goa ordinarily, IIC, Ranpur P.S. did not have any jurisdiction to initiate the investigation. But, the investigation cannot be treated as vitiated as the evidentiary materials so gathered during the purported has their legal value.

15. Mr. Tripathy, learned counsel in support of his contention has relied on a decision of the Apex Court in **MS. P XXX v. State of Uttarakhand and Anr.** [the order dated 16.06.2022 delivered in SLP (Crl.) No.6548/2019]. In the said decision, the Apex Court observed on restating the law enunciated in **Sunita Kumari Kashyap** reported in **(2011) SCC 301** where it has been succinctly observed, having referred to Sections 177, 178 and 179 of the Cr.P.C. as under:

“8.... From the above provisions, it is clear that the normal rule is that the offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. However, when it is uncertain in which of several local areas an offence was committed or where an offence is committed partly in one local area and partly in another or where an offence is a continuing one, and continues

to be committed in more than one local area and takes place in different local areas as per Section 178, the court having jurisdiction over any of such local areas is competent to inquire into and try the offence. Section 179 makes it clear that if anything happened as a consequence of the offence, the same may be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued.”

16. Having referred to ***Satvinder Kaur v. State (Govt. of NCT of Delhi) and Anr.*** reported in (1999) 8 SCC 728, it has been further observed by the Apex Court in ***MS. P xxx*** (supra) that Section 156 (2) of the Cr.P.C. distinctly provides that, no proceeding of a police officer is to be challenged on the ground of power to investigate. A reference has been made by the Apex Court in ***Mohan Baitha and Ors. v. State of Bihar and Anr.*** reported in (2001) 4 SCC 350 in respect of meaning and purport of “*same transaction*”. In that case, the accused challenged the proceeding on the ground of lack of territorial jurisdiction, as the offence under Section 304-B IPC had taken place in Jahanaganj in the State of Uttar Pradesh and hence, the Court at Bhagalpur was lacking in territorial jurisdiction to try the same. But the High Court dismissed the petition of the accused. In further appeal to the Apex Court, it had been observed that the acts formed parts of the same transaction, which came under the ambit of Section 220 of the Cr.P.C. and directed the Magistrate at Bhagalpur to proceed with the matter expeditiously. The Apex Court has dwelled upon

Section 177 as well as Section 220 of the Cr.P.C. by observing as under:

“4.....Section 177 of the Code of Criminal Procedure on which Mr Mishra relies, uses the expression “ordinarily”. The use of the word “ordinarily” indicates that the provision is a general one and must be read subject to the special provisions contained in the Criminal Procedure Code. That apart, this Court has taken the view that the exceptions implied by the word “ordinarily” need not be limited to those specially provided for by the law and exceptions may be provided by law on considerations of convenience or may be implied from other provisions of law permitting joint trial of offences by the same court..... It may be noticed that under Section 220 of the Code of Criminal Procedure, offences more than one committed by the same persons could be tried at one trial, if they can be held to be in one series of acts, so as to form the same transaction. The expression “same transaction” from its very nature is incapable of an exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be in one transaction. It is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. But the circumstances of a given case indicating proximity

of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not. Therefore a series of acts whether are so connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria.”

17. As the facts situation in MS. P xxx (supra) is entirely different the other observations of that case cannot be imported to the case in hand. For purpose of further appreciation, we may gainfully refer to Sections 177, 178 and 179 of the Cr.P.C.

Section 177 of the Cr.P.C. provides that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

Section 178 of the Cr.P.C. makes reference to when it is uncertain in which of several local areas an offence has been committed or an offence is committed partly in one local area and partly in another or where an offence is a continuing one, and continues to be committed in more local areas than one, or where consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

18. In the case in hand, the entire transaction of offence had taken place in the State of Goa and there is no uncertainty in respect of the local areas, where the offence was committed and this is not a case that the part of the offence was

committed in Goa or the part was committed in any place under the jurisdiction of the Ranpur Police Station. It is also not the case of the State that the offence is continuing one and it continued to more than one local area, including the areas under the jurisdiction of the Ranpur Police Station or the Court of the Special Judge under the POCSO Act. As such, there cannot be any application of Section 178 of the Cr.P.C. in the present case. Even, no act has been done in consequence of the offence, as referred under Section 179 of the Cr.P.C. Therefore, the State cannot derive any advantage by referring to Section 179 of the Cr.P.C. Section 177 of the Cr.P.C. is the appropriate provision to be referred and relied on for purpose of determining the local area or the jurisdiction of the Court. In this case what we have noticed is that, the police is totally befuddled in respect of the jurisdiction. But there had been no such reason to be. We have already referred several orders of the Special Judge. Despite that, the charge-sheet had been filed. Later on, when the Court insisted for appropriate action, another application under Section 173(8) of the Cr.P.C. had been filed by the Respondent No.3 to take leave from the Court for further investigation. It is really disturbing to note that, the police had deliberately continued the investigation having the total knowledge that they had no authority to investigate, as they were lacking in the territorial jurisdiction. In this regard, a reference can be made to Sections 156(1) and 156 (2) of the Cr.P.C. Section 156 (1) provides that any officer-in-charge of a police station may, without the order of

Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. This provision clearly lays down that for commencing investigation in respect of a cognizable offence, no order of a Magistrate is required, but such offence must have taken place within the territorial jurisdiction (See Section 177 of the Cr.P.C.) of a Court. Therefore, the territoriality of a police station confers the authority to commence investigation.

19. Section 156 (2) provides that no proceeding of a police officer in any such case shall at any state be called in question on the ground that, the case was one which such officer was not empowered under this section to investigate. It clearly gives immunity against the irregularity or illegality in respect of the territoriality, so far as the investigation is concerned. It is well settled that irregularity, even illegality, during investigation ought not to be treated as ground to reject the prosecution case (*See Leela Ram vs State of Haryana*) reported in *AIR 1999 SC 3717*. A defective investigation cannot be made a basis for acquitting or discharging the accused. Immunity against the procedural illegality regarding investigation by the police officer including the absence of jurisdiction in respect of investigation into cognizable offence has thus been expressly provided. Any irregularity or illegality in conducting investigation by any police officer, even as regards the territorial jurisdiction is taken well care of, by

Sub-section (2) *ibid.* Irregularity in the investigation will not vitiate the entire prosecution case.

20. Now let us focus on interpretation of Section 177 of the Cr.P.C. having regard to the word ‘ordinarily’. What is the purpose of employing the word ‘ordinarily’? Does it create wholesome discretion in favour of the Court, so far as the inquiry or trial of a case is concerned? Having regard to the Scheme of Chapter-XIII on the jurisdiction of the criminal Courts in inquiry and trial, the answer is bound to be in the negative. The word ‘ordinarily’ should be given etymological meaning save and except those cases provided under that chapter (*See Narumal vs. State of Bombay* reported in *AIR 1960 SC 1329*). The word “ordinarily” must be taken to mean *except in cases provided herein under*. Therefore, the rule under Section 177 of the Cr.P.C. shall be read, subject to any special provisions of law, which may curtail jurisdiction differently, such as Sections 178, 179, 180, 181, 182, 183, 184, 185, 186 and 188 of the Cr.P.C. ‘Ordinarily’ as appearing in Section 177 of the Cr.P.C. indicates that the said rule is available for all cases. The use of the word ‘ordinarily’ indicates that the said provision is a general rule [genus] and must be subject to special provision contained in the Criminal Procedure Code. Exceptions implied by the word ‘ordinarily’ cannot be strictly limited by these special provisions as exceptions can be made on consideration of convenience or in the interest of justice by the competent courts having such power. The rule that every offence shall be inquired or tried by

the Court within whose jurisdiction it was committed is not an unexceptional and unchangeable principle. Section 177 of the Cr.P.C. itself has been framed by the legislature thoughtfully using the precautionary word ‘ordinarily’ to indicate that the rule is general in nature, there be specified areas for tweaking its meaning within provinces of law. Section 178 of the Cr.P.C. suggests that, if there is uncertainty as to where among different localities, the offence has been committed, the trial can be held in a Court having jurisdiction over any of those localities. Further, it has been provided that in case where the offence was committed partly in one local area and partly in another local area, the Court in either of the localities can exercise jurisdiction to try the case.

21. There is clear statutory distinction between the investigation and the inquiry. Section 156 (1) is as regards the investigation by any officer in charge of the police station. Section 2(g) defines inquiry which means every inquiry, other than trial, conducted by a Court. Therefore, so far as the words ‘inquiry’ or ‘trial’ as are appearing in Section 177 it is as regards the jurisdiction of the Court not in respect of the territorial jurisdiction of a police officer to investigate. The investigation has also been defined under Section 2 (h) of the Cr.P.C. According to that provision, investigation includes all the proceedings under the Criminal Procedure Code for collection of evidence, conducted by a police officer or by any person other than a Magistrate who is authorized by a Magistrate in that behalf. Therefore, there should not be any

amount of ambiguity or uncertainty that the Inspector in-charge of the Ranpur P.S. did not have the territorial jurisdiction to investigate the case as has been disclosed by the First Information Report (Annexure-1 to the writ petition). An investigating officer or agency may expand their territory of investigation, if the crime is committed within their territorial limit. In the case in hand, the investigation is irregular as the information ought to have transferred to the appropriate police station situated within the State of Goa. But that was not done. Not only that, they have completed the investigation and filed the police report under Section 173(2) of the Cr.P.C. in the Special Court established under POCSO Act. It is noted with dismay that, the said charge-sheet was filed despite the said order on territoriality passed by the Special Court established under the POCSO Act that the police did not have any jurisdiction to investigate. As such, we do interfere with the Final Report/Charge Sheet No.31 dated 21.04.2021 (Annexure-3 to this petition) to a limited extent. The said charge-sheet shall be returned to the Investigating Officer, who filed the same by observing that, the Court of Additional Sessions Judge-cum-Special Court under POCSO Act, Nayagarh, does not have the territorial jurisdiction to enquire or try the offence on the basis of the said Final Report/Charge-Sheet No.31 dated 21.04.2021. Thereafter, the proceeding before the said Court shall be closed for all purposes.

22. The Opposite Parties No.1, 2 and 3, in view of the above observation and direction, are directed to send all the

papers/materials including the Final Report/Charge-Sheet to the Police Station having the jurisdiction in terms of Section 156(1) of the Cr.P.C., as we are not inclined to interfere with the investigation. Even though, we hold that the said investigation is irregular, the in-charge police officer of the jurisdictional Police shall have the right to examine the materials and/or documents etc including the charge-sheet and to carry out further investigation for ensuring justice.

23. We have noticed that, the Petitioner has been languishing in the judicial custody for more than one year, but the crime that he has been committed by the Petitioner is a crime of heinous nature. As such, we direct the Opposite Parties No.1 and 2 to transport the Petitioner and produce the Petitioner to the appropriate Judicial authority by observing the due procedure. The Special Judge, Nayagarh shall issue transit order. The Special Judge shall issue along with the transit order, a separate order showing the days of detention the Petitioner has suffered after arrest till the transit order is issued. A copy of the said order be furnished to the police for placing the same before the jurisdictional police. Further a copy of the said order relating to the detention be supplied to the Petitioner.

24. Having observed thus, this writ petition stands disposed of. Before parting with the records, we should observe that this is not a case where the writ of habeas corpus

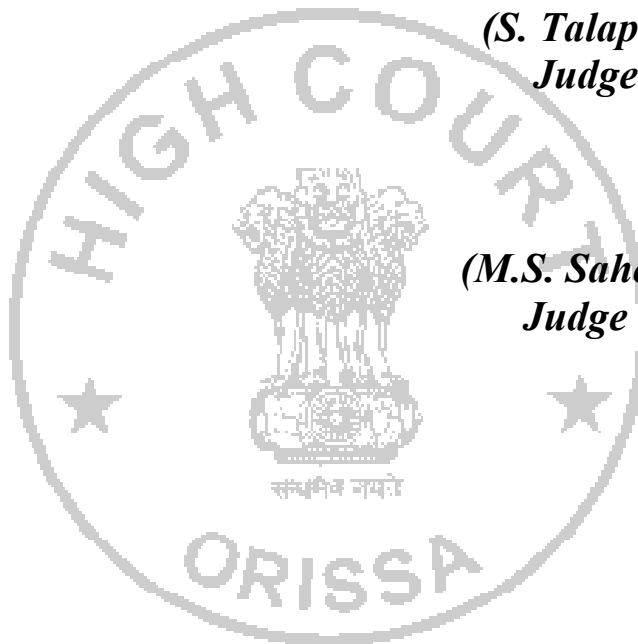
can be issued, in as much as the detention cannot be held to be wholly illegal.

25. No order as to costs.

26. Registry is directed to send a copy of this order to the Additional Sessions Judge-cum-Special Judge [under POCSO Act] Nayagarh forthwith. Advance copy be sent by e-mail for compliance.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge



Murmu