

**Netra Parida Vs. the State and ors.**

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**Court :** Orissa

**Decided On :** Mar-25-1960

**Reported in :** 26(1960)CLT403; 1961CriLJ688

**Judge :** R.L. Narasimham, C.J.

**Appellant :** Netra Parida

**Respondent :** The State and ors.

**Judgement :**

ORDER

R.L. Narasimham, C.J.

1.This revision petition was filed against an order of a First Class Magistrate of Nayagarh refusing to commit the accused to the Court of Session merely because the connected case has been committed for trial in the Court of Session.

2. Petitioner Netrananda Parida lodged information against several persons alleging that they committed offences under Sections 147 and 323 I.P.C. at about 8 p.m. on the 27th March, 1959 in village, Badapandusara. On the same day, at about 9 p.m. one Arjun Parida lodged information against petitioner Netrananda and some other persons alleging that at about 7-30 p.m. they committed offences under Sections 147, 324, 323 and 436 I.P.C. The police investigated both the cases and submitted charge sheets in both.

The case instituted by Arjun Parida was clearly one triable by the Court of Session being one under Section 436 I.P.C. while the case instituted by Netrananda was triable by a First Class Magistrate. Hence, when the latter case was taken up before the Court of Sri N.V.R. Murty, Magistrate First Class, a prayer was made on behalf of the petitioner for committing that case also for trial by the Court of Session on the ground that it was connected with the other case. The learned Magistrate relying on Emperor v. Nathu AIR 1932 Lah 168 refused to commit the case.

3. The Lahore decision on which the learned Magistrate relied is of the year 1932. Since then there have been innumerable decisions of various High Courts to the effect that if two cases arise out of the same incident and one of them is triable by the Court of Session it is desirable that the other counter case should also be committed to the Court of Session and both the cases should be heard by the same Judge though judgment in such case must be based on the evidence adduced in that case.

In Ramakrishnayya v. The State : AIR1954 Mad442 all the decisions dealing with this aspect of the matter have been collected. What is important is that the Court should be satisfied that one case is really counter to the other that is to say, that both the cases arise out of the same incident and one case will be practically a defence for the accused persons in the other case. If, however, two distinct offences are alleged, one happening after the other, the former being the motive for the commission of the latter offence the two cases may not be deemed to be counter cases, so as to come within the principle mentioned above.

The learned Magistrate should therefore scrutinise the case diary in both the cases and then decide whether the aforesaid principle embodied in the Madras decision would apply. If he comes to a finding that they are both counter cases arising out of the same incident, it is desirable that the petitioner's case should also be committed to the Court of Session for trial. If on the other hand he thinks that they are distinct cases arising out of two incidents occurring one after the other, he may proceed with the trial in the usual way. It appears that the Magistrate has not yet framed any charge and it is still open to him to consider this

question further in the light of the observations made above.

4. The revision petition is disposed of in terms of these observations.

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