

Criminal Revision

Present:

The Hon'ble Justice Ashim Kumar Roy

Judgment on

C.R.R. No. 1878 of 2010

Mihir Banerjee

versus

State of West Bengal & Anr.

Points:

Analogous hearing- Two cases arises out of the self-same occurrence and those are case and counter case whether to be heard by one court-Code of Criminal Procedure,1973 S.482

Facts:

Petitioner lodged a F.I.R and the same gave rise to Haroa P.S. Case No. 57 dated 13.07.2007 under Sections 341/324/325/326 of the Indian Penal Code, and after completion of investigation, the police submitted charge-sheet against the opposite party no. 2 . For the self-same offences another now pending for trial before the Learned Judicial Magistrate, 1st Court, Basirhat being G.R. Case No. 1146 of 2007, whereas on the basis of a complaint made by the opposite party no. 2, a case being Haroa P.S. Case No. 56 dated 13.07.2007 under Sections 341/323/325/307/34 of the Indian Penal Code has been registered against the present petitioner and the same has also been ended in charge sheet but for Sessions triable offences. The said case, now being committed to the Court of Sessions, is pending for trial, before the Learned Additional Sessions Judge, Fast Track, 1st Court, Basirhat. The aforesaid cases are arising out of the self-same occurrence and those are case and counter case. Learned Sessions Judge, Barasat, North 24-Parganas

rejected the petitioner's prayer for transfer of the G.R. Case No. 1146 of 2007 from the Court of the Learned Judicial Magistrate, 1st Court, Basirhat to the Court of Learned Additional Sessions Judge, Fast Track, 1st Court, Basirhat, where the Sessions Case No. 5 (7) of 2008 arising out of G.R. Case No. 1146 of 2007 is pending.

Held:

It is an admitted position that the aforesaid cases are arising out of the self-same occurrence and those are case and counter case. It is now well settled by a catena of decision of the Hon'ble Apex Court as well as of this High Court that where there are two cases and both the said cases arising out of selfsame occurrence and are in fact case and counter case, one is exclusively triable by a Court of Sessions and other relates to offences triable by any Magistrate, it would be expedient in the interest of justice that both of such cases be tried analogously one after another before the self-same Court and the judgement be pronounced after the conclusion of trials, one after another.

Para 5

For Petitioner : Mr. Subrata Kumar Basu

Mr. Taraprasad Halder

For State : Mr. Amajit De

For O.P. No. 2 : Mr. Moinak Bakshi

The Court: The subject matter of challenge in this criminal revision is an order passed by the Learned Sessions Judge, Barasat, North 24-Parganas rejecting the petitioner's prayer for transfer of the G.R. Case No. 1146 of

2007 from the Court of the Learned Judicial Magistrate, 1st Court, Basirhat to the Court of Learned Additional Sessions Judge, Fast Track, 1st Court, Basirhat, where the Sessions Case No. 5 (7) of 2008 arising out of G.R. Case No. 1146 of 2007 is pending.

2. Heard Mr. Subrata Kumar Basu, learned advocate for the petitioner and Mr. Amajit De, learned advocate for the State as well as Mr. Moinak Bakshi, learned advocate for the opposite party no. 2. Perused the materials on record.

3. A FIR being lodged at the behest of the present petitioner the same gave rise to Haroa P.S. Case No. 57 dated 13.07.2007 under Sections 341/324/325/326 of the Indian Penal Code, and after completion of investigation, the police submitted charge-sheet against the opposite party no. 2 for the self-same offences and the same is now pending for trial before the Learned Judicial Magistrate, 1st Court, Basirhat being G.R. Case No. 1146 of 2007, whereas on the basis of a complaint made by the opposite party no. 2, a case being Haroa P.S. Case No. 56 dated 13.07.2007 under Sections 341/323/325/307/34 of the Indian Penal Code has been registered against the present petitioner and another and the same has also been ended in chargesheet but for Sessions triable offences. The said case, now being committed to the Court of Sessions, is pending for trial, before the Learned Additional Sessions Judge, Fast Track, 1st Court, Basirhat.

4. It is an admitted position that the aforesaid cases are arising out of the self-same occurrence and those are case and counter case. It is now well settled by a catena of decision of the Hon'ble Apex Court as well as of this High Court that where there are two cases and both the said cases arising out of selfsame occurrence and are in fact case and counter case, one is exclusively triable by a Court of Sessions and other relates to offences

triable by any Magistrate, it would be expedient in the interest of justice that both of such cases be tried analogously one after another before the self-same Court and the judgement be pronounced after the conclusion of trials, one after another.

5. In view of above, the order impugned is set aside.

6. It is directed that the G.R. Case No. 1146 of 2007 now pending before the Learned Judicial Magistrate, 1st Court, Basirhat be transferred to the Court of the Learned Additional Sessions Judge, Fast Track, 1st Court, Basirhat before whom the Sessions Case No. 5 (7) of 2008 is now pending for trial.

7. It is further directed the Learned Additional Sessions Judge, Fast Track, 1st Court, Basirhat shall hold the trial of both the cases one after another and after conclusion of both the trials, he shall deliver the judgment consecutively on the same day.

8. The Learned Judicial Magistrate, 1st Court, Basirhat is directed to transmit the records relating to the G.R. Case No. 1146 of 2007 to the Court of the Learned Additional Sessions Judge, Fast Track, 1st Court, Basirhat within a week from the date of communication of this order.

9. The transferee Court is directed to conclude the trial as expeditiously as possible preferably within 10 months from the date of receipt of the records.

10. The Office is directed to communicate this order to both the Courts, viz., the Learned Judicial Magistrate, 1st Court, Basirhat as well as to the Court of the Learned Additional Sessions Judge, Fast Track, 1st Court, Basirhat at once by Special Messenger at the cost of the petitioner.

11. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)

