

HIGH COURT OF DELHI: NEW DELHI

+ CRL. M.C. No. 305/2009

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MOHD. ABAD ALI & ANR. Petitioners
Through: Mr. Vijay Aggarwal and Mr.
Gurpreet Singh, Advs.

Versus

D.R.I. Respondent
Through: Mr.S.C. Aggarwal, Adv. for
respondent No.1.
Mr. Harish Gulati and Mr.
Anindya Malhotra, Advs. for
CBI.

Judgment reserved on: 4th December, 2009
Judgment delivered on: 10th December, 2009

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

A.K. PATHAK, J.

1. Officers of the Directorate of Revenue Intelligence (DRI), conducted a raid on 20th December, 2004 in room No. 403 of Hotel Diwan Palace, Paharganj, Delhi and

recovered 9196 counterfeit Indian currency notes of Rs. 500/- in denomination worth Rs. 45.98 lakhs from two suitcases. The said suitcases belonged to the petitioners Narun Nahar Lovely and Rashid Ahmed. These fake currency notes were to be delivered to co-accused Mohd. Abad Ali and Imam Raza. Petitioners and co-accused were arrested and after completion of investigation, a complaint under Section 135 of the Customs Act was filed by DRI in the court of learned Additional Chief Metropolitan Magistrate.

2. Information was also sent to the Central Bureau of Investigation (CBI). On the basis of this information CBI registered an FIR under Section 489-B and 489-C read with Section 120 B of the Indian Penal Code (for short hereinafter referred to as "IPC") against the petitioners and their co-accused. Petitioners were arrested in this case also. Trial of this case is pending in the court of Additional Sessions Judge.

3. Petitioners filed an application under Section 408 read with Section 220(3) of the Code of Criminal Code (for short hereinafter referred to as "Cr.P.C.") before the

Sessions Judge for clubbing of both the abovementioned two cases. This application was disposed of on 20th December, 2006 and complaint case was transferred to the court of learned Additional Sessions Judge where Sessions trial was pending. However, no order of clubbing of both the cases was passed.

4. Petitioners filed a petition under Section 482 Cr.P.C. in this Court praying therein that both the cases be clubbed and tried together. This petition was disposed of by this Court on 28th March, 2007 with liberty to the petitioners to approach the learned District & Sessions Judge seeking relief of one trial of both the cases.

5. Petitioners filed an application under Section 220(3) Cr.P.C. before the learned District & Session Judge praying for a direction for holding a single trial of abovementioned two cases, which was disposed of on 5th October, 2007 with liberty to the petitioners to approach the concerned court seeking the relief of single trial of the said two cases.

6. Petitioners then moved an application under Section 220(3) Cr.P.C. before the concerned Additional Sessions Judge seeking a single trial for the complaint case filed by the DRI as well as Sessions case arising out of the FIR registered by the CBI. Learned Additional Sessions Judge dismissed the said application vide impugned order dated 15th January, 2009. It was observed that all the witnesses had already been examined in the complaint case; in the Sessions case, only one or two witnesses remained to be examined, therefore, clubbing of both these cases at this stage would not only cause inconvenience to the prosecution but also to the co-accused as serious prejudice may be caused to them. Learned Additional Sessions Judge was also of the view that trial of both the cases was being conducted by the same court and judgment was likely to be announced on one day, therefore, there was no need to club both the cases which were at different stages of trial. As per the learned Additional Sessions Judge, Section 220 Cr.P.C. was only an enabling provision, which permits the court to try more

than one offence in a single trial. Accordingly, court may or may not try more than one offence in single trial.

7. Aggrieved by the order dated 15th January, 2009, petitioners have approached this court by filing the present petition under Section 482 Cr.P.C. praying therein that a single trial of cases titled DRI vs. Narun Nahar Lovely & Ors and State (CBI) vs. Narun Nahar Lovely & Ors be ordered.

8. Learned counsel for the petitioners has vehemently contended that sub-Section 3 of Section 220 Cr.P.C. provides that if the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with and tried at one trial for, each such offences. According to learned counsel, both the cases arise from the same incident i.e. recovery of fake currency notes from the petitioner and the co-accused, thus, single trial of both the cases be conducted so as to make petitioners entitled to benefit of Section 71 IPC and Section 31 Cr.P.C. In nutshell, the contention of learned counsel is that since

both the cases arise out of the same incident, the complaint case under Section 135 of the Customs Act, filed by DRI as well as the Sessions case under Section 489-B and 489-C filed by CBI be tried in single trial. Reliance has been placed on ***Adnan Bilal Mulla vs. State of Maharashtra*** reported in ***2006 CRI L.J. 564*** and ***Raja Dayanand vs. State*** reported in ***2004 (3) JCC 1886***.

9. As against this, learned counsel for the respondent has contended that single trial of both the cases cannot be ordered at this stage. In fact, complaint case is at the stage of final arguments and all the witnesses had been examined therein. So far as Session case is concerned, the same is at the fag end and only one or two witnesses remained to be examined. Purpose of single trial is that the common witnesses are examined only once and read in both the cases. It is further contended that prosecuting agencies of both the cases are also different, therefore, single trial cannot be ordered. Two more accused are involved in both the cases besides the petitioners and their consent had not been obtained and in absence of

their consent joint trial cannot be ordered. Reliance has been placed on ***Lalu Prasad @ Lalul Prasad Yadav vs. State through CBI (AHD), Ranchi, Jharkhand*** reported in ***AIR 2003 SC 3838***.

10. I have considered the rival contentions of both the parties. In the facts of the present case, I do not find any force in the contentions of learned counsel for the petitioners. Admittedly, in trial of complaint case, filed by the DRI evidence is over as all the witnesses had been examined and case is at the stage of final arguments. No witness remains to be examined in this case. So far as case filed by the CBI is concerned, it is also at the fag end. All the common witnesses had been examined. At this stage it would not be practicable to order for single trial of both the cases. Having slept over the issue for long and although the trial is practically over, at this stage, petitioner cannot claim single trial as a matter of right.

11. Accordingly, I am of the view that learned Additional Sessions Judge has rightly declined the prayer for single trial more so, when both the cases are at different stages of trial. Judgments relied upon by the learned counsel for

the petitioners are on different facts and of no help to the petitioners.

12. Besides this, I am of the view that the petitioners cannot claim joint trial as a matter of right. The court may or may not order for joint trial under Section 220(3) Cr.P.C. The word used under this Section is “may” and not “shall”. It is the discretion of the court to club trial of the offences under different laws, in the given facts and circumstances of a case.

13. That apart, co-accused of the petitioners had not approached for joint trial. In Lalu Prasad’s case (supra) Supreme Court held that trial court had also to consider the stand of other co-accused who had not prayed for joint trial inasmuch as consent of other accused who had not applied for amalgamation had to be obtained.

14. In Mohinder Singh’s case (supra), Supreme Court held that Section 220 Cr.P.C. was an enabling provision which permits the court to try more than one offence in one trial. The court may or may not try the offence in one trial.

15. In the light of the above discussions, I do not find any justification to interfere with the order passed by the learned Additional Sessions Judge.

16. Dismissed.

A.K. PATHAK, J.

December 10, 2009

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