

R.N.BISWAL, J.

TRP (CRL.) NO.33 OF 2011 (Decided on 30.09.2011)

KARTIK PARIMANIK

..... Petitioner.

. Vrs.

STATE OF ORISSA

.....Opp.Party.

CRIMINAL PROCEDURE CODE, 1973 (ACT NO.2 OF 1974) – S.407.

For Petitioner - M/s. J.Katikia, A. Mohanty,
P.Mohanty, K.B.Pradhan
For Opp.Party - Addl. Standing Counsel

R.N.BISWAL, J. This petition is filed under section 407 of Cr.P.C. to transfer S.T. Case No.8 of 2011 from the court of Ad-hoc Addl. Sessions Judge (FTC-I), Phulbani to any other court with equal jurisdiction.

2. As per the petition, the petitioner is facing trial for the offence under sections 147/148/427/436/302 read with section 149 of I.P.C. in the aforesaid case. It is alleged that during cross-examination of the I.O. (P.W.7), the learned Ad-hoc Addl. Sessions Judge (FTC-I), Phulbani (hereinafter referred as 'trial court') did not record some answers given by him and declared that since on the self-same evidence an order of conviction had already been recorded against one co-accused in the split up case, it would not help the present accused even if the answer given by the I.O. to the question put by the defence counsel was recorded.

3. It is further alleged in the petition that in his examination-in-chief the I.O. stated that due to blockage of road, he could not proceed to the spot of occurrence immediately after the F.I.R. was lodged. In cross-examination it was elicited from him that at that time there was no blockage of road and the vehicles were plying on the road freely without obstruction. At that time the trial court intervened and reminded the I.O. that he had already stated in his examination-in-chief that there was road block. When the defence counsel confronted some part of the evidence of P.W.1 to the I.O. to impeach the credibility of the latter, the trial court did not record the answer given by the I.O. Time and again the trial court expressed its view in the open court that no elaborate cross-examination was required because in the split up case one of the accused persons had already been convicted and the petitioner would meet the same fate.

4. It is further alleged that the trial court was annoyed with the petitioner on the wrong notion that he made allegation against it before the District & Sessions Judge, Phulbani during his visit to jail that his case was unnecessarily lingering. In fact during visit of the learned District & Sessions Judge (FTC-I), Phulbani to the jail, the petitioner informed him that his case was lingering due to non-attendance of the prosecution witnesses in spite of issuance of summons, but this was understood otherwise by the trial court.

5. It is further alleged that during his cross-examination, the I.O. challenged the relevancy of each and every question, instead of answering the same. When it was brought to the notice of the trial court, instead of cautioning him, it told that since the I.O. was an young officer the defence counsel should not take cognizance of the same.

6. On 28.7.2011 when the case was taken up at about 11.30 A.M., the trial court told the defence counsel to conclude the cross-examination of the I.O. within half an hour, on the plea that there were eight witnesses in some other cases to be examined, whereas in fact there was no other witness in any other case. It is further alleged that the defence counsel came to know from reliable source that the trial court was annoyed with him, because while he was conducting a case in this court it was asked to give explanation on some points. Under such circumstances, the petitioner apprehends that he will not get justice from the trial court. Hence the petition.

7. Learned counsel appearing for the petitioner submits that justice should not only be done, but should manifestly be seen to be done. In the case at hand, since the trial judge is determined to pass similar order as it passed in the split up case, where one co-accused has been convicted, the apprehension of the petitioner that he will not get justice from the trial court is reasonable. When the trial court did not record the answers given by the I.O. to the questions of the defence counsel and it is under impression that the petitioner made allegation against the trial court, during his visit to the jail, the apprehension of the petitioner that he will not get justice from the trial court became stranger. In addition to all these, the trial court was also annoyed with the defence counsel on the misconception that at his instance this court called for an explanation from it. For all these reasons, the defence counsel did not like to conduct the case and filed a petition, under Annexure-1 before the trial court to allow him to withdraw from it. So, the learned counsel for the petitioner urged to allow the prayer of the petitioner.

8. Per contra, learned Addl. Standing Counsel contends that as found from Annexure-1, the only allegations made against the trial court are that it interfered with each and every question put by the defence counsel to the I.O.; that it did not record the evidence given by the I.O. in respect of some contradictions; that even though the I.O. gave evasive reply or replied out of the record time and again, it did not warn him to maintain decorum of the court which encouraged him to put counter questions to the defence counsel and that it gave indirect hints that the case needed no elaborate cross-examination since in the split up case, the co-accused who were facing trial for the offence under section 436 of I.P.C. had been convicted. According to learned Addl. Standing Counsel the other grounds taken in the petition under section 407 of Cr.P.C. are after thought. The allegations made under Annexure-1 do not indicate that, the trial court is determined to convict the petitioner. He further submits that, as it appears, since in the split up case, the accused persons have been convicted, the petitioner apprehends that he will meet the same fate, for which he has filed the transfer petition.

9. It is found from the certified copy of the deposition of P.W.7, the I.O. that his deposition in examination-in-chief as recorded on 27.7.2011 consists of two pages and two lines only. He was cross-examined in part on that date which was recorded in two and half pages and his further cross-examination was deferred to the next date. On that date his cross-examination was recovered in one page and in course of cross-examination, the learned defence counsel filed a petition under Annexure-1 to allow him

to withdraw from the case. So, it can not be believed that the trial court interfered at every stage during cross-examination and did not record some answers given by the I.O. Moreover, the Presiding Officer is not required to record each and every answer irrespective their admissibility and relevancy. It has been endorsed by the trial court below the deposition of the I.O. as follows:

“The advocate for the accused asked the witness whether in his statement dated 5.10.2008 the informant Naresh Digal had stated before him that the accused Kartika Paramanik and others participated in destroying his house. On perusal of his evidence, a question in this regard was asked to the witness which he denied. Further it appears that the said informant had stated the said fact in his earlier statement recorded on 26.8.2008. As such this question is not entertained.”

From this endorsement, it appears that the defence counsel in his cross-examination asked the I.O. whether the informant in his statement recorded on 5.10.2008 stated before him that the petitioner and others participated in demolishing his house. Since the informant in his evidence had admitted not to have stated so before the I.O., the trial court held that the question put to the I.O. was not relevant. I found no illegality in it. If relevant questions were put, but the trial court intervened in the matter, the defence counsel ought to have brought the same to record in writing, but he did not do so. Only because some of the co-accused facing trial under section 436 of I.P.C., got convicted, it does not mean that the petitioner who faces trial under sections 147/148/427/436/302 would also be convicted. In other words when the petitioner is facing trial in five heads of charge, conviction of the co-accused in one head only, would not automatically lead to conviction of the petitioner in all heads or in one head even. So the allegation that the trial court was giving indirect hints to convict the petitioner can not be accepted. Admittedly pecuniary interest is not attributed to the trial court. Even if it is presumed that the trial court did not caution the I.O. (P.W.7) not to put counter question to the defence counsel, such innocent omission on its part, can not give rise a ground to transfer the case to some other court. The other allegations made in the petition under section 407 of Cr.P.C. appear to be after thought.

10. Under such circumstances, it is held that the apprehension of the petitioner that he would not get justice from the trial court is not reasonable. If he apprehends that the co-accused in the split up case have been convicted under section 436 of I.P.C., so he would meet the same fate, such apprehension can be branded as fanciful and imaginary and can not be a ground for transfer of the case.

11. Accordingly, the petition under section 407 of Cr.P.C. is rejected and the TRPCRL stands dismissed.

Application dismissed.