

IN THE HIGH COURT OF ORISSA AT CUTTACK

TRPCRL No. 107 of 2021

Nityananda Nayak & Others

.....

Petitioners

Mr. J.K. Mishra, Adv.

Vs.

State of Orissa & Another

.....

Opposite Parties

CORAM:

JUSTICE SAVITRI RATHO

ORDER

29.07.2022

Order No.

03.

This matter is taken up through hybrid mode.

2. Heard Mr. J.K. Mishra, learned counsel for the petitioners.

3. This application under Section 407 of the Cr.P.C. has been filed by the accused persons praying for transfer of G.R. Case (N.G.) No.133 of 2021 pending in the Court of the learned Nayadhikari Gramya Nayalay, Ghasipura (J.M.F.C.) (arising out of Ramachandrapur P.S. Case No. 56 of 2021), to any Court in Bhadrak or Soro.

4. Mr. J.K. Mishra, learned counsel for the petitioners submits that the petitioner no.1 is a practicing advocate at Bhadrak Court and petitioner no.3 is his wife and other accused are their relatives and all of them reside at Rajamakundapur in the district of Bhadrak. The opp. party no.2, her father and brother have threatened the petitioners of dire consequences if they go to Ghasipura. As per the F.I.R. the occurrence took place at Bhadrak but the FIR has been filed at Ramachandrapur for which after filing of charge sheet, the petitioners will be forced to attend the Court at Ghasipura Gramina Nalaya.

Petitioner nos.1 and 3 due to their old age and financial problems and the opp. party no.2 due to life risk are unable to attend the G.R. Case for which they will face a number of problems they have to go to Ghasipura, in Keonjhar.

5. The relevant portion of Section 407 of the Code of Criminal Procedure is extracted below:-

“407. Power of High Court to transfer cases and appeals.

(1) Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order-

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.”

6. From a reading of the provision, it is apparent that the High Court can transfer a case if it finds that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate

thereto, or that some question of law of unusual difficulty is likely to arise, or that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice.

7. After hearing the learned counsel for the petitioners, perusing the TRPCRL petition and keeping the provision of Section-407 CrI.P.C. in mind, I am not satisfied that a case is made out for transfer of the case from the Court of the learned Nayadhikari Gramya Nayalay, Ghasipura (J.M.F.C.) to any Court in Bhadrak or Soro.

8. Hence, the TRPCRL, being devoid of merit, is dismissed.

9. The petitioner is at liberty to seek for transfer of the case if any compelling situation arises subsequently.

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

Sukanta

(SAVITRI RATHO)
JUDGE