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IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLREV No. 551 of 2008

From an order dated 26.02.2008 passed by the learned Additional Sessions Judge, Talcher in C.T.(S) No. 13 of 2007.

Kalandi Charan Samal ***Petitioner***

-versus-

State of Orissa ***Opp. Party***

CRLREV No. 631 OF 2008

1. Nilakantha Samal
2. Puspallata Samal
3. Bina Mahanty @ Binapani Mohanty
4. Basanti Samal
5. Jayanta Kumar Mohanty @ Jayanta Mahanty ***Petitioners***

-versus-

State of Orissa ***Opp. Party***

Advocates appeared in both the cases through hybrid mode :

For Petitioner(s) : Mr. Pitambar Acharya,
Sr. Advocate

For Opp. Party : Mr. Sibani Shankar Pradhan,
Addl. Govt. Advocate

CORAM:

JUSTICE SAVITRI RATHO

.....
Date of Judgment : 18.05.2022
.....

Savitri Ratho, J

Kalandi Charan Samal, the petitioner in Criminal Revision No. 551 of 2008 and Nilakantha Samal, Puspallata Samal, Bina Mahanty @ Binapani Mohanty, Basanti Samal and Jayanta Kumar Mohanty @ Jayanta Mahanty, the petitioners in Criminal Revision No.631 of 2008 have challenged the order dated 26.02.2008 passed by the learned Additional Sessions Judge, Talcher in C.T.(S) No. 13 of 2007 filed under Section 319 Cr.P.C. directing the petitioner-Kalandi Charan Samal (Brother-in-law), Nilakantha Samal (Father-in-law), Basanti Samal (Sister-in-law), Puspallata Samal (Sister-in-law), Bina Mahanty (Sister-in-law) and Jayanta Mahanty (Husband of Sister-in-law) of the deceased, to be tried jointly alongwith her husband Milu @ Kumuda Samal (husband) for the alleged commission of offences punishable under Sections 498-A, 306 and 34 I.P.C. Since the impugned order in both the Criminal Revision applications is the same, they are disposed of by a common judgment.

2. The prosecution case in brief is that the deceased, Binodini, daughter of P.W.1-Girish Chandra Pattnaik had married accused- Milu @ Kumuda Samal in the year 1986 as per Hindu rites and customs. At the time of marriage, as per demand of the bride groom, various articles had been given to him and gold necklace, gold chain, ear flowers, gold ring and about eight bharies of gold had been

given to the deceased Binodini along with other household articles. For one year or one and half years, the accused- Milu @ Kumuda Samal and the deceased lived happily. Thereafter the accused often came home under influence of liquor and would assault her. His father-in-law Nilakantha Samal, three sisters - Puspallata Samal, Basanti Samal, Bina Mahanty and brother-in-law Jayanta Mohanty (Petitioners in CrI. Revision No.631 of 2008 and cousin Kalandi Samal (Petitioner in CrI. Revision No.551 of 2008) assaulted the deceased and demanded Rs.1,00,000/- and threatened that on failure to get the amount, they would get the accused married for the second time. On 25.04.2006 (Tuesday), in the evening, one person from Santhapada, came and informed P.W.1 that his daughter Binodini is lying dead at Mandapal Hospital. P.W.1 informed his family members and thereafter all of them went to Mandapal Hospital and found the dead body of his daughter was lying on the bed of the hospital but her husband and other in-laws were not present near the dead body. He thereafter filed F.I.R. in the Talcher Police Station that the accused and his family members killed his daughter by pressing pillow on her face. Basing on his information, Talcher Police Station Case No.8 dated 25.04.2006 was registered for commission of offence punishable under Sections 498-A, 306 and 34 I.P.C. After completion of investigation, charge sheet was filed against

Milu @ Kumuda Samal for commission of offence punishable under Sections 498-A, 306 and 34 I.P.C.

3. During trial, after six witnesses had been examined by the prosecution, an application was filed on behalf of the prosecution so summon the petitioners to face trial as ample evidence was available against them in the evidence of P.Ws.1 & 2.

4. I have heard Mr Pitambar Acharya learned Senior Counsel and Mr S.S Pradhan . I have gone through the written notes of arguments filed by them and decisions relied on by them. I have also perused the depositions of the five witnesses who have been examined in the trial.

Relying on the evidence of P.W.1-Girish Chandra Pattanaik (father of the deceased) to the effect , that apart from the husband of the deceased, her other relatives, namely, Nilakantha Samal (father-in-law), Kalandi Charan Samal (brother-in-law), Basanti Samal (sister-in-law), Puspalata Samal (sister-in-law), Bina Mahanty (sister-in-law) and Jayanta Mahanty (husband of sister-in-law) were assaulting his daughter and asking her to bring Rs.1,00,000/- from him otherwise they would settle the marriage of accused- Milu @ Kumuda Samal for the second time ; and the statement of P.W.2-Sarat Chandra Pattnaik

that after two years of marriage, the deceased was physically and mentally tortured by her husband, his father and three sisters who were assaulting her physically and threatening to kill her and get the accused married for the second time, the learned trial Court was satisfied that the petitioners had committed the offence under Section – 498-A / 306 IPC and issued summons them to face trial alongwith with the original accused Kumuda Samal, husband of the deceased.

5. Mr. Pitambar Acharya, learned Senior Counsel has prayed for setting aside the impugned order stating that it has been settled in a catena of decisions by the Hon'ble Supreme Court that power under Section -319 Cr.P.C. is to be exercised sparingly only when strong and cogent reasons are available and it is not to be exercised mechanically. He further submitted that in view of the provisions of Section 319 (4) (a), which provides that the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard, trial has to start afresh after the newly added accused persons appear. The evidence of P.W.1, which has been relied on by the learned trial court for passing the impugned order can no longer be used against the petitioners and for proceeding against them in the trial, his evidence would have be recorded afresh. But this is not feasible as P.W.1 has expired in the meanwhile. He has also submitted that the evidence of P.W.2 will not

be of much help to the prosecution as he has only made a bald statement without naming any of the petitioners that the father and three sisters of accused Kumuda were assaulting the deceased. Among them Petitioner No.1 Nilakantha Samal (father) and Petitioner No.4 Basanti Samal (sister in law) in Crl. Revision No. 631 of 2008 have expired during pendency of the Crl. Revision, which only leaves two other sisters - Petitioner No.2 Pusalata Samal, Petitioner No.3 Bina Mohanty and brother in law (nanandei) Petitioner No.5 Jayanta Mohanty in Crl. Revision No.631 of 2008 and brother in law (diara) Kalandi Charan Samal Petitioner in Crl. Revision No.551 of 2008 none of whom have been named by P.W.2. In support of his submissions, he has relied on the decisions of the Supreme Court in the cases of:

(i) **MCD v. Ram Kishan Rohtagi** reported in (1983) 1 SCC 1,

(ii) **Sarabjit Singh v. State of Punjab** reported in (2009) 16 SCC 46,

(iii) **Hardeep Singh v. State of Punjab** reported in (2014) 3 SCC 92

and

(iv) **Sunil Kumar Gupta v. State of U.P.** reported in (2019) 4 SCC 556.

6. Mr. S.S. Pradhan, learned Additional Government has opposed the said prayer submitting that no interference is called for in the said order as the order has been passed after due application in mind after discussing the scope of Section – 319 Cr.P.C. and as the evidence of P.W.1 and P.W.2 clearly disclosed enough materials for the learned trial court to allow the application under Section 319 Cr.P.C. and issue summons to the petitioners in the two criminal revisions to face trial alongwith the original accused - Kumud Samal, the impugned order does not call for any interference. His further submission is that even if no materials were available against the petitioners in the chargesheet, the statements recorded under section 161 Cr.P.C. are not to be looked into while exercising power under Section – 319 Crl.P.C. He further submits that the death of P.W.1 does not in way help the accused persons and the death of two accused persons cannot help the remaining the accused persons as P.W.2 has also implicated them. In support of his submissions, he relies on the decisions of the Hon'ble Supreme Court in the case of:

(i) **Rajendra Singh v. State of U.P. and another** reported in (2007) 7 SCC 378 ; and

(ii) **Hardeep Singh v.State of Punjab** reported in (2014) 3 SCC 92.

7. For deciding this application, it would be apposite to refer to the provisions of Section - 319 Cr.P.C. which provides as follows :

Section 319. Power to proceed against other persons appearing to be guilty of offence. *(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.*

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

Therefore for deciding if such power has been rightly exercised, it would be necessary to peruse the evidence of the

witnesses examined during the trial, especially those on whom the learned trial Court has placed reliance on , for proceeding against the petitioners. Five witnesses had been examined in the trial out of whom, only the evidence of P.W.1, P.W.2 and P.W.3 contain allegations against the petitioners.

8. P.W.1 Girish Chandra Pattanaik father of the deceased has stated that both husband and wife lived happily for one and half year. Thereafter the accused was coming home under the influence of liquor and was assaulting the deceased. His father Nilakantha Samal, his cousin Kalandi and his sisters – Puspallata, Basanti, Bina Mohanty and brother in law Jayanta @ Madhu Mahanty were assaulting the deceased and were demanding Rs One lakh from him or they would get the accused married for the second time. On 25.04.2006 evening, a person came and informed them about his daughter lying dead at Mandapal hospital. He has also stated that the accused, his father, his sister and brother-in-laws have killed his daughter by pressing pillow on her face.

P.W.2 Sarat Chandra Pattnaik has stated that after two years of marriage, the deceased was physically and mentally tortured by her husband, his father and three sisters who were assaulting her physically and threatening to kill her and get the accused married for the second time and this has been intimated to him by the deceased when she had

come to his house. As Binodini had earlier been threatened he strongly believed that the family members of the accused persons have murdered her.

P.W.3 Haresh Chandra Pattnaik has stated that after marriage, the accused and the deceased were living peacefully and that the deceased was coming to their village to her parents house, she was telling that she was facing difficulties in maintaining her livelihood and also stating that the accused under influence of liquor, was quarrelling with her and her “Nanandas” were also quarrelling with her.

P.W.4 Dr. Somanath Gadanaik who was working as Surgery Specialist, S.D.H., Talcher , has been declared hostile and cross-examined by the prosecution as he stated that he could not remember about the treatment of the deceased or the cause of her death.

P.W.5 Pramoda Chandra Pradhan is the witness to seizure of saree, blouse and ornaments of the deceased.

P.W.6- Sidheswar Bhuian is the owner-cum-driver of one auto rickshaw bearing Registration No.OR-19-B-232, in which the deceased was taken by the accused persons to Krishna Clinic.

A perusal of the depositions , reveals that P.W.1- Girish Chandra Pattanaik (father of the deceased) has implicated all the petitioners and the original accused Milu @ Kumuda Samal. P.W.2- Sarata Chandra Pattanaik (younger brother of P.W.1) has implicated the father in law and three sisters in law of the deceased without naming them, apart from the original accused . P.W.3-Haresh Chandra Pattsnaik (another brother of P.W.1) has implicated the husband and stated that sister in laws were quarrelling with the deceased. P.W.4 Dr. Somnath Gadnaik is the Medical Officer has been declared hostile, P.W.5 Pramoda Chandra Pradhan is a seizure witness and P.W.6 Sidheswar Bhuian, is the owner-cum-driver of one auto rickshaw bearing Registration No. OR-19-B-232, in which the deceased was taken to Krishna Clinic I by the accused persons.

9. The Supreme Court in the case of **Ram Kishan Rastogi** (supra), has held as follows :

...."In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the Court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence Court can take cognizance against them and try them along with the other accused. But, we would hasten to add that this is really an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling

reasons exist for taking cognizance against the other person against whom action has not been taken. More than this we would not like to say anything further at this stage. We leave the entire matter to the discretion of the Court concerned so that it may act according to law. We would, however, make it plain that the mere fact that the proceedings have been quashed against respondents 2 to 5 will not prevent the Court from exercising its discretion if it is fully satisfied that a case for taking cognizance against them has been made out on the additional evidence led before it.”

In the case of **Sarabjit Singh** (supra), the Supreme Court has held as follows:

....“ An order under Section 319 of the Code, therefore, should not be passed only because the first informant or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be assigned by the court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. Such an evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction.

For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

18. The observation of this Court in Municipal Corporation of Delhi (supra) and other decisions following the same is that mere existence of a prima facie case may not serve the purpose. Different standards are required to be applied at different stages. Whereas the test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, the court must be satisfied that there exists a strong suspicion. While framing charge in terms of Section 227 of the Code, the court must consider the entire materials on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction. Whether a higher standard be set up for the purpose of invoking the jurisdiction under Section 319 of the Code is the question. The answer to these questions should be rendered in the affirmative. Unless a higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down, the ingredients thereof, viz., (i) an extraordinary case and (ii) a case for sparingly exercise of jurisdiction, would not be satisfied.”...

In the case of **Hardeep Singh** (supra), a five judge Bench was deciding a reference which arose due to a variety of views expressed by the Supreme Court and several High Courts on the scope and extent of the powers of the courts to arraign any person as an accused during the course of inquiry or trial as contemplated under Section 319 of the Code of Criminal Procedure, 1973

(hereinafter referred to as the 'Cr.P.C.'). Five questions had been framed and answered by the Court . Question IV is relevant for the purpose of deciding this application. The question and the answer of the Court are extracted below:

.... “ *Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?* ”

“A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different”

The larger Bench of the Supreme Court also held as follows :

“98. Power under Section 319 Cr.P.C is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

*99. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if “it appears from the evidence that any person not being the accused has committed any offence” is clear from the words **“for which such person could be tried together with the accused”**. The words used are not “for which such person could be convicted”. There is, therefore, no*

scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused.”.....

In the case of ***Sunil Kr Gupta*** (supra), the Supreme Court has held as follows :

... “12. Under Section 319 Cr.P.C., a person can be added as an accused invoking the provisions not only for the same offence for which the accused is tried but for “any offence”; but that offence shall be such that in respect of which all the accused could be tried together. It is to be seen whether the appellants could be summoned for the offence under Section 498A IPC and under Sections 3 and 4 of Dowry Prohibition Act. The statement of PW- 1 both in the complaint and in his evidence before the court is very general stating that he had given sufficient dowry to Shilpa according to his status and that the groom side were not satisfied with the dowry and that they used to demand dowry each and every time. Insofar as the demand of dowry and the dowry harassment, there are no particulars given as to the time of demand and what was the nature of demand. The averments in the complaint and the evidence is vague and no specific demand is attributed to any of the appellants. In such circumstances, there is no justification for summoning the appellants even under Section 498A IPC and under Sections 3 and 4 of Dowry Prohibition Act. It is also pertinent to point out that upon completion of investigation, the Investigating Officer felt that no offence under Sections 498A, 304-

B IPC and under Sections 3 and 4 of the Dowry Prohibition Act is made out. Charge sheet was filed for the offence punishable only under Section 302 IPC against Chanchal @ Babita. As held in the Constitution Bench judgment in Hardeep Singh, for summoning an accused under Section 319 Cr.P.C. it requires much stronger evidence than mere probability of his complicity which is lacking in the present case. The trial court and the High Court, in our considered view, has not examined the matter in the light of the well-settled principles and the impugned order is liable to be set aside.”...

In the case of **Rajender Singh** (supra), the Supreme Court reiterated the following principle:

....“It is, therefore, clear that if the evidence tendered in the course of any enquiry or trial shows that any person not being the accused has committed any offence for which he could be tried together with the accused, he can be summoned to face trial even though he may not have been charge sheeted by the investigating agency or may have been discharged at an earlier stage”...

The Supreme Court also held that a statement recorded under Section 161 Cr.P.C. is not a substantive piece of evidence and is not relevant for exercise of power under Section -319 Crl.P.C. and that in exercise of power under Section - 482 Cr.P.C., the High Court cannot decide the plea of alibi of an accused basing on some affidavits

and such plea has to be proved by leading evidence during trial so that the prosecution will get an opportunity to cross examine the witnesses.

In the case of ***Michael Machado & Anr. v. Central Bureau of Investigation & Ors., AIR 2000 SC 1127***, the Supreme Court has held as follows :

... “The court while deciding whether to invoke the power under Section 319 of the Code, must address itself about the other constraints imposed by the first limb of sub-section (4), that proceedings in respect of newly added persons shall be commenced afresh and the witnesses re-examined. The whole proceedings must be re-commenced from the beginning of the trial, summon the witnesses once again and examine them and cross-examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are quite a large in number the court must seriously consider whether the objects sought to be achieved by such exercise is worth wasting the whole labour already undertaken. Unless the court is hopeful that there is reasonable prospect of the case as against the newly brought accused ending in conviction of the offence concerned we would say that the court should refrain from adopting such a course of action.” And again

... “The statements of those three witnesses were placed before us. No doubt the statements may create some suspicion against the appellants. But suspicion is not

sufficient to hold that there is reasonable prospect of convicting the appellants of the offence of criminal conspiracy.

We strongly feel that a situation has not reached as to waste the whole massive evidence already collected by the trial court thus far, against the 4 accused arraigned in the case. Hence the order of the trial court in exercise of Section 319 of the Code has to be interfered with for enabling the trial to proceed to its normal culmination.

We, therefore, allow this appeal and set aside the impugned judgment of the High Court as well as the order of the Metropolitan Magistrate under challenge. We direct him to proceed with the trial with the existing accused arraigned before the court.”....

10. From a careful reading of the aforesaid judgments of the Supreme Court and the provisions contained in Section-319 Cr.P.C., it is forthcoming that a discretion is available with the trial court whether to exercise such power even if materials surface against persons not before it, as the words appearing in Section 319 (1) of the Cr.P.C are “*may proceed* ” and not “*shall proceed* ” and summon such persons. Apart from scrutinizing the materials in the evidence of witnesses the Court is also required to consider the other factors as issuance of summons under Section 319 Cr.P.C. entails a denovo trial for which re-examination of witnesses already examined may prejudice the

prosecution and delay the trial. Therefore the Court has to exercise the discretion vested in it with great care and caution and not as a matter of course or not in a “cavalier” manner.

11. On a careful reading of the evidence of P.W.1, it is apparent that on applying the standards laid down by the Supreme Court in the aforesaid decisions, materials were available against the petitioners so as to summon them to face trial in exercise of the power under Section – 319 Cr.P.C. was made out. So the learned trial court has exercised its discretion in accordance with law . But in view of the fact that P.W.1 Girish Chandra Pattanaik has died after his evidence was recorded and his evidence cannot be used against any of the petitioners as his evidence would have to be recorded afresh which is no longer possible , it has become necessary to scrutinize the evidence of P.W.2 and P.W.3 to come to a conclusion if the impugned order can be sustained by relying on their evidence. The relevant portions of their evidence are extracted below :

P.W.2 Sarata Chandra Pattanaik, uncle of the deceased, has stated in paragraph 2 of his examination in chief ,as follows:

“....2. For two years after marriage, accused and Binodini lived happily. Thereafter, she was physically and mentally tortured by the accused, his father and three

sisters. They were assaulting her physically. They were threatening her that they will kill her and will get the accused marry for the second time. I could know about such cruelty on Binodini from herself while she was coming to our house”....

P.W.3-Haresh Chandra Pattanaik, another uncle has stated at paragraph 1 of his examination in chief as follows:

...“After marriage, they were living peacefully . However, while Binodini was coming to our village to her parents’ house, she was telling that she was facing difficulties in maintaining her livelihood and I made her understand that since she a son , there would be no future trouble and she should adjust in the family .Binodini was stating that the accused under influence of liquor ,was quarrelling with her and her “Nanandas” were also quarrelling with her.....”

P.W.2 has implicated the father and sisters of the accused without naming them any of them. He has not stated anything about demand for dowry . Two of the petitioners – Nilakantha Samal - father of the original accused and Basanti Samal one of his sisters have died in the meanwhile. P.W.3 has stated about the sister in laws quarrelling with the deceased and nothing about demand for dowry or harassment or torture .

12. After a careful perusal of the depositions of P.Ws.2 and 3 as discussed above, I am of the view that when the impugned order was passed, on account of the nature of evidence of P.W.1 , it fulfilled the requirements of Section 319 Cr.P.C. But in view of the fact that P.W.1 has died in the meanwhile and the nature of evidence of P.Ws.2 and 3, the impugned order now calls for interference. The impugned order dated 26.02.2008 passed by the learned Addl. Sessions Judge, Talcher, in CT(S) No. 13 of 2007, issuing summons to the petitioners to face trial alongwith the original accused Milu@ Kumuda Samal is therefore set aside.

The sessions trial is pending since 2007. The learned Addl. Sessions Judge, Talcher is requested to proceed with the trial against the original accused Milu @ Kumuda Samal without further delay .

13. Criminal Revision No 551 of 2008 and 631 of 2008 are accordingly allowed.

14. Before parting with the case, I feel it imperative to observe as follows :

Vide interim order dated 08.05.2008 passed in Criminal Revision No. 551 of 2008 and order dated 07.08.2008 in Criminal Revision No. 631 of 2008 , further proceedings in the trial had been

stayed. This interim order of stay has been extended from time to time. After 18.05.2010, the cases were listed after eleven years on 16.11.2021. On the said date an affidavit dated 15.11.2021 sworn to by Kalandi Charan Samal alongwith copies of death certificates was filed stating that P.W 1 Girish Chandra Pattanaik had died on 13.05.2019 and Petitioner Nilakantha Samal had died on 09.10.2011 and Petitioner Basanti Samal had died on 18.11.2013. The learned Additional Government Advocate had been directed to obtain instructions. Vide letter No 4460 dated 25.11.2021, the Inspector in Charge, Talcher Police Station has confirmed the death of the two petitioners as stated in the affidavit. On 25.04.2022 it was submitted at the bar that after framing of charge against the petitioners, there had been no progress in the trial.

It is a matter of concern that the two criminal revisions where the further proceedings in the sessions trial had been stayed, were not listed for eleven years in this Court. During this time, the main witness and two accused persons have died. As a consequence of which, the impugned order which had been passed in accordance with law, has now been set aside. In fact to deal with and prevent situations like this, the Supreme Court in the case of *Asian Resurfacing of Road Agency Private Limited and Another vrs. Central Bureau of*

Investigation, reported in (2018) 16 SCC 299 has held and directed as follows :

.....“36. In view of the above situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized. The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced”

The trial courts should therefore strictly follow the directions of the Supreme Court in the case of **Asian Resurfacing** (supra) so that

proceedings in the trial courts do not remain stayed indefinitely for years together due to orders passed by higher courts and subsequent non listing or disposal of the cases due to oversight or contrivance.

15. Urgent certified copy of the order be granted on proper application.

16. Registry is directed to send a copy of this order to the Court of the learned Addl. Sessions Judge, Talcher and the learned Sessions Judge, Angul.

.....
(Savitri Ratho)
Judge

Orissa High Court, Cuttack
Dated 18th May 2022 /puspa

