

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1776 of 2022

Harapriya @ Haripriya Giri *Petitioner*
.....
State of Odisha and others *Opposite Parties*
.....
versus-

CORAM: JUSTICE S. PUJAHARI

Order
No.

ORDER
08.07.2022

01. 1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order dated 18th June, 2022 passed by the 3rd Additional Sessions Judge, Balasore in Crl. Misc. Case No.21 of 2019 with a direction to the learned J.M.F.C., Jaleswar now N.G.N.-cum-J.M.F.C., Bhograi to submit the C.T. No.334 of 2017 records to the court of Assistant Sessions Judge, Jaleswar for analogous hearing with S.T. No.9 of 2019.
3. Heard the learned counsel for the Petitioner and the learned counsel for the State-Opposite Party No.1
4. The Petitioner has filed this petition challenging the aforesaid order passed by the learned 3rd Additional Sessions Judge, Balasore refusing to transfer the records of C.T. No.334 of 2017 from the court of J.M.F.C., Jaleswar to the court of Assistant Sessions Judge, Jaleswar where the counter case stated to be pending. The learned 3rd Additional Sessions Judge,

Balasore vide the impugned order have held that the Court has no jurisdiction to transfer of such cases. However, the appropriate provision that has to be invoked under Section 323 of Cr.P.C. before the Magistrate.

5. 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"

6. 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.

7. After perusal of the materials on record and the order impugned, this Court though does not find any illegality in the order impugned, but in view of the mandate of law as cited supra, directs the Petitioner to approach the learned J.M.F.C., Jaleswar now N.G.N.-cum-J.M.F.C., Bhograi in a petition under Section 323 of Cr.P.C. and in that event, the learned J.M.F.C. in exercise of the power and in view of the finding of the learned 3rd Additional Sessions Judge, Balasore that both the case and counter case, shall commit the said case. On receipt of such case, the sessions court concerned shall transfer the case record to the Court of Assistant Sessions Judge, Jaleswar where the counter case is pending. Needless to say that on receipt of the C.T. No.334 of 2017, the learned Assistant Sessions Judge, Jaleswar shall try both the cases in the manner indicated in the case of *Nathilal and Others* (supra).

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

(S. Pujahari)
Judge

DA