

PRADIP MOHANTY, J.

CRLREV. NO.11 OF 2010 (Decided on 24.12.2010)

NARENDRA AICHA @ BABALI & ORS. Petitioners.

.Vrs.

STATE OF ORISSA Opp.Party.

CRIMINAL PROCEDURE CODE, 1973 (ACT NO.2 OF 1974) – SEC.210.

For Petitioners - M/s. B.Pujari, B.K.Nayak,
N.Moharana & M.R.Nayak.
For Opp.Party - Miss. Samapika Mishra
Addl. Standing Counsel
& Mr.B.N.Mohapatra (for informant)

PRADIP MOHANTY, J. This criminal revision is directed against the order dated 29.07.2009 passed by the learned Assistant Sessions Judge, Anandapur in S.T.Case No.17/57 of 2009 declining to club it up with S.T. Case No.16/55 of 2009.

2. Before delving into the legality and propriety of the impugned order, it is necessary to give a brief resume of events of both the sessions cases, clubbing up of which has been sought for.

S.T. Case No.16/55 of 2009 arises out of G.R.Case No.165 of 2008 and Nandipada P.S. Case No.28 of 2008 registered on the basis of FIR lodged by Smt. Manjarika Panda. The allegation in this case is that on 30.03.2008 at about 9.30 a.m. while the informant was busy in her household work, the petitioners along with others being armed with weapons like bhujali, khanda, bomb, thenga, gun, etc., came to her house, abused her in obscene language, uprooted the fence and threatened to kill her. Since her husband was absent, she rushed inside the house. But, petitioner no.1 Narendra and petitioner no.2 Babuli caught hold of her, dragged her out and tried to disrobe her. It is also alleged that one Anil Pattnaik (not charge-sheeted) tried to hit her head by a Nepali Katta but she warded off and became unconscious. After regaining sense, she found that the accused persons have taken away cash of Rs.40,300/- in cash, gold ornaments and radio. When the Grama Rakhi protested, he was also assaulted. In this case, charge-sheet has been filed against the petitioners under Sections 452/341/294/427/354/307/323/34 I.P.C.

So far as S.T. Case No.17/57 of 2009 is concerned, it arises out of G.R.Case No.166 of 2008 and Nandipada P.S.Case No.29 of 2008 registered on the basis of FIR lodged by Anusaya Barik. Her allegation is that on 30.03.2008 her husband Narahari was posted at the house of Umakanta Panda of village Badarampas as Gramarakhia as per direction of the O.I.C. Nandipada Police Station. On that day, at about 9.30 a.m. the petitioners and others including one Anil Pattnaik (not charge-sheeted) came near the house of Umakanta Panda, hurled obscene language and declaring to finish him forcibly entered into his house. When Narahari protested, he was assaulted. They also

assaulted Manjarika and stole away gold ornaments, cash and other items from the house. In this case charge-sheet has been filed against the petitioners under Sections 447/341/294/323/325/307/353/34, IPC.

3. Mr. Pujari, learned counsel for the petitioners submitted that in both the cases time and place of occurrence are same, accused persons are same and the charge-sheeted witnesses are also same. Both the cases arise out of one occurrence but in order to harass the accused-petitioners two FIRs have been lodged. If the accused-petitioners are made to face separate trials, it will amount to double jeopardy. Therefore, in the interest of justice and fair play both the cases may be clubbed up and tried together.

4. Mr. B.N. Mohapatra, learned counsel for the informant submitted that both the cases arise out of two separate incidents. The first incident took place in the house of Umakanta Panda and the second one occurred outside his house in course of which the accused-petitioners attacked the Grama Rakhi, who was posted there as per direction of the O.I.C. Nandipada P.S. to maintain law and order. So, both the occurrences can not be said to be one and same. Therefore, the trial court has committed no illegality in rejecting the application.

5. Miss Mishra, learned Additional Standing Counsel relying upon the comparative charge vehemently contended that the first F.I.R. was lodged at 10.30 a.m. by Manjarika Panda, wife of Umakanta Panda, whereas the second F.I.R. was lodged at 10.40 a.m. by Anusaya Barik, wife of Narahari Barik, the Grama Rakhi. The accused persons first entered into the house of Manjarika Panda and committed the crime. While coming out of her house, they assaulted the Grama Rakhi who was guarding outside the house of Umakanta Panda. In both the cases, the witnesses are not same but some common witnesses are there including the doctor and the I.O. The Code of Criminal Procedure does not prescribe clubbing up the two police cases. Section 210 Cr.P.C. only prescribes for clubbing up of a G.R. Case with a complaint case.

6. Perused the records including the C.Ds. of both the S.T. Cases. There was a time gap of ten minutes in registering the cases. Both the incidents occurred simultaneously, first one occurred inside the house of Umakanta Panda and the second outside the house while the accused persons were coming back. Two FIRs were lodged, separate investigation was conducted and two charge-sheets have been filed. The doctor, the investigating officer and two independent witnesses are common. The Magistrate took cognizance in both the cases and committed them to the Court of Session. There is no provision in the Criminal Procedure Code for clubbing up of cases except under Section 210, Cr.P.C., which provides for clubbing up where there is a complaint case and police investigation in respect of same offence. Therefore, this Court is not inclined to interfere with the impugned order. However, this Court directs the trial court to conduct the trial of the aforesaid Sessions cases one after the other, hear the arguments on one day and also deliver the judgments on the same day.

7. The Criminal Revision is accordingly disposed of.

Revision disposed of.