

## ORISSA HIGH COURT : CUTTACK

### TRPCRL NO. 23 OF 2013

In the matter of a petition under Section 407 of the Code of Criminal Procedure, 1973.

Babuli Behera

-----  
...

Petitioner

Versus

State of Odisha and others

...

Opposite parties

For petitioner

-

M/s. Subrata Mishra and R.K.Pradhan

For opposite parties

-

M/s. Sangram Nayak, K.B.Kar,  
S.Pattnaik, D.K.Pattnaik

(for opp.party no.2)

M/s. S.R.Mohapatra, B.R.Mohanty,  
B.K.Raj, S.Harichandan,  
H.K.Swain and S.C.Biswal

(for opp.party nos.4 & 5)

M/s. P.R.Dash, J.Sahu, K.Raj and  
S.Mohapatra, (for opp.party no.6)

M/s. Dharanidhar Nayak, S.Das,  
U.R.Jena and B.K.Das

(for opp.party nos.7 & 8)

M/s. Asim Amitabh Dash, B.K.Panda,  
S.Mohanty, A.N.Pattnaik and  
S.A.Pattnaik (for opp.party no.9)

-----  
**P R E S E N T**

**THE HONOURABLE MR. JUSTICE S. K. MISHRA**

-----  
Date of hearing - 10.04.2014

:

Date of Judgment - 16.05.2014  
-----

**S.K.Mishra, J.**

This is an application under Section 407 of the Code of Criminal

Procedure, 1973, hereinafter referred as the 'Code' for brevity, seeking transfer

of S.T. Case No. 405 of 2012 of the court of Addl. District and Sessions Judge, Puri to the court of the District and Sessions Judge, Bhubaneswar.

2. The petitioner happens to be the informant of Pipili P.S. Case No. 10 of 2012 corresponding to G.R. Case No.22 of 2012, out of which the aforesaid Sessions Trial case arose. The petitioner also happens to be the father of the deceased. It is alleged that the deceased was raped and attempted to murder by the accused persons and later on by the intervention of this Court, she was admitted in the S.C.B. Medical College and Hospital, Cuttack, where she breathed her last on 21.6.2012 due to sequel of attempted strangulation. It is further asserted that the matter has become one of national ramification due to the involvement of a Cabinet Minister of the State who had harboured the accused persons in his farm house and subsequently he was made to resign from his portfolio. It is further alleged that due to involvement of the ex-Minister in this case, the Inspector In-Charge of Pipili Police Station Mr. Amulya Kumar Champatiray did not register the F.I.R. lodged on 29.11.2011 and also did not take up the investigation and cooperate with the family members of the deceased girl in Pipili Hospital.

3. It is further alleged that when the deceased was brought to the Pipili hospital, she was referred to the Capital Hospital, Bhubaneswar on the same day without giving any treatment to her. But in the Capital Hospital, the doctors also asked for copy of the F.I.R. and the petitioner on the same day rushed to the Pipili Police Station to obtain a copy of the F.I.R., but the I.I.C. Pipili P.S. seeing the petitioner again in the Police Station became angry and asked

the petitioner to leave the Police Station immediately, otherwise he would be detained in custody for attempting murder to his own daughter.

4. It is further stated that after administration of some medicines and injection in the Capital Hospital, the deceased girl was referred to the S.C.B. Medical College and Hospital, Cuttack on the same day. The Causality Ward of the Medical College and Hospital also declined to provide medical assistance to the deceased girl without the police requisition. It is further alleged that the deceased girl was admitted in the S.C.B. Medical College and Hospital with a condition that on the next day the petitioner should bring a copy of the F.I.R. from the Pipili Police Station.

5. It is further stated that on 30.11.2011 the petitioner along with his younger brother Kabuli Behera went to Pipili Police Station in order to receive a free copy of the F.I.R., but the I.I.C. said that he had lost the F.I.R. and asked them to lodge another F.I.R. on that day and the petitioner again lodged an F.I.R. on 30.11.2011 and that was also not registered by the I.I.C. The I.I.C. also stated that when the deceased girl would return to normal condition and able to speak he will register the F.I.R. and arrest the offenders. It is further stated that with much persuasion, the doctor in the S.C.B. Medical College and Hospital attended the deceased girl without police requisition. Four to five days after the I.I.C., Pipili Police Station came to the S.C.B. Medical College and Hospital and discussed with the doctors and thereafter the attitude of the doctors changed and they behaved in a rude manner and asked the petitioner to take away his daughter from the hospital as she was in her last stage of life. The doctors also threatened

to drive her out from the hospital with the help of police if the petitioner did not take away her from the hospital. The petitioner further alleged that finally the deceased girl was forcibly discharged by the S.C.B. Medical College and Hospital on 14.12.2011 being influenced by the ex-Minister who was made to resign from his portfolio.

6. It is further alleged that after discharge from the hospital the deceased girl was taken to the brother-in-law's house of the petitioner at Ghatikia near Bhubaneswar as there was constant threat to the life of the entire family members of the petitioner at their native village Arjunagada. On 09.01.2012 the matter was brought to the notice of the Human Right Commission of Odisha and due to the intervention of Human Rights Commission, the girl was admitted in the Capital Hospital, Bhubaneswar and kept in the I.C.U. for two days. Thereafter, the deceased girl was referred to the S.C.B. Medical College and Hospital, Cuttack for better treatment. This Court also interfered in the matter and directed the State Authority for surveillance and to submit report regularly. It is alleged that due to the intervention of the State Human Rights Commission, the F.I.R. was registered by the Pipili Police Station on 09.01.2012 as P.S. Case No.10 of 2012 under Sections 341, 376 and 506/34 of the I.P.C. read with Section 3(1) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, hereinafter referred to as the 'Act' for brevity. The State C.I.D. Crime Branch assumed the charges of Investigation on 10.01.2012 and accordingly registered C.I.D. P.S. Case no.2 of 2012 and investigated the matter. The Charge-sheet was submitted on 10.03.2012 before the learned J.M.F.C., Pipili in G.R. Case No.22 of 2012 by keeping the investigation open under Section 173(8) of the

Code. The case was turned to a case under Section 302 of the I.P.C. from Section 307 of the I.P.C. after the death of the victim girl Babina Behera.

7. It is further stated by the petitioner that one Satrughana Panda who was the headman of the village and active member of the B.J.D. political party being very close to the sitting M.L.A. of Pipili Constituency monitored the entire activities in the hospital, Police Station and also influenced the investigation conducted by the Crime Branch. The Crime Branch did not bring him within the realm of investigation, who had taken every steps for disappearance of evidence of rape, threatened the family members of the deceased girl to kill the entire family, influenced the I.I.C. Pipili Police Station not to receive the F.I.R., harboured the criminals in the farm house of the M.L.A.

8. It is further stated that on 29.11.2011 the petitioners along with his family members are not staying in their native village Arjunagada due to the constant threat to their lives. They are staying at Ghatikia near Bhubaneswar in the house of the brother-in-law of the petitioner. It is further alleged that the B.J.D. political party members including Satrughana Panda exerting pressure to the family members of the petitioner not to give oral evidence in the court as the accused persons belong to B.J.D. political party. It is further alleged that if summons will be issued to the family members of the petitioner to give oral evidence, then they will be held up at Pipili by stopping their vehicle and they may be killed by the other two accused persons who are now released on bail by the Court as the Crime Branch has charge-sheeted them under Section 3 of the Act. It is further alleged that there is every possibility of physical assault, which may be resulted from the anguish of the B.J.D., Political Party. It is also alleged

that, therefore, a lot of inconvenience will be faced by the witnesses while going to depose in this case before the learned Addl. Sessions Judge, Puri. Hence, the petitioner prays for transfer of the S.T. Case No.405 of 2012 pending in the court of the Addl. District and Sessions Judge, Puri to the court of the Addl. District and Sessions Judge, Bhubaneswar for fair trial of the case. It is also stated by the petitioner that the doctors on duty at Capital Hospital, Bhubaneswar on 29.11.2011 had given her anti-venom injection for treatment of “unknown bite” , whereas the deceased girl was not bitten by any snake. Thus, from the analysis of series of events it transpires that the State authorities were involved in every respect to kill the deceased girl and also taken all possible steps for disappearance of evidence of rape and recording of her statement regarding the physical assault. It is further stated that the petitioner and his family members are pressurized and terrorized not to give oral evidence in the Court. It is further stated that they will have to pass through Pipili if the trial of the case will be conducted at Puri and they will be intercepted and prevented on the way to Puri by the accused persons who are released on bail as well as the other workers of the B.J.D. Political party. Therefore, it is imperative on the part of the petitioner to approach this Court for a direction to transfer the case from Puri to Bhubaneswar as the petitioner and his family members are now staying at Ghatikia near Bhubaneswar.

9. Opposite parties 2 and 3 have filed their counter affidavit, inter alia, submitting that the allegation made in the petition are false and baseless assertions and are not relevant in the context of adjudication of the present controversy, whether in the interest of justice the case should be transferred from

Puri to Bhubaneswar. It is further stated that reckless unfounded allegations have been made against the persons who being not on record as parties do not get any scope to have their say in the matter. It is further submitted that such bald and false allegations are needed to be eschewed from consideration.

10. The opposite parties however asserted that the accused persons do not belong to the B.J.D. party and for said reason the party members including one Satrugghna Panda are exerting pressure on the family members of the petitioner not to give evidence in court. It is, therefore, stated that the allegations made in paragraphs 1 to 4 of the petition are false and is not true. It is also submitted that there is no legally sustainable ground in support of the prayer for transfer of the Sessions Trial from the Court at Puri and that too at a stage when trial has already commenced and some witnesses have already been examined. That apart, the opposite parties further submitted that if the case at this stage is transferred to any other place, it would cause inconvenience to opposite parties 2 and 3 and put additional financial pressure on them in defending their cause. On such factual assertions, opposite parties 2 and 3 asserted that the petition for transfer should be dismissed.

11. An additional affidavit has been filed by the petitioner delineating the different dates and different facts allegedly the occurrence took place. On the instance of such facts, the petitioner submits that the State authorities are involved in the case. They were trying to kill the victim girl and in that process recording of her statement regarding the physical assault has not been made. It is, however, asserted that accused Purna Chandra Swain and Premananda Nayak have threatened the family members of the petitioner on 28.02.2012, for

which charge-sheet no.7 was submitted against them by the Commission of Enquiry for commission of offences under Section 506/34 of the I.P.C. read with Section 3(I) (x) of the Act.

12. It is further asserted by the petitioners that the father of the victim girl i.e. the petitioner himself, her mother and brothers are staying in Ghatikia near Bhubaneswar since the date of the incident and they are the vital witnesses to the case and the petitioner is the informant in this case. They are always pressurized and terrorized not to give evidence in the court. Therefore, it is very difficult on the part of the informant and his family members to attend the Sessions Court at Puri during the trial to give oral evidence, as the accused persons and their associates in the B.J.D. party at Pipili will intercept them on the way to Puri and confine them at some other place. It is further alleged that they cannot reach Puri to give oral evidence on the schedule date of trial. Therefore, it is asserted by the petitioner that the series of events which have taken place will give rise to a reasonable apprehension that a fair trial cannot be possible at Puri since the petitioner and his family members will be prevented by the accused persons and their associates from giving oral evidence at Sessions Court, Puri.

13. Additional reply affidavit has been filed by the opposite parties 2 and 3 asserting that the allegations made against the State machineries and certain individuals are not only false and concocted but also cannot otherwise be taken note of as there is no basis for it and further the allegations have been laid without making them parties. Baseless allegations have also been made that the petitioner, his wife and his son are staying at Ghatikia, Bhubaneswar since the date of incident in 2011 and that when they would proceed to Puri to give



evidence they would be obstructed and confined on the way not to give evidence at Puri. Allegations made in this regard are asserted to be false and imaginary. It is further asserted that the petitioner and their family members have been staying in their village Anjunagada and doing agricultural activities. Hence, such allegations made by the petitioner are denied. As far as other opposite parties are concerned, no counter affidavit has been filed.

14. Learned Additional Standing Counsel has filed a memo and has brought to the notice of the Court the letter issued by the Superintendent of Police, C.I.D., Crime Branch, Odisha, Cuttack addressed to the Advocate General, Odisha, Cuttack that after careful consideration, the Government of Odisha, Home Department has agreed for transfer of the case from Puri Court to Bhubaneswar Court for trial. Accordingly, the C.I.D., C.B. has been advised to move this Court to appraise the matter accordingly.

15. The learned counsel for the petitioner relying upon the case of **K.Ambazhagan v. The Superintendent of Police and others etc.**, (2004) 3 SCC 767 and **Smt. Sonabai Digambar Jagtap v. The State of Maharashtra and others**, 2001 CrL. L.J. 2129 contends that there is a reasonable apprehension in the mind of the informant that a full fledged trial is not possible at the Puri Court and the case should be transferred to the court at Bhubaneswar. He similarly relies upon the decision of the Andhra Pradesh High Court in the case of **The Public Prosercutor v. D.Venkataranga Reddy**, 1976 CrL. L.J. 1252, where the prosecution witnesses were residing at Anantapur district and the case was transferred to Anantapur keeping in view the balance of

convenience. Similarly, learned counsel for the petitioner relied upon the reported case of **Punyananda Avadhut v. State and others**, IR 1970 Calcutta 241, wherein the Calcutta high Court has transferred the case because one of the accused persons, who was local Block Development Officer at the time of incident and against whom serious allegations had been made.

16. Learned counsel for the opposite parties has relied upon several decisions and submits that there is no good ground to allow the prayer of transfer as there is no real threat to the life of the witnesses by the petitioners. In this connection, learned counsel for opposite parties 2 and 3 relied on the reported cases of **Manjulata Behera v. Ramesh Chandar Behera and two others**, (2001) 20 OCR 188; **Prafulla Kumar Pradhan v. The State of Orissa and others**, (1998) 14 OCR 548; **Sri Susanta Kumar Rout v. State of Orissa**, 2000 (Supp.) OLR 171; **Kuna alas Dolagobinda Mohanty and others v. Bulu alias Jaya Gobinda Mohanty**, (1998) 14 OCR 409, **Usharani Mohapatra v. Nityanand Sahu and another**, 2000 CrL L.J. 190; **Rajesh Talwar v. Central Bureau of investigation and others**, 2012 (II) OLR (SC) 118; **Ranjit Singh and another v. Popat Rambhaji Sonavane and others**, AIR 1983 SC 292 and **V. Rameswar Raju v. State of Orissa and others**, 2002 (Supp.) OLR 148 and contends that mere allegation that there is apprehension of fair trial cannot be conducted in a particular case is not accepted. It is further contended that the specific allegation regarding the involvement of Satrugna Panda cannot be taken into consideration as he has not been made a party to the proceeding and a case regarding which a mention has been made in the additional affidavit

relates to a different incident. It is contended that therefore this Court should refuse the application to transfer the case to any other court from the Additional Sessions Judge, Puri.

17. Having analyzed the fact of the case and the ratio decided in the aforesaid case, this Court comes to the conclusion that a case can be transferred from one court to another under Section 407 of the Code if it appears to the court that an effective and impartial trial cannot be held in any criminal court subordinate to it. The case is of a notoriety for which a Cabinet Minister has to resign, a Police Inspector being the Inspector In-Charge of Pipili Police Station has to be dismissed by the State Government and the C.I.D. C.B. has Charge-sheeted number of doctors both of Capital Hospital, Bhubaneswar and S.C.B. Medical College and Hospital, Cuttack, this Court comes to the conclusion that this is a very sensitive case requires careful consideration.

18. As far as the submission made by the learned counsel for the petitioner is concerned, the same has gone virtually unchallenged by the affidavit filed by the opposite parties 2 and 3. It is further borne out from the records that on 28.02.2012 an F.I.R. was lodged by the C.I.D. C.B. in relation to Pipili P.S. Case No.10 of 2012 against Purna Chandra Swain and Premananda Nayak for threatening the family members of the victim girl. It is further borne out from the records that at present the petitioner, his wife and son are staying at Ghatikia near Bhubaneswar. From the materials on record, this Court is of the opinion that there is real threat on the life and liberty of the present petitioner and other witnesses who are dealing with the petitioners. These are not mere allegations. There is a real apprehension that a fair trial cannot be conducted in this case at

Puri. This is so, because the petitioner has to go through Pipili to reach Puri and on the way the petitioner and other witnesses may be threatened, restrained and assaulted. There is real threat on them and there is lot of pressure as asserted in their affidavits. So this Court is of the opinion that a fair trial is not possible at the Puri Court.

19. Hence, the Transfer Petition is allowed. It is ordered that the S.T. Case No.405 of 2012 of the court of the learned IInd Additional Sessions Judge, Puri, arising out of G.R. Case No.22 of 2012 corresponding to Pipili P.S. Case No.10 of 2012 be transferred from the aforesaid court to the court of the Ist Additional Sessions Judge, Bhubaneswar for trial. Office is directed to communicate the order to both the courts immediately.

With such direction, the Transfer Application is disposed of.

.....  
**S.K.Mishra, J.**

**Orissa High Court, Cuttack**  
**Dated, May 16, 2014/JNS.**