

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 575/2007**

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Reserved on: 10th May, 2012

Decided on: 5th July, 2012

BALWINDER SINGH @ BELLY THR. PEROKAR/FATHER
KASHMIR SINGH Petitioner

Through Mr. Maninder Singh, Mr. Sanjay
Chaubey, Mr. Ashok Mishra, Mr.
Sermon Rawat, Mr. Harsh Vardhan
Sharma, Advs.

versus

GOVT. OF N.C.T. OF DELHI Respondent

Through Mr. Mukesh Gupta, APP for State
with Inspector Manjeet Singh PS
EOW.

+ **CRL.REV.P. 603/2007**

JASPAL SINGH @ RAZA @ HONEY SAHOTA Petitioner

Through Mr. Maninder Singh, Mr. Sanjay
Chaubey, Mr. Ashok Mishra, Mr.
Sermon Rawat, Mr. Harsh Vardhan
Sharma, Advs.

versus

GOVT. OF N.C.T. OF DELHI Respondent

Through Mr. Mukesh Gupta, APP for State
with ASI Sansar Pal PS Spl. Cell.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. In these petitions the common prayer of the Petitioners is to set aside the orders dated 9th May, 2007 and 2nd July, 2007 passed by the Additional Sessions Judge directing framing of charge and framed the charge against

the Petitioners together and they are being tried together in three FIRs. During the course of hearing learned counsel for the Petitioner confined his relief only to the extent that the trial in case FIR No. 229/2005 registered at PS Alipur be separated from the trial in cases FIR Nos. 206/2005 registered at PS DBG Road and FIR No. 287/2005 registered at PS Patel Nagar.

2. The grievance of the Petitioners is that because the trial in three FIRs have been clubbed together, the trial in FIR No. 229/2005 at PS Alipur is also getting delayed in view of a number of accused persons and witnesses involved in other two FIRs, which is prejudicial to the Petitioners. Thus, the grievance of the Petitioner is limited to para 11 of the impugned order dated 9th May, 2007, which is reproduced hereunder:

“11. Since, the incident relating to these three cases are connected together so as to form part of same transaction and several accused are common in these cases and taking cue from the judgment relating to Bombay bomb blast case as reported as 2006 CrI.L.J. 564, “Adnan Bilal Mulla Vs. State of Maharashtra” and in view of Section 223(d) Cr.P.C. all these accused in these three cases are ordered to be tried jointly and hence further proceedings concerning these cases will be recorded in the case bearing S.C. No. 313/05, FIR No. 206/05, PS DBG Road, titled “State Vs. Balwinder Singh @ Belly & Ors.” and files of remaining two cases i.e. S.C. No. 115/06 and S.C. No. 119/06 are ordered to be consolidated with said case file bearing S.C. No. 313/05.”

3. Learned counsel for the Petitioner contends that the finding of the Learned Trial Court that the three cases are connected together so as to form a part of the same transaction and since several accused are common, thus the three case are required to be tried together in view of Section 223 (d) Cr.P.C. is wholly incorrect. The first two FIRs relate to the blasts which

took place at Liberty and Satyam Cinema halls on 22nd May, 2005 whereas FIR No. 229/2005 registered at PS Alipur relates to the arrest of Petitioner Jaspal Singh @ Raja @ Honey Sahota and Vikas Sehgal with another Babber Khalsa International (BKI) militant Jagtar Singh Hawara allegedly along with arms, ammunitions and explosives. It is contended that the arrest of the co-accused cannot form part of the same transaction with the offences of blasts which took place at Liberty and Satyam Cinema halls on 22nd May, 2005.

4. Learned APP for the State relying on *Adnan Bilal Mulla Vs. State of Maharashtra 2006 Crl.L.J. 564* states that the three FIRs relate to common transaction, have common accused persons and in view of the commonality attached, they are required to be tried together in terms of Section 223(d) Cr.P.C.

5. Heard learned counsel for the parties. Briefly the facts giving rise to filing of the present petitions are that on 22nd May, 2005 two bomb blasts took place at Liberty and Satyam cinema halls within a span of 20 minutes. Thus, two cases were registered being FIR No. 206/2005 under Sections 323/307 IPC & 3/4/5 Explosives Substance Act at PS DBG Road and FIR No. 287/2005 under Sections 307 IPC and 3/4/5 Explosives Substance Act at PS Patel Nagar. The investigation of both these cases was transferred to PS Special Cell, Lodhi Road on 23rd May, 2005. Since in the blast one person died and 73 persons were injured the relevant Sections were added in the case diaries. During the investigation of case FIR No. 287/2005 of PS Patel Nagar pertaining to Satyam Cinema blast the technical analysis of the data of the different telephone service providers was done and it was found that

three mobile phone numbers 9818777781 (Airtel) 9811027595 (Hutch) and 9350923057 (Reliance) were in continuous touch with each other on 25th May, 2005 before the bomb blasts, at the time of bomb blasts and after the bomb blasts. Their locations were also found in the areas where the bomb blasts took place. Further analysis of these mobile numbers was done and it was found that mobile No. 9818777781 was in contact with USA and Germany telephone numbers on 22nd May, 2005 before and after the blasts. On scrutiny it was found that this number was in contact with a Delhi landline telephone number. The subscriber of the landline number revealed that the user of mobile No. 9818777781 was his friend Jaspal Singh @ Raja @ Honey Sahota. He gave other numbers of Jaspal and further information. Further investigation qua Jaspal Singh was conducted and it was found that Jaspal Singh and Balwinder Singh, the two Petitioners before this Court travelled from Delhi to Bangkok on Flight No. IC 853 on 19th April, 2005. On 31st May, 2005 a raid was conducted at Village Hiala, where Petitioner Balvinder Singh @ Belly was found present. He was interrogated and he revealed that Petitioner Jaspal Singh @ Raja is a member of militant organization Babbar Khalsa International (BKI) and he became friendly with him during college time and was motivated to join the BKI. He further disclosed that the Petitioners collected consignment of arms and explosives from Jammu, had gone to Pakistan for military training on 22nd April, 2005 and came back on 31st May, 2005. During training, they were asked to be ready for some specific task to be assigned by BKI. After reaching Delhi, Petitioner Jaspal told Petitioner Balvinder that he had received directions from overseas bosses of BKI to stop screening of film “Jo Bole So Nihal” which is offensive to Sikhism. Thus, they planned explosion of bombs in

Delhi at the cinema halls where the film was being screened. Petitioner Balvinder Singh @ Belly made further disclosures. At the instance of Petitioner Balvinder Singh his passport, air-ticket, a pair of shoes in which he carried the explosive substance in the cinema hall and one mobile phone make Nokia was recovered. Thereafter at the instance of Balvinder @ Belly Tata Sierra Jeep DL 9C A 6856 of Jaspal Singh was got recovered from Village Kirana, PS Banga, Nawasahar, Punjab.

6. On 31st May, 2005 another accused Jagan Nath was arrested in Satyam cinema blast case who also disclosed about the involvement of Jaspal Singh @ Raja, Vikas @ Vicky @ Monu and Balvinder Singh in the conspiracies. From the search of Santro car found in possession of Jagan Nath, one mobile phone make Nokia, SIM of mobile number 9811027595, one counterfoil of ticket bearing No. 015/032403 of movie 'Jo Bole So Nihal' of Audi No.1, Satyam cinema complex dated 22nd May, 2005, registration certificate and other things were recovered. Thus, two blast incidents were found to be interconnected and committed by same accused persons.

7. On 1st June, 2005 accused persons Jagan Nath & Balvinder led the Police party to a rented room of Jaspal Singh, which was found locked. On opening of the said room, one 303 rifle along with its 3 magazines & 90 cartridges, 5 empty magazines of .30 pistol, 1 kg black coloured RDX, three detonators, one pair of shoes, three pair of socks, one police uniform, one air pistol etc., were recovered and seized.

8. On 8th June, 2005 the Crime Branch arrested Jaspal Singh @ Raja and Vikas Sehgal and another BKI militant Jagtar Singh Hawara with RDX, arms, ammunitions, mobiles etc. in FIR No. 229/2005 under Section

186/353/332/307/121A/122 IPC, 3/4/5 Explosive Substance Act & 25/27 Arms Act. It was found that Jagtar Singh Hawara had given shelter to Jaspal Singh @ Raja and Vikas Sehgal and thus the Petitioners were arrested in other FIRs. The Petitioner Jaspal Singh was arrested in another FIR also. On the pointing out of the Jaspal Singh and Vikas Sehgal, one VIP suitcase containing 1.25 kg, 10 detonators, photocopy of driving license of Honey Sahota, photocopy of R/C & insurance of vehicle No. DL 9CA 6856 etc., were recovered. Subsequently, co-accused Joginder Kumar and Bishan Lal were also apprehended and from their possession 2.5 kg of RDX and 10 detonators were recovered. The Tata Sierra car bearing No. DL 9CA 6856 was found to be registered in the name of Honey Sahota son of Harbhajan Sahota. On inspection of the vehicle traces of explosives from cavity and stereo box were found. Further analysis of phone call details showed the links between the accused persons. After completion of investigation, charge-sheet was filed.

9. During the course of argument, learned counsel for the Petitioners has not pressed his petitions qua his challenge to the order on charge but confines his prayer to the separation of trial in case FIR No. 229/2005 of PS Alipur from FIR No. 206/2005 PS DBG Road and FIR No. 287/2005 PS Patel Nagar. Thus, the issue to be considered is whether the accused in 229/2005 of PS Alipur can be tried with accused in FIR No. 206/2005 PS DBG Road and FIR No. 287/2005 PS Patel Nagar; and whether the third FIR i.e. 229/2005 is part of the same transaction subject matter of the first two FIRs i.e. FIR No. 206/2005 registered at PS DBG Road and FIR No. 287/2005 registered at PS Patel Nagar. The Hon'ble Supreme Court in *State*

of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao & Anr. AIR 1963 SC 1850 while considering what is common transaction under Section 223 (d) Cr.P.C. held:

27. According to Mr. Chari s. 235(1) cannot be construed as having an overriding effect on s. 239 because whereas it contemplates acts so connected together as to form the same transaction resulting in more offences than one, s. 239(d) contemplates offences committed in the course of the same transaction and nothing more. The question is whether for the purposes of s. 239(d) it is necessary to ascertain anything more than this that the different offences were committed in the course of the same transaction or whether it must further be ascertained whether the acts are intrinsically connected with one another. Under s. 235(1) what has to be ascertained is whether the offences arise out of acts so connected together as to form the same transaction, but the words "so connected together as to form" are not repeated after the words "same transaction" in s. 239. What has to be ascertained then is whether these words are also to be read in all the clauses of s. 239 which refer to the same transaction. Section 235(1), while providing for the joint trial for more than one offence, indicates that there must be connection between the acts and the transaction. According to this provision there must thus be a connection between a series of acts before they could be regarded as forming the same transaction. What is meant by "same transaction" is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any Court which has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be

possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction. The connection between a series of acts seems to us to be an essential ingredient for those acts to constitute the same transaction and, therefore, the mere absence of the words "so connected together as to from" in clause (a), (c) and (d) of s. 239 would make little difference. Now, a transaction may consist of an isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stands out independently, they would not form part of the same transaction but would constitute a different transaction or transactions. Therefore, even if the expression "same transaction" alone had been used in s. 235(1) it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression "same transaction" occurring in cls. (a), (c) and (d) of s. 239 as well as that occurring in s. 235(1) ought to be given the same meaning according to the normal rule of construction of statutes. Looking at the matter in that way, it is pointless to inquire further whether the provisions of s. 239 are subject to those of s. 235(1). The provisions of sub-s. (2) and (3) of s. 235 are enabling provisions and quite plainly can have no overriding effect. But it would be open to the court to resort to those provisions even in the case of a joint trial of several persons permissible under s. 239.

10. Section 219 Cr.P.C. and 223(a)&(d) Cr.P.C. read as under:

“219. Three offences of same kind within year may be charged together.

(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the

same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local laws:

Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

223. What persons may be charged jointly.

The following persons may be charged and tried together, namely:

- (a) Persons accused of the same offence committed in the course of the same transaction;
- (d) Persons accused of different offences committed in the course of the same transaction;”

11. Thus in determining a common transaction, the factors to be considered are whether there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of act. In the present case it would be noted that one of the Petitioners is an accused in all the three FIRs. The offences have been committed in quick succession and in the third FIR on secret information, Petitioner Jaspal Singh was arrested. The Petitioner Jaspal Singh along with co-accused was arrested with RDX detonators, arms and ammunitions. The continuity of action and unity of

purpose cannot be given a restricted meaning and offences committed by the accused at the time of arrest in the third FIR would certainly form part of the same transaction.

12. Learned counsel for the Petitioner has strenuously argued that the witnesses in the three FIRs are not common, and thus the same is causing prejudice to them. No doubt the witnesses are distinct, however the fact still remains that after the blasts on the basis of which the first two FIRs are registered, the accused were to be arrested and while the accused were being arrested the third FIR was registered. The delay in trial on account of the clubbing of the FIRs cannot be a ground to disassociate the trial. Hence, I find no merit in the contention of the learned counsel for the Petitioners.

13. Petitions are dismissed.

(MUKTA GUPTA)
JUDGE

JULY 5, 2012
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