

**Court No. - 33****Case :- APPLICATION U/S 482 No. - 9136 of 2023****Applicant :- Manoj****Opposite Party :- State of U.P. and Another****Counsel for Applicant :- Pandey Balkrishna, Sunil Kumar Mishra****Counsel for Opposite Party :- G.A., Sunil Kumar Singh****Hon'ble J.J. Munir,J.**

1. This is an application under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') praying that the order dated 09.02.2023 passed by the learned Additional Sessions Judge, Court No.12, Bulandshahr in S.T. No. 219 of 2017, State vs. Manoj & others (arising out of Case Crime No.58 of 2017), under Sections 342, 323, 325, 308 I.P.C., Police Station Khurja Dehat, District Bulandshahr be quashed; and proceedings of Complaint Case No.523 of 2019, Kripa Devi vs. Ravikant and others, under Sections 323, 354, 504, 506 I.P.C., Police Station Khurja Dehat, District Bulandshahr, pending before the Magistrate be called from that Court and tried along with the sessions trial aforesaid as a cross-case by the learned Additional Sessions Judge.

2. The offence, according to the First Information Report (for short, 'FIR'), giving rise to the sessions trial and the one giving rise to the cross-version lodged at the instance of the accused in the sessions trial, both relate to an incident that happened on 16.02.2017. The FIR, leading to the sessions trial, does not mention the time of occurrence, whereas the one that has led to the complaint case pending before the Magistrate, indicates the time to be 18:00 hours (6:00 p.m.). While the FIR giving rise to the sessions trial was promptly lodged on 16.02.2017, to wit, the date of occurrence, the cross-version came to be registered

after a refusal by the Police to lodge it, under orders of the learned Magistrate passed under Section 156(3) of the Code. It was registered on 01.05.2017.

3. It would be apposite to refer to the prosecution version, as carried in the FIR, relating to Crime No.58 of 2017, that has given rise to the sessions trial. The FIR here was lodged by one Ratibhan son of Pyare Lal, a resident of Village Bagarai Kalan, District Bulandshahr. According to the informant here, the informant's son Ravikant Singh was abducted by the accused Manoj son of Dalchand, Mahesh, Babloo, sons of Dalchand, Trilok Chand son of Mahveer, Mahaveer son of Roopa, Deepak son of the late Raju and Dalchand son of the late Babu Lal, all natives of the village. These men abducted the informant's son Ravikant from his home and forcibly took him over to their house, where the accused battered the informant's son mercilessly, after stuffing his mouth with cloth. They carried out the assault employing iron rods, which were wielded by Mahaveer and Mahesh, whereas Babloo and Trilok wielded sticks (*danda*). These they employed to deliver grievous injuries to the victim's head. The accused, Deepak and Dalchand also had iron rods, which they used to deliver blows to the victim's limbs causing fracture to his hands and lower limbs. It is also alleged that Manoj, amongst the accused, opened fire with an intention to kill the victim employing a country-made pistol, but the informant's son was saved by a hairbreadth. It is on the basis of this version that Crime No.58 of 2017 was registered under Sections 147, 148, 149, 342, 308, 323, 325 I.P.C. at Police Station Khurja Dehat, District Bulandshahr.

4. According to the FIR lodged by Smt. Kripa Devi wife of Manoj, that carries the cross-version, the accused were five in number. It includes Ravikant son of Ratibhan, Sanjeev son of

Ratibhan, Vijayveer son of Kishan, Ratibhan son of Pyare Lal and Kishan son of Pyare Lal. According to this report, that has been lodged under orders of the A.C.J.M., Khurja, District Bulandshahr, on 16.02.2017 at about 6 o'clock in the evening, the first informant was feeding her buffaloes in the *Gher* behind her house, when Ravikant and Sanjeev sons of Ratibhan, Vijayveer, Ratibhan and Kishan forced their entry into her home and molested her. They tore up her clothes with an intent to outrage her modesty. The informant raised alarm, whereupon the informant's husband Manoj, his younger brothers Mahesh and Babloo, came over to the informant's rescue. Upon an attempt to rescue the informant, the accused here, employing the sticks and iron rods that they were carrying, assaulted the informant. The victim and her family raised alarm, which brought natives of the village, Anil, Jallu and Ajay, besides others to the spot.

The men, who arrived there, rescued the first informant and her family from the clutches of the accused here, who left the place abusing the first informant and saying that their brother serves in the Police, on account of which the informant cannot bring them any harm. The assailants also threatened the victim with death. The informant goes on to say that with the assistance of her family, she caught Ravikant red handed on the spot. The Police arrived at that time. The informant handed over Ravikant to the Police. Since, the informant's husband and brothers-in-law had sustained considerable injury, the informant approached the local police station to lodge an FIR. The local police, however, said that the informant should better get a medical examination done for a first. She went to the Jatia Government Hospital, Khurja, where a medico-legal examination was carried out. Still, the Police did not lodge the

informant's FIR. Instead, in connivance with Ravikant, he was let off with no proceedings being taken against him. The informant sent a written information to the Senior Superintendent of Police by registered post on 17.04.2017, but no action was taken. It was in these circumstances that she had to move the learned Magistrate, who ordered registration of a case.

5. The case of the informant in the cross-version, that is to say, Smt. Kripa Devi, was registered as Crime No.176 of 2017 under the provisions already mentioned and investigated by the Police. The informant, Kripa Devi too had sustained injuries and her statement was recorded under Section 164 of the Code, where she supported the prosecution. The Investigating Officer, nevertheless, submitted a final report. A protest petition was moved against the final report, which was rejected by the Magistrate and the final report accepted *vide* order dated 20.11.2018.

6. Aggrieved, Kripa Devi carried Criminal Revision No.436 of 2018 to the learned Sessions Judge, which came up before the learned Additional Sessions Judge, Khurja at Bulandshahr. He set aside the order dated 20.11.2018 *vide* his judgment and order dated 06.04.2019. The matter was sent back to the Magistrate, but with what directions, is not very patent. The Magistrate, bearing in mind the gravity of the offence, under orders of the Revisional Court, directed the case to be registered as a complaint case *vide* order dated 06.06.2019 and proceeded as such.

7. The Additional Chief Judicial Magistrate *vide* her order dated 20.10.2021, upon considering the statements under Sections 200 and 202 of the Code, proceeded to summon the

informant of the present crime, Ratibhan, his son Ravikant, Sanjeev, Vijayveer and Kishan to stand their trial for offences punishable under Sections 323, 354, 504, 506 I.P.C.

8. Now, this case is pending before the Magistrate. It is no doubt a complaint case, and, may be, as the learned Additional Sessions Judge says in the impugned order, is at a very incipient stage. The applicant, who is one of the accused in the sessions trial and the informant's husband in the complaint case carrying the cross-version, moved an application dated 04.02.2023 before the Trial Judge praying that the record of proceedings of the pending Complaint Case No.523 of 2019, be summoned from the Magistrate's Court and tried along with the sessions trial. The prayer in the application falls short of saying that, but given the legal acumen, seen now-a-days in *Mofussil* Courts, the purport of the application is clear. It is, particularly, so as the following averment in the application would demonstrate:

"इस प्रकार ए०सी०जे०एम०खुर्जा में लम्बित परिवाद व उक्त सत्र वाद की घटना एक ही दिनांक व समय दिनांक - 16-02-2017 समय शाम 6.00 बजे की है। इसके अलावा इस सत्र वाद के वादी व गवाह परिवाद सं० - 523 / 2019 में अभियुक्त है। इस प्रकार माननीय न्यायालय में लम्बित उक्त सत्र वाद व प्राथनापत्र में वर्णित परिवाद सं०-523 / 2019 अं० धारा - 354, 323, 504, 506, आई० पी० सी० थाना खुर्जा देहात क्रोस केस है। दोनो वादों का निस्तारण एक ही साथ आवश्यक है।"

9. The learned Sessions Judge has understood the application to be one made for trial of both cases together by the learned Sessions Judge, as cross-versions. There is, therefore, no ambiguity about the purport of the application, bearing Paper No.71-B, notwithstanding the casual words in which the prayer has been made. The learned Sessions Judge has rejected the applicant and directed the trial to proceed.

**10.** Parties have exchanged affidavits and the matter was admitted to hearing on 16.05.2023. It was subsequently heard and judgment reserved, when an interim order was granted staying delivery of judgment in the sessions trial till pronouncement of judgment in this case.

**11.** Heard Mr. Pandey Balkrishna, learned Counsel for the applicant, Mr. Sunil Kumar Singh, learned Counsel on behalf of opposite party No.2 and Mr. D.K. Srivastava, learned A.G.A. on behalf of the State.

**12.** It is submitted by the learned Counsel for the applicant that it is a salutary principle of law governing procedure in criminal trials that cross-version must always be tried together. He submits that keeping out one cross-version gives an incomplete picture to the Court, and, in any case, one of the versions if tried in isolation, almost results in rejection of the other, without a trial.

**13.** Mr. Sunil Kumar Singh, learned Counsel for the complainant and Mr. D.K. Srivastava, learned A.G.A., on the other hand, say that bringing in the so called cross-version, which is pending as a complaint case before the Magistrate, is no more than a dilatory tactic by the accused in a case where the sessions trial has reached a stage where judgment has to be pronounced.

**14.** Upon hearing learned Counsel for parties, this Court finds that what the learned Counsel for the complainant and the learned A.G.A. say, is in accord with what the learned Trial Judge held, and what has to be seen is, if the order passed by the Trial Court, given the nature of the two versions, is in accord with the law. The learned Judge has said in his remarks that the sessions trial is at the stage of address of arguments and the

complaint case, which the applicant says, ought to be called and tried, is pending before the A.C.J.M., Khurja, Bulandshahr. In that case, summons have been issued against the accused and the entire testimony is yet to be recorded. It is also remarked by the learned Sessions Judge that the accused, in their statements under Section 313 of the Code, have not mentioned the cross-case nor do they say that the present sessions trial arises out of the same incident. It is also noted by the Trial Judge that between the two sides in the past also, according to the accused's statement under Section 313 of the Code, offences have been committed involving the family, where cases are pending. The Court has concluded that the application made by the applicant in this case is one to delay trial and runs counter to the directions of the Supreme Court and this Court to conclude criminal trials at the earliest as an imperative. The first to be determined is the fact if indeed the complaint case at the instance of the applicant or so to speak his wife, is a cross-version of the occurrence. The Trial Judge has contented himself, by holding it not to be so, because the accused in their statement under Section 313 of the Code have not said it to be a cross-case pending between parties. We do not think that, that is in any way decisive of the matter.

**15.** The substance of a cross-version or a cross-case comes from the fact if in the same occurrence, the aggressor, who is the accused, says that in fact he is not to blame, but the other side, who are the complainant and dubbed him as the aggressor, are themselves the aggressors, who have committed an offence, for which they ought to be punished. The fact, therefore, if a case indeed is a cross-version, depends mostly upon the fact if the occurrence is the same, about which two sides have different versions. The mere fact that one side

being tried as the accused do not say in their statement under Section 313 of the Code that there is a cross-version also, is not at all relevant. The learned Trial Judge has spoken about the stage of the trial as fairly advanced before him and the complaint case being at an incipient stage, as a consideration against trying the cross-version together. That again is an irrelevant consideration. The question of delay while certainly of concern for every Judge, cannot be remedied by haste, resulting in miscarriage of justice. If two cross-versions that are indeed so and arise from the same occurrence are tried at different points of time, one earlier and the other later, one before one Judge and the other before another Judge, would certainly result in the determination of truth being lost to preclusion by the first determination and a truncated trial being held, causing miscarriage of justice. The complete and wholesome version would never be tried. This is not the cost at which the trial of a case is to be expedited. This is not to say that cross-versions being in most cases mutually exclusive in the sense that if one is true, the other false, the trial of cross-versions is to be consolidated and common evidence recorded. That is not the law about it. In cross-versions arising out of the same occurrence, trials are to be separately held, one after the other, but before the same Judge, who may, therefore, have a complete picture of it before him, when evidence concludes in both trials. The further salutary purpose to be achieved by this course of action is to eschew conflicting judgments relating to the same occurrence.

**16.** What we observe in this case from the records is that the cross-version is not merely one that has been propounded as some kind of a counterblast or a *mala fide* enterprise. Rather, the learned Trial Judge has himself noticed that there is a

history of offences involving families of the applicant and the complainant in this case. The version here also narrates that there are injuries, regarding which the Police told the applicant and his party to get themselves medically examined first before an FIR is lodged. They did get themselves medically examined according to the applicant's version, but an FIR was still not lodged. The applicant and his side approached the Senior S.P. by intimating him of the information through registered post, but to no avail. The applicant's wife acting as the informant, then moved the learned Magistrate under Section 156(3) of the Code and an FIR came to be registered by the Police. The Police put in a final report, which was protested. The protest was rejected and the FR accepted. The applicant's wife then preferred a revision to the Sessions Judge, that was allowed and the matter remanded. In the next lap, the learned Magistrate chose to take cognizance of the matter as a complaint and after an inquiry under Sections 200 and 202 of the Code, summoned the opposite party-complainant and the other accused on his side to stand their trial.

**17.** In the background of these facts, what is further noticeable is that the FIR lodged at the instance of the applicant and that on behalf of the complainant-opposite party, allege the incident to have happened on the same date i.e. 16.02.2017. Rather, quaintly the FIR lodged at the instance of the complainant-opposite party, does not mention any time of the incident. To the contrary, the FIR lodged at the instance of the applicant, under orders of the Magistrate, mentions the time of occurrence to be 6 o'clock in the evening hours. According to the FIR that the applicant's wife had lodged, which has now culminated in the complaint case, the aggressors were the complainants of the case giving rise to the sessions trial, where

the victim Ravikant and the informant himself were amongst the party, who entered the applicant's home and molested the informant. The FIR at the instance of the applicant's wife clearly says that Ravikant was apprehended when others had arrived and the informant's husband and her two brothers-in-law were there, the co-accused in this case. All these facts coalesce to show that the two incidents are indeed cross-versions.

**18.** All that has been said here may not be taken to mean in the slightest an expression of opinion on the merits of the parties' case. That is not the office of these proceedings under Section 482 of the Code nor the intention of the Court to judge the truth or otherwise of the two versions. All that we wish to say is that the facts that we have noticed show both the cases to be indeed cross-versions, arising out of the same occurrence. The concern of the learned Sessions Judge about the delay is also not well-founded, the way the proceedings in this case have turned. The fact that the Police had not registered the informant's case and when it was indeed registered under orders of the Magistrate, they put in a final report, which was accepted by the learned Magistrate, compelling the applicant to approach the Revisional Court, makes the delay not relevant. These are all matters that do not support inherently a dilatory conduct on the applicant's part or the other co-accused on his side. The applicant cannot be blamed for delays on the part of the Police, or the mistakes that they have committed, or the errors by the learned Magistrate that were rectified in revision. The blame for the time consumed in all these proceedings cannot be placed on the applicant's shoulder.

**19.** The principles governing cross-cases and the propriety of these being tried together, this Court has already dealt with.

This issue has engaged the attention of the Supreme Court in **Nathi Lal and others v. State of U.P. and another, 1990 Supp SCC 145**, where it was observed:

"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 the 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."

**20.** A more elaborate statement of the principles is to be found in the decision of the Supreme Court in **State of M.P. v. Mishrilal (dead) and others, (2003) 9 SCC 426**, where following **Nathi Lal** (*supra*) it has been held:

"8. In the instant case, it is undisputed, that the investigating officer submitted the challan on the basis of the complaint lodged by the accused Mishrilal in respect of the same incident. It would have been just, fair and proper to decide both the cases together by the same court in view of the guidelines devised by this Court in *Nathi Lal* case [1990 Supp SCC 145 : 1990 SCC (Cri) 638] . The cross-cases should be tried together by the same court irrespective of the nature of the offence involved. The rational behind this is to avoid the conflicting judgments over the same incident because if cross-cases are allowed to be tried by two courts separately there is likelihood of conflicting judgments. In the instant case, the investigating officer submitted the challan against both the parties.

Both the complaints cannot be said to be right. Either one of them must be false. In such a situation, legal obligation is cast upon the investigating officer to make an endeavour to find out the truth and to cull out the truth from falsehood. Unfortunately, the investigating officer has failed to discharge the obligation, resulting in grave miscarriage of justice."

**21.** The question that is involved here in the context of trying two cases together by the same Judge, arising out of the same occurrence, one instituted on a police report and the other dealt with as a complaint, came up before the Supreme Court in **Pal alias Palla v. State of Uttar Pradesh, (2010) 10 SCC 123**. The issue was if the case on the police *challan* had to be tried together with the complaint carrying a cross-version or just the police case tried in accordance with the provisions of sub-Sections (1) and (2) of Section 210 of the Code. It was held in **Pal alias Palla (supra)**:

"30. The facts of the case also warrant that the two trials should be conducted by the same Presiding Officer in order to avoid conflict of decisions. As was observed in *Harjinder Singh case* [(1985) 1 SCC 422 : 1985 SCC (Cri) 93] clubbing and consolidating the two cases, one on a police *challan* and the other on a complaint, if the prosecution versions in the two cases are materially different, contradictory and mutually exclusive, should not be consolidated but should be tried together with the evidence in the two cases being recorded separately, so that both the cases could be disposed of simultaneously."

**22.** Since in cross-cases, the versions would be mutually exclusive and conflicting decision is to be eschewed, the two cases are to be tried together by the same Judge recording evidence separately in both the trials. And, as held in **Nathi Lal**, judgment must be pronounced by the same learned Judge, one after the other, to borrow the words of their Lordships.

**23.** In view of these facts, this Court finds that the impugned order passed by the learned Sessions Judge is not sustainable and deserves to be quashed.

**24.** In the result, this application succeeds and is **allowed**. The impugned order passed by the learned Additional Sessions Judge, Court No.12, Bulandshahr dated 09.02.2023 is hereby **quashed**. It is ordered that proceedings of Complaint Case No.523 of 2019, Kripa Devi vs. Ravikant and others, under Sections 323, 354, 504, 506 I.P.C., Police Station Khurja Dehat, District Bulandshahr pending before the learned Magistrate, shall be called by the Additional Sessions Judge, Court No.12, Bulandshahr and tried by the same Judge, though separately, where evidence would be recorded in each case, also separately. The judgment shall, however, be pronounced by the same learned Judge, one after the other, bearing in mind the guidance in this judgment and the law.

**Order Date :- 16.11.2023**

Anoop

**(J.J. Munir, J.)**