

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P. No.12/2023

1. Md. Arkum Ali alias Akram Ali (Aged-51 years), S/O. Late Sanohar Ali alias Chanuhar Ali,
 2. Md. Manfar Ali (Aged-49 years), S/O. Late Sanohar Ali alias Chanuhar Ali,
 3. Mst. Khela Begam (Aged-45 years), W/O. Md. Arkum Ali alias Akram Ali,
 4. Mst. Shamiya Begam alias Samia Begum (Aged-30 years), W/O. Manoj Miya, D/O. Md. Arkum Ali alias Akram Ali,
- All are of Saraspur, Ward No.4, P.S.-Kadamtala, District-North Tripura.
..... Petitioner(s).

V E R S U S

The State of Tripura

.....Respondent(s).

For Petitioner(s)	: Mr. A. Acharjee, Advocate.
For Respondent(s)	: Mr. S. Debnath, Addl. P.P.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

28/07/2023

Heard Mr. A. Acharjee, learned counsel appearing for the petitioners and Mr. S. Debnath, learned Addl. Public Prosecutor appearing for the respondent-State.

2. The instant revision questions the legality, validity and propriety of the order dated 10.01.2023 passed by the learned Sessions Judge, North Tripura, Dharmanagar in Criminal Misc. case No.28 of 2022 whereby and whereunder the learned Court has rejected the application preferred by the petitioners under Section 409 of the Code of Criminal Procedure (Cr.P.C., for short) for withdrawal and recall of the case bearing No.PRC(WP) 08 of 2022 from the Court of learned Judicial Magistrate 1st Class, North Tripura,

Dharmanagar to the Court of learned Sessions Judge, North Tripura, Dharmanagar as counter case.

3. Let it be pointed out at the outset that the petitioners have not impleaded the persons accused in PRC(WP) No.08 of 2022 at the instance of the informants/petitioners herein. Learned Court of Sessions Judge after hearing the learned counsel for the petitioners and the learned counsel appearing for the State and after perusal of the original case records of PRC(WP) No.08 of 2022 and S.T. (Type-2) No.14 of 2021 held as under:

"But upon perusal of the case record of ST(Type-2) 14 of 2021 it is found that the said Sessions Trial has been initiated from Kadamtala PS case no. 2021 KDL 028 under Sections 448/354/326/307/34 of IPC and as per the written FIR of that police case the alleged incident took place on 23rd May, 2021 at about 11.30 am at Saraspur under Kadamtala Police Station whereas the case bearing No. PRC(WP) 08 of 2022 has been initiated from Kadamtala PS case no. 2021 KDL 029 under Sections 341/325/326/427/34 of IPC and as per the written FIR of that police case the alleged incident took place on 23rd May, 2021 at about 10.00 am at Saraspur under Kadamtala Police Station.

At the time of hearing Ld. Public Prosecutor opposed the application filed by the accused-petitioners and verbally submitted that the aforesaid cases were registered on the basis of two separate incidents and as such those cases cannot be treated as counter case of each other.

From the case laws referred by the Ld. Counsel of the petitioners itself show that the Hon'ble Supreme Court of India was pleased to observe that "where same incident led to registration of two First Information Reports-one FIR triable by the Sessions Court and another by the Magistrate Court, such cross cases shall be tried by the same court for the following reasons:

(a) it saves off the danger of an accused being convicted before his whole case is before the court,

(b) it deters conflicting judgments being delivered upon similar facts and

(c) in reality case and counter case are, to all intents and purposes, different or conflicting versions of one incident, resulting which the case transferred by the Sessions Court to Magistrate Court was re-transferred to the Sessions Court, for trial.”

From the aforesaid facts revealed from the case records of ST (Type-2) 14 of 2021 and PRC(WP) 08 of 2022 it is very much clear to this court that those cases can no way be treated as a counter case of each other when the time of occurrence in both the cases are totally different and the FIR of those cases were not initiated out of the same incident.

Hence, I find no merit in the application filed by the petitioners under Section 409 of Cr.P.C and the same is rejected.

Accordingly, this Criminal Misc. case is thus disposed of on contest.

Send back the case records of PRC(WP) 08 of 2022 and ST(Type-2) 14 of 2021 to the concerned Ld. Trial courts along with a copy of this order at once.

Make necessary entry in the TR."

4. It appears from the record that S.T.(Type-2) 14 of 2021 arose from Kadamtala P.S. case No.2021KDL028 under Sections 448/354/326/307/34 of the IPC in relation to an alleged incidence that took place at 11.30 a.m. on 23.05.2021 at Saraspur under Kadamtala P.S. lodged by the informant Smt. Manti Begam against Md. Manfar Ali, Md. Akram Ali, Mst. Khela Begam and Mst. Shamiya Begam alias Samia Begam with the following allegations:

"Accused persons are my neighbourer. Today on 23.05.2021 morning at about 11.30 hrs. on the issue of land dispute the FIR named accused persons Sl. No.1 & 2 (Md. Manfar Ali and Md. Akram Ali) assaulted grandmother-in-law of the complainant namely Samuta Bibi by sharp cutting dao. As a result, she sustained grievous injuries on her

person and she was shifted to Kadamtala CHC for treatment by the help of male persons of her house. Thereafter, on absence of male persons in the house of complainant the FIR named accused persons entered into the dwelling house of complainant and outraged the modesty of the complainant by pulling her saree and hand. Thereafter, the FIR named accused persons forcibly get out the complainant from her house by pushing her body and assaulted upon her by lathi, kick and fist blows in view to kill me. Thereafter, the family members of the complainant returned to her house on seeing them the accused persons left her house. As a result, the complainant received grievous injuries on her person and shifted to Kadamtala CHC for treatment by her family members.

My humble submission to give justice by proper investigation."

5. PRC(WP) No.08 of 2022 which has been sought to be transferred at the instance of the present petitioners arose from Kadamtala P.S. case No.2021KDL029 under Sections 341/325/326/427/34 of IPC which was lodged by one Mst. Alima Begam on 23.05.2021 at about 10 a.m. at Saraspur under Kadamtala Police Station. The content of the allegations lodged by Alima Begam is extracted hereunder:

"With respectfully prays that I, Complainant and mentioned accused persons are residing under above noted address. The above named accused persons has filed a civil suit against my husband and brother in law which is pending in Dharmanagar Court for a long time.

On 23.05.21 morning around 10.00 hrs the complainant of the case engaged labour for cutting bamboo for her works purpose. At that time FIR named accused persons Sl. No.7 Mst. Samarta Bibi not allow her labour to cut bamboo and assaulted the labour by lathi. After that husband of the complainant left his house while driving his Alto car at that time FIR named accused persons Sl. No. 1 to 6 wrongfully restrained her husband. Then elder brother of her husband Arkum Ali and his wife Khela Begam came at spot. After that FIR named accused persons Sl. No.1 to 6 assaulted upon Arkum Ali and his wife Khela Begam by dao, iron rod. As a result Arkum Ali and Khela Begam, complainant herself and her husband received serious injuries on their

persons. Then and there they shifted to Kadamtala CHC for treatment and Arkum Ali, Khela Begam till now under treatment.

My humble submission to give justice by proper investigation."

6. Police investigated both the cases and submitted a final form. A perusal of the final form/charge-sheet would show that the Investigating Agency did not find any explicit connection with the incidences alleged in the two separate FIRs. In Kadamtala P.S. case No.2021KDL028, the police charge-sheeted the FIR named accused persons namely (i) Md. Manfar Ali, S/O. Lt. Sanohar Ali alias Chanuhar Ali alias Sonhur Ali, (ii) Md. Arkum Ali alias Akram Ali alias Akram Uddin, S/O. Lt. Sanohar Ali alias Chanuhar Ali alias Sonhur Ali, (iii) Mst. Khela Begam, W/O. Md. Arkum Ali alias Akram Ali alias Akram Uddin, and (iv) Mst. Samia Begam, W/O. Manoj Miya, D/O. Md. Arkum Ali alias Akram Ali alias Akram Uddin of Saraspur, Ward No.4, P.S.-Kadamtala, North Tripura under Sections 448/ 354/325/307/34 of the IPC.

In Kadamtala P.S. case No.2021KDL029, the police submitted final form/charge-sheet against the FIR named accused persons namely (i) Habibur Rahaman, S/O. Lt. Samar Ali, (ii) Liakat Ali, S/O. Lt. Samar Ali, both of Saraspur Ward No.4, P.S. Kadamtala, North Tripura under Sections 341/325/326/427/34 of the IPC and prayed for discharging the remaining FIR named accused persons namely (i) Dilwar Hussien, S/O. Lt. Abdul Sattar, (ii) Rangi Bibi, D/O. Samar Ali, (iii) Reshma Begam, W/O. Habibur Rahaman, (iv) Manti Begam, W/O. Abdul Rahaman, and (v) Samarta Bibi, W/O. Lt. Samar Ali, all of Saraspur, Ward No.4, Kadamtala P.S., from the liability of the case.

7. The investigating agency did not find or refer to any connection between the two FIRs in either of the final forms. One is being tried before the

learned Sessions Judge being S.T.(Type-2) 14 of 2021 and the other is being tried before the Court of learned Judicial Magistrate being PRC(WP) No.08 of 2022. Petitioners who are informant in S.T. (Type-2) 14 of 2021 which relates to the incidence at 11.30 a.m. have sought transfer of PRC(WP) No.08 of 2022 which relates to the incidence at 10 a.m. lodged against the informant party by one Alima Begam.

8. Learned counsel for the petitioners has relied upon Sections 220 and 223 of the Cr.P.C. in support of the submission that since the accused persons in PRC(WP) No.08 of 2022 are accused for the same offence committed in course of the same transaction, the said case ought to be tried along with S.T.(Type-2) 14 of 2021 which was at the behest of the informant party belonging to the present petitioners, i.e. Manti Begam. He has also relied upon the decision of the Apex Court in the case of *Sudhir and others vrs. State of M.P.* reported in (2001) 2 SCC 688, relevant paragraphs-10 to 12 of which are quoted hereunder:

"10. We are unable to understand why the legislature is still parrying to incorporate such a salubrious practice as a statutory requirement in the Code. The practical reasons for adopting a procedure that such cross cases shall be tried by the same court, can be summarised thus: (1) It staves off the danger of an accused being convicted before his whole case is before the court. (2) It deters conflicting judgments being delivered upon similar facts; and (3) In reality the case and the counter case are, to all intents and purposes, different or conflicting versions of one incident.

11. In fact, many High Courts have reiterated the need to follow the said practice as a necessary legal requirement for preventing conflicting decisions regarding one incident. This court has given its approval to the said practice in *Nathi Lal & ors. vs. State of U.P. &*

anr. [1990 (Supp) SCC 145]. The procedure to be followed in such a situation has been succinctly delineated in the said decision and it can be extracted here: (SCC pp. 145-46, para 2)

"2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other."

12. How to implement the said scheme in a situation where one of the two cases (relating to the same incident) is charge-sheeted or complained of, involves offences or offence exclusively triable by a Court of Sessions, but none of the offences involved in the other case is exclusively triable by the Sessions Court. The magistrate before whom the former case reaches has no escape from committing the case to the Sessions Court as provided in Section 209 of the Code. Once the said case is committed to the Sessions Court, thereafter it is governed by the provisions subsumed in Chapter XVIII of the Code. Though, the next case cannot be committed in accordance with Section 209 of the Code, the magistrate has, nevertheless, power to commit the case to the court of Sessions, albeit none of the offences involved therein is exclusively triable by the Sessions Court. Section 323 is incorporated in the Code to meet similar cases also. That section reads thus:

"323. If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of chapter XVIII shall apply to the commitment so made."

9. Under the scheme of the Criminal Procedure Code and the Chapter relating to joinder of charges, the legislature has prescribed the provisions under which trial of more than one offence which are so connected together as to form the same transaction and that when more offences than one are committed by the same person can be charged and tried in one trial for every such offence. Sub-clause (a) of Section 223 of the Cr.P.C. prescribes that persons accused of the same offence committed in the course of the same transaction may be charged jointly. The Apex Court in the case of *Sudhir* (supra) relied upon by the petitioners has at paragraph-12 clarified as to how the scheme in such a situation where one of the two cases (relating to the same incident) charge-sheeted or complained of and involving offences or offence exclusively triable by a Court of Session and the other nature of offences not triable by the Sessions Court are to be dealt with. The emphasis is on the two cases relating to the same incident. A close scrutiny of the allegations made in both the FIRs and the final form submitted by the police against the persons accused do not show that the two cases relate to the same incidence. Apart from the difference in timing of the two incidences complained of by the two sets of informant party, the second FIR which has been lodged at the instance of the petitioner/ informant party does not even make a reference to the incidence complained of in the other FIR. Even during course of investigation,

the police has not found any material or statement on the part of the informant party, i.e. the petitioners herein to show that the incidence complained of at the instance of Alima Begam in FIR No.2021KDL029 which allegedly occurred at 10 a.m. had any connection with the incidence with which the present petitioners are aggrieved of and the case is being tried by learned Sessions Court being S.T.(Type-2) 14 of 2021. Apparently, both the cases relate to different incidence and the accused persons in both the cases are also not wholly identical. Therefore, it cannot be said that the offences occurred in a series of acts or are connected together so as to form the same transaction or committed by the same person as has been prescribed under Section 220 of the Cr.P.C. The learned Court of Sessions Judge examined records of both the cases and, therefore, rightly came to a conclusion that those cases can no way be treated as a counter case of each other for the purposes of clubbing them.

The ratio rendered in the case of *Sudhir* (supra) when applied to the case at hand, in fact, militates against the stand taken by the petitioners for transfer of the case to the same Court.

10. This Court has given anxious consideration to the submission of learned counsel for the petitioners. However, after due consideration of the submission of learned counsel for the petitioners and learned Addl. Public Prosecutor and on scrutiny of the relevant records relating to both the cases, this Court does not find any irregularity, illegality or impropriety on the part of the learned Sessions Court in rejecting the application preferred under Section 409 of the Cr.P.C. by the petitioners herein.

11. The instant revision petition being devoid of merit is, therefore, dismissed.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

PULAK BANIK

Date: 2023.08.03
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