

Serial No. 18
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Rev.P. No. 5 of 2023

Date of Decision: 16.06.2023

Shri. Nikesh Debnath & Anr. Vs. State of Meghalaya & 10 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Ms. C.B. Sawian, Adv.
For the Respondent(s)	:	Mr. B. Bhattacharjee, AAG. with Mr. A.H. Kharwanlang, Addl.Sr.GA. for R 1 Mr. K.K. Gupta, Adv. for R 2 & 4. Mr. A. Sharma, Adv. for R 3. Mr. R. Kharkrang, Adv. for R 5. Ms. D.K. Mutyent, Adv. for R 7. Ms. U. Dhar, Adv. for R 6, 8, 9, 10 & 11.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT (ORAL)

1. The learned Special Judge (POCSO), East Khasi Hills, Shillong is conducting the trial in Special POCSO Case No. 29 of 2017 which is a case under Section 5 of the Immoral Traffic Prevention Act, 1956 and Section 17 of the POCSO Act, 2012. The learned Special Judge is also trying as many as five other cases all registered under the POCSO Act, wherein the main

accused in all the cases is Smti. Mamuni Parveen also involving the survivor who is also connected to all the six cases mentioned above.

2. Apart from the aforementioned main accused, there are also other co-accused persons in all the six cases who were implicated in one or the other cases, but not in all the cases.

3. It is also admitted that in all the six cases, separate trials are proceeding and now at different stages of the trial, some at the evidence stage. The evidence of the survivor has been recorded in three of the cases.

4. The learned Special Judge then heard the counsels of all the six cases on the issue of whether all the abovementioned cases ought to be tried together and upon hearing the counsels, the learned Special Judge vide order dated 08.04.2022, has directed that all the cases stated above shall be tried together.

5. The accused Shri. Nikesh Debnath and Shri. Sonjit Das respectively has approached this Court as petitioners, assailing the said impugned order dated 08.04.2022 on the ground that the same is prima facie illegal and not permissible in law as well as it being an abused of the process of court.

6. Ms. C.B. Sawian, learned counsel for the petitioner has led this Court to the provisions of Section 219 and 220 of the Code of Criminal Procedure and has submitted that the provisions provides that a person who

is accused of more than one offence of the same kind committed within the space of 12 months from the first to the last of such offences, may be tried at one trial for all such offences not exceeding three. Further, if in one series of acts so connected together to form the same transaction more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence.

7. The learned counsel has submitted that what the aforementioned provisions provides is that for clubbing together of such offences, the same could only be done at the time of framing of charges. In this case, the learned Special Judge has taken up the matter *suo moto* and has passed the impugned order in the midst of the trial when the evidence is already being recorded in some cases and yet to be recorded in some other cases related thereto. This is not permissible in law and as such, the impugned order is passed without jurisdiction.

8. The learned counsel in support of her contention, has referred to the case of *Nasib Singh v. State of Punjab & Anr: (2022) 2 SCC 89, para 16.2 (b)* and has submitted that the Hon'ble Supreme Court has held that “...(b) whether a joint trial should be held must be decided at the beginning of the trials...”.

9. Reliance was also placed in the case of *Manoj Jain v. Naveen Kumar Jain*, wherein the Hon'ble High Court of Madhya Pradesh in MCRC

19603/2016 vide order dated 03.08.2017, has rejected an application filed under Section 219 Cr.P.C on the ground that no such application was filed at the initial stage before framing of charge, but the same was filed only at the stage of complainant's evidence.

10. Another authority cited is the case of ***Pramod Bhaichand Raisonni & Ors v. State of Maharashtra & Ors***, wherein vide order dated 02.05.2019 in Writ Petition No. 2784 of 2018 at para 14, the Hon'ble Bombay High Court has held as follows: -

“14. The Hon'ble Apex Court also dealt and interpreted the power conferred under Section 220 and 223 for conduct of a joint trial, recently, in case of Fodder scam in the case of State of Jharkhand through SP, CBI Vs. Lalu Prasad @ Lalu Prasad Yadav, MANU/SC/0586/2017: 2017 (8) SCC page 1 and it reiterated the principles by making the following observations:

29. It is apparent from section 212 read with section 219 that there have to be separate trials for different years covering the period of more than one year. Same kind of offence is a different thing than the "same offence" for the purpose of sections 219, 220 or 300. The scheme of law is clear that separate charges for distinct offences must be framed separately and they cannot be clubbed together for more than one year.

30. This Court in Natwar Lal Sakar Lal Mody v. The State of Bombay 26 (1984) DLT 64 considered the question of joint trial of persons and offences for conspiracy as per provisions contained in section 239(d) of the old Cr.PC. This Court has laid down that separate trial is the rule and joint trial is an exception. Joint trial would be an irregular exercise of discretion if a court allows innumerable offences spread over a long period of time and committed by a large number of persons to be under the protecting wings of an all-embracing conspiracy, and if each or some of the offences can be separately tried, it would be appropriate and lawful. Joint trial prolongs the trial and causes waste of judicial time and

complicates the matter which might otherwise be simple, and it would confuse the accused and cause prejudice to them. Court should not be overzealous to provide a cover of conspiracy for a number of offences unless it is satisfied that the persons who committed separate offences were parties to the conspiracy and committed the separate acts pursuant to conspiracy. This Court has laid down thus:

"11. This discussion leads us to the following legal position. Separate trial is the rule and joint trial is an exception. While Section 239 of the Code of Criminal Procedure allows a joint trial of person and offences within defined limits, it is within the discretion of the Court to permit such a joint trial or not, having regard to the circumstances of each case. It would certainly be an irregular exercise of discretion if a Court allows an innumerable number of offences spread over a long period of time and committed by a large number of persons under the protecting wing of all-embracing conspiracy, if each or some of the offences can legitimately and properly form the subject-matter of a separate trial; such a joint trial would undoubtedly prolong the trial and would be a cause of unnecessary waste of judicial time. It would complicate matters which might otherwise be simple; it would confuse accused and cause prejudice to them, for more often than not accused who have taken part in one of the minor offences might have not only to undergo the long strain of protracted trial, but there might also be the likelihood of the impact of the evidence adduced in respect of other accused on the evidence adduced against him working to his detriment. Nor can it be said that such an omnibus charge or charges would always be in favour of the prosecution for the confusion introduced in the charges and consequently in the evidence may ultimately benefit some of the accused, as a clear case against one or other of the accused may be complicated or confused by the attempt to put it in a proper place in a larger setting. A Court should not be overzealous to provide a cover of conspiracy for a number of offences unless it is clearly satisfied on the material placed before it that there is evidence to prove prima facie that the persons who committed separate offences were parties to the conspiracy and they committed the separate acts

attributed to them pursuant to the object of the said conspiracy."

(Emphasis Supplied)

11. Per contra, Mr. B. Bhattacharjee, learned AAG in support of the impugned order has submitted that the said order was passed looking into the facts and circumstances of the case which involves the survivor who may be compelled to relive her trauma if made to appear and testify before the court in each and every one of the six cases if such cases are tried separately.

12. The learned AAG has also referred to excerpts from the impugned order to say that the consideration before the Trial Court is to connect the initial complaint which refers to the act of procuring the survivor by the accused person therein which act has attracted the relevant provision of the Immoral Traffic Prevention Act as well as provisions of the POCSO Act. Though the offence took place only once, but the offence of procuring the survivor for the purpose of prostitution remains the same in all the six cases wherein, the main accused on multiple occasions have caused or induced the survivor to carry on prostitution aided and abetted by the co-accused and also the same culminating in the commission of penetrative sexual assault by multiple co-accused, albeit at different points of time and at different places. In this backdrop, the petitioners herein have not been able to prove that by passing the impugned order, prejudice has been caused to them.

13. In this context, the learned AAG has referred to the case of Nasib

Singh (supra) wherein at para 51, 51.1, 51.2 and 51.3 the Hon'ble Supreme Court has formulated some principles in this regard. The same are reproduced below as: -

“51. From the decisions of this Court on joint trial and separate trials, the following principles can be formulated:

51.1. Section 218 provides that separate trials shall be conducted for distinct offences alleged to be committed by a person. Sections 219 - 221 provide exceptions to this general rule. If a person falls under these exceptions, then a joint trial for the offences which a person is charged with may be conducted. Similarly, under Section 223, a joint trial may be held for persons charged with different offences if any of the clauses in the provision are separately or on a combination satisfied;

51.2. While applying the principles enunciated in Sections 218 - 223 on conducting joint and separate trials, the trial court should apply a two-pronged test, namely, (i) whether conducting a joint/separate trial will prejudice the defence of the accused; and/or (ii) whether conducting a joint/separate trial would cause judicial delay.

51.3. The possibility of conducting a joint trial will have to be determined at the beginning of the trial and not after the trial based on the result of the trial. The appellate court may determine the validity of the argument that there ought to have been a separate/joint trial only based on whether the trial had prejudiced the right of accused or the prosecutrix;”

14. There are also other private respondents in this matter. The learned counsel for the respondents No. 2 & 4 has endorsed the submission of the learned AAG. The learned counsels for the respondents No. 3, 5-11 have all endorsed the submission of the learned counsel for the petitioners.

15. This Court has given due consideration to the contention and submission of the learned counsels for the rival parties and have also

perused the petition again as well as the impugned order in question.

16. Facts as stated by the parties is that a total number of six cases are now pending before the learned Special Judge (POCSO), Shillong. According to the learned Special Judge, the offence involved flows from the primary offence under the provisions of the Immoral Traffic Prevention Act, 1956 and also of offences under the POCSO Act alleged to have been committed by the main accused, Smti. Mamuni Parveen. All other related cases are linked and connected to the offence alleged to have been committed by the said Smti. Mamuni Parveen. Separate trials of all the six cases are proceeding before the same court. Therefore, to simplify the process, keeping in mind the impact the proceedings would have on the survivor, the Trial Court at the relevant point of time, had thought it fit to order for a joint trial of all the said six cases.

17. It is the contention of the petitioners that the learned Trial Court had committed an error of jurisdiction by passing the impugned order, inasmuch as, an order for a joint trial, if justified, can only be passed at the beginning of the trial. The learned Trial Court has passed the impugned order, when admittedly, in three cases, recording of evidence has already commenced while in another three, evidences is yet to be recorded. This will prejudice the petitioners and as such, the impugned order dated 08.04.2022 cannot be sustained being passed without any legal basis.

18. The focus of the submission and contention of the State respondent is based mainly on the fact that there is no irregularity or illegality in the passing of the said impugned order, the same being passed under the relevant provision of law, particularly Section 223 (d) Cr.P.C which provides that persons accused of different offences committed in the course of the same transaction may be charged and tried together. Emphasis was also laid on the fact that the survivor should not be made to suffer or to undergo multiple traumatic experiences by being made to appear and to depose before the court in all the six cases separately. This, according to the Trial Court will be to defeat the purpose of what is mandated under Section 35 of the POCSO Act, which provides that the evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence.

19. As to the power of the Trial Court to direct a joint trial, the provision of Section 223 Cr.P.C would enable it to do so. However, in the case of Nasib Singh (supra) at para 51.2 (quoted above), it is clear that conducting a joint trial, should not in any case cause prejudice to the accused, though the issue of judicial delay has also to be considered.

20. In the case of *Balbir v. State of Haryana & Anr: AIR 2000 Supreme Court 11*, the Hon'ble Supreme Court expounding the principle of law found in Section 223 (a) and (d) has at paragraphs 11 and 12 observed as

follows:

“11. We would, therefore, extract clauses (a) and (d) in Section 223 as under:

"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."

In both the aforesaid clauses the primary condition is that persons should have been accused either of the same offence or of different offences "committed in the course of the same transaction". The expression advisedly used is "in the course of the same transaction". That expression is not akin to saying "in respect of the same subject matter-" It is pertinent to point out that the same expression is employed in Section 220 (1) of the Code also (corresponding to Section 235(1) of the old Code). The meaning of the expression "in the course of the same transaction" used in Section 223 is not materially different from that expression used in Section 223(1). It is so understood by this Court in *State of Andhra Pradesh v. Cheemalapati Ganeswara Rao & Anr.*, [1964] 3 SCR, 297. The following observation in the said judgment is contextually quotable: (Para 27):

"The series of acts which constitute a transaction must of necessity be connected with the another and if some of them stand 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."

12. For several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as

principal and subsidiary, so as to result in one continuous action. Thus, where there is commonality of purpose or design, where there is continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction."

21. Again, in the context of the subject matter, the Hon'ble Supreme Court in the case of Nasib Singh (supra) at para 43 has observed as follows:

"43. The Bench held that holding a separate trial is the rule and a joint trial is the exception. However, in case the accused persons commit different offences forming a part of the same transaction, a joint trial would be the rule unless it is proved that joint trial would cause difficulty: (Cheemalapati Ganeswara Rao case, AIR pp. 1861-862, para 30)

"30. No doubt, as has been rightly pointed out in this case, separate trial is the normal rule and joint trial is an exception. But while this principle is easy to appreciate and follow where one person alone is the accused and the interaction or intervention of the acts of more persons than one does not come in, it would where the same act is committed by several persons, be not only inconvenient but injudicious to try all the several persons separately. This would lead to unnecessary multiplicity of trials involving avoidable inconvenience to the witnesses and avoidable expenditure of public time and money. No corresponding advantage can be gained by the accused persons by following the procedure of separate trials. Where, however, several offences are alleged to have been committed by several accused persons it may be more reasonable to follow the normal rule of separate trials. *But here, again, if those offences are alleged not to be wholly unconnected but as forming part of the same transaction the only consideration that will justify separate trials would be the embarrassment or difficulty caused to the accused persons in defending themselves.*"

22. In the cases cited by the learned counsel for the petitioners, the case of Manoj Jain (supra) speaks of an application under Section 219 which

is not the case herein. The reference to the case of Pramod Bhaichand Raisonni (supra) at para 14 would discuss the effect of a joint trial, vis-à-vis, a protracted trial and the waste of judicial time as a result thereof which proposition may not be applicable to the case of the parties herein.

23. In the final analysis, on the basis of the observations made above and the authoritative pronouncement of the Hon'ble Supreme Court in cases relevant to the issue raised before this Court, this Court is convinced that no error of jurisdiction has occurred in the passing of the impugned order. The same is upheld.

24. Petition disposed of. No costs.



Judge

Meghalaya
16.06.2023
"D. Nary, PS"