

**AFR**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLMC No. 3006 of 2023**

An application under Section 482 of the Code of Criminal Procedure, 1973 arising out of S.T. Case No. 12 of 2022 in the Court of the learned Assistant Sessions Judge, Soro.

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**1. Laxmidhar Swain**  
**2. Ghanashyam Swain**  
**3. Manmath Swain @ Mana Swain .....** **Petitioners**

**-versus-**  
**1. State of Odisha**  
**2. Gajendra Behera**  
**3. Balaram Behera**  
**4. Jagannath Behera .....** **Opp. Parties**

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For Petitioners : Mr. B.S. Das, Advocate

For Opp. Parties : Mr. S.S. Mohapatra, A.S.C.  
(for Opp. Party No.1)

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**CORAM:**  
**HONOURABLE MISS JUSTICE SAVITRI RATHO**

**JUDGMENT**  
**08<sup>th</sup> September, 2023**

**Savitri Ratho, J.** This application under Section 482 Cr.P.C. has been filed by the petitioners challenging the order dated 03.06.2023 passed by the learned Assistant Sessions Judge, Soro in S.T. Case No.12 of

2022 corresponding to C.T. Case No.674 of 2019. By the said order, the learned Assistant Sessions Judge has allowed the prayer of the opposite parties No. 2 to 4 and fixed the hearing of S.T case No. 12 of 2022 and S.T case No.3 of 2022 on the same day.

2. Mr. B.S. Das, learned counsel for the petitioners has drawn my attention to the observation in the order wherein it is stated that the prayer of the petitioner has been allowed and submits that the two cases do not relate to the same occurrence and even if they relate to the same occurrence they cannot be tried together as the accused persons and witnesses in the two cases are different petitioners. He has also submitted that the trial court could not have passed such an order as it was only the magistrate who could have directed for the same while committing the cases. He relies on the decision in the case of *Danda Naik and three others vs. State of Orissa* reported in *2007 (II) OLR 742*, to buttress his submissions.

3. Mr S.S. Mohapatra learned Additional Standing Counsel submits that since the occurrences in both the cases have taken place on the same day, time and place and investigated by the same I.O., to prevent conflicting decisions, it would be proper if they are heard on the same day by the same Judge. No possible

prejudice would be caused to the petitioners, so this application has no merit and should be dismissed.

4. Perusal of the FIR in Khaira P.S case No.141 of 2019 (Annexure-1) reveals that the occurrence had taken place on 03.08.2019 at Badanuagaon between 9.00 pm to 9.30 pm and FIR was registered at 21.10 hrs on the same day (night) on the information of Gajendra Behera against Laxmidhara Swain, Ghanashyam Swain and Mana Swain (petitioners), under Sections - 341,294,307,323,324,506/ 34 I.P.C.

On a perusal of the FIR in Khaira P.S case no.142 of 2019 (Annexure-2), I find that the occurrence had taken place on 03.08.2019 at Badanuagaon between 9.00 pm to 9.30 pm and FIR was registered at 21.20 hrs on the same day (night) on the information of Manmath Swain against Gajendra Behera, Balaram Behera and Jagannath Behera (opposite parties No. 2 to 4) under Sections - 294,307,323,324,341/34 I.P.C.

Therefore the contention of the learned counsel that the occurrences in the two case cases have not taken place in the same place and time and do not relate to the same incident is not correct.

5. Coming to the second contention of the learned counsel that prejudice which will be caused to the petitioners if the two cases

are tried together, it would be apposite to refer to the decisions of the Supreme Court and this Court on this aspect.

In the case of *Nathilal & others vs. State of Uttar Pradesh and others : 1990 Supp SCC 145*, the Supreme Court has pointed out the procedure to be followed by the trial court in the event of cross-cases by observing 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.”*

The Supreme Court in the case of ***Sudhir vs. State of Madhya Pradesh : (2001) 2 SCC 688*** has held as follows :

*“It is a salutary practice, when two criminal cases relate to the same incident; they are tried and disposed of by the same Court by pronouncing judgments on the same day. Such two different versions of the same incident resulting in two criminal cases are compendiously called “case and counter case” by some High Courts and “cross-cases” by some other High Courts.*

*Where one of the two cases (relating to the same incident) is charge-sheeted or complained of, involves offences or offence exclusively triable by a Court of Sessions, but none of the offences involved in the other case is exclusively triable by the Sessions Court, the Magistrate has no escape from committing the former case to the Sessions Court as provided in Section 209 CrPC. Though, the next case cannot be committed in accordance with Section 209 of the Code, the Magistrate has, nevertheless, power to commit the case to the Court of Session. Section 323 is incorporated in CrPC to meet similar cases also.”*

In the case of *State of Madhya Pradesh vs. Mishrilal* reported in (2003) 9 SCC 426, after referring to the decision of the Supreme Court in the case of *Nathi Lal* (supra), the Supreme Court has held as follows :

“8. In the instant case, it is undisputed, that the investigating officer submitted the challan on the basis of the complaint lodged by the accused Mishrilal in respect of the same incident. It would have been just fair and proper to decide both the cases together by the same court in view of the guidelines devised by this Court in *Nathilal's* case (supra). The cross- cases should be tried together by the same court irrespective of the nature of the offence involved. The rational behind this is to avoid the conflicting judgments over the same incident because if cross cases are allowed to be tried by two courts separately there is likelihood of conflicting judgments” .....

This Court in the case of *Danda Naik* (supra), has held as follows :

“18. This is an old and accepted principles of criminal jurisprudence that the case and the counter case should be tried together by the same Judge for the ends of justice. Reference in this connection may be made to a decision of the Madras High Court in the case of *Thota Ramakrishnayya and others vs.*

*The State reported in AIR 1954 Madras 442. In that case the learned Judge after examining various decisions of different High Courts held that where there is a fight between two rival factions which gives rise to complaint and counter complaint it is a generally recognised rule that both cases should be tried together by the same judge in quick succession ,This salutary principle of criminal law has been laid down by the earned judge in paragraph 39 of the said judgment”....*

In the case of ***Pal @ Palla vs State of Uttar Pradesh*** : (2010) 10 SCC 123, the order of the High Court confirming the order passed by the Magistrate clubbing a complaint case and a case on a police report regarding the same incident where the accused were different, to be tried together in one trial was challenged. The Supreme Court set aside the orders and directed for holding two separate trials by the same Presiding Officer but together in order to avoid conflict in the decisions. Paragraphs 30 and 31 of the decision which are relevant are extracted below:

*30. The facts of the case also warrant that the two trials should be conducted by the same Presiding Officer in order to avoid conflict of decisions. As was observed in **Harjinder***

*Singh's case (supra) clubbing and consolidating the two cases, one on a police challan and the other on a complaint, if the prosecution versions in the two cases are materially different, contradictory and mutually exclusive, should not be consolidated but should be tried together with the evidence in the two cases being recorded separately, so that both the cases could be disposed of simultaneously.*

*31. Although, the High Court has relied on the provisions of Section 210 of the Code in directing that the two cases be clubbed together, in our view, the fact situation does not really attract the provisions contemplated in the said section. On the other hand, as indicated hereinabove, the trial court, in the unusual facts of the case, is required to hear the two cases together, though separately, and take evidence separately, except in respect of all witnesses who would not be affected either by the provisions of Article 20(2) of the Constitution or Section 300 Cr.P.C.”*

6. In view of the above pronouncements, it is no longer *res integra* that when a Magistrate conducting the inquiry or before whom the charge sheet (s) is/are filed, finds that two or more cases relate to the same occurrence which have taken place at the same place and time or in close proximity, he/she should inquire into the cases or try them together, one after the other. If it is found that one of the cases is triable by the Court of Sessions, while the other



involves Magistrate triable offences, the latter case should be committed to the Court of Sessions in exercise of power provided under Section 323 of the I.P.C., so that both the cases can be tried by the same Judge. Applying the same principle, the Court of Sessions can also pass order for trying/hearing two or more cases pending before it, one after the other on the same day if they are found to be “*case*” and “*counter case*” or “*cross case*”, as this will prevent conflicting judgments from being delivered and would therefore be in the interest of justice.

7. An interesting development in the law is the decision of the Karnataka High court in the case of *State of Karnataka vs. Hosakeri Ningappa : 2011 SCC Online Karn 2394*, where the Full Bench of the Karnataka High Court has held that in cross-criminal cases the investigation should be conducted by one investigation officer and cases/trials conducted by two different Public Prosecutors.

8. In view of the aforesaid discussion, I am not impressed with the contentions raised by the learned counsel for the petitioners. As the learned Trial Court has not directed for holding one trial in the two cases but has directed for posting both the trials on the same date, there is no illegality in the said order. As the

cases will be tried by the same Judge on the same day, one after the other, no prejudice will be caused to the petitioners. On the other hand, this will prevent conflict in the decisions in the two cases and would therefore be in the interest of justice. The impugned order therefore does not call for interference.

9. With the aforesaid observations, the CRLMC is disposed of.

10. Urgent certified copy of this order be granted as per rules.

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(Savitri Ratho, J.)

Orissa High Court, Cuttack.  
The 08<sup>th</sup> day of September, 2023.  
B.N. Sahoo, Personal Assistant