

**THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**Crl. Petn. No.05 of 2015**

1. Sri Tinku Saha,  
son of Sri Ganesh Chandra Saha,  
resident of Indranagar,  
Jagatpur near Kalibari,  
P.S. East Agartala,  
District – West Tripura
2. Sri Mithun Kumar Saha @ Mana,  
son of Sri Ganesh Chandra Saha,  
resident of Indranagar,  
Jagatpur near Kalibari,  
P.S. East Agartala,  
District – West Tripura

..... **Petitioners**

– **Vs** –

The State of Tripura

.....**Respondent**

**B E F O R E**  
**THE HON'BLE MR. JUSTICE S. TALAPATRA**

|                                                     |                                   |
|-----------------------------------------------------|-----------------------------------|
| For the petitioners                                 | : Mr. R. Saha, Advocate           |
| For the respondent                                  | : Mr. A. Ghosh, Public Prosecutor |
| Date of hearing and<br>delivery of judgment & order | : <b>23.02.2015</b>               |
| Whether fit for reporting                           | : <b>YES / NO</b>                 |

**JUDGMENT & ORDER (ORAL)**

Heard Mr. R. Saha, learned counsel appearing for the petitioners as well as Mr. A. Ghosh, learned Public Prosecutor appearing for the respondent.

**02.** This is a petition under Section 482 of the Cr.P.C. challenging the decision of the Addl. Sessions Judge, West Tripura, Agartala, Court No.2 for proceeding with Sessions Trial (WT/A) No.36

of 2014 arising from East Agartala PS Case No.203 of 2012 under Section 307/506/34 of the IPC read with Section 27 of the Arms Act.

**03.** Mr. Saha, learned counsel for the petitioners has submitted that there is a counter case out of the same transaction by the accused of the said sessions trial. The said case was registered as East Agartala PS Case No.204 of 2012 under Section 387/506/34 of the IPC read with Section 27 of the Arms Act.

**04.** Mr. Ghosh, learned PP has fairly submitted that from reading of the written ejahars in both the cases it would be apparent that the case and the counter case have emerged from the same transaction. Therefore, in ordinary course, the same trial judge would hear both the cases. But since in the case which has been registered on the complaint of the father of the petitioner No.1, no charge sheet has been filed on culmination of the investigation, the Sessions Judge has taken up the one where the charge sheet has been filed. According to Mr. Ghosh, learned PP unless in both the cases the chargesheets are filed, the cases cannot be taken up by trial judge. The counter case, out of the same transaction, has not reached the stage of submission of the police report and that, according to Mr. Ghosh, learned PP is the reason why the Addl. Sessions Judge has decided to proceed with the case where the chargesheet has been filed. But Mr. Ghosh, learned PP did not deny that fact that investigation is still on in the police case which has been instituted at the instance of the father of the petitioner No.1.

**05.** Law in this regard has been settled by the apex court in ***Nathi Lal vs. State of UP*** reported in **1990 Supp. SCC 145** where it has been enunciated that:

***"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."***

**06.** The said decision has been reiterated by the apex court in ***Sudhir vs. State of MP*** reported in **2001 2 SCC 688** where the apex court has held as under:

***"It is a salutary practice, when two criminal cases relate to the same incident, they are tried and disposed of by the same court by pronouncing judgments on the same day. Such two different versions of the same incident resulting in two criminal cases are compendiously called "case and counter case" by some High Courts and "cross cases" by some other High Courts. Way back in nineteen hundred and twenties a Division Bench of the Madras High Court (Waller, and Cornish, JJ) made a suggestion (In Re Goriparthi Krishtamma - 1929 Madras Weekly Notes 881) that "a case and counter case arising out of the same affair should always, if practicable, be tried by the same court, and each party would represent themselves as having been the innocent victims of the aggression of the other."***

***Close to its heels Jackson, J, made an exhortation to the then legislature to provide a mechanism as a statutory provision for trial of both cases by the same court (vide Krishna Pannadi vs. Emperor: AIR1930Mad190. The learned judge said thus:***

***"There is no clear law as regards the procedure in counter cases, a defect which the legislature ought to remedy. It is a generally recognized rule that such cases should be tried in quick succession by the same Judge, who should not pronounce judgment till the hearing of both cases is finished."***

***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.***

***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."***

**07.** But in this case, there is a different feature added to the situation that in one case where the chargesheet has been filed and the police papers have been committed to the court of the Sessions for proceeding in accordance with law and in the other case the final police report has yet to be filed by the Investigating Officer.

**08.** Having regard to that circumstance, this court is of the considered opinion that the Addl. Sessions Judge may proceed with the trial of that case where the chargesheet has been filed. Even he may hear the argument but he shall not pronounce the judgment. In the meanwhile, the Addl. Sessions Judge in exercise of the powers provided under Section 172(2) of the Cr.P.C. shall send for the police diaries of the case which has been instituted on the basis of the written ejahar filed by the father of the petitioner No.1 being East Agartala PS Case No.204 of 2012 under Section 387/506/34 of the IPC read with Section 27 of the Arms Act and aid for the purpose of completion of the

investigation, irrespective of whatever the IO may prima facie opine. The Addl. Sessions Judge may also ask the IO to complete the investigation of the cross case within a certain time having regard to the trial being conducted by him so that the said trial can also be held by him inasmuch as it is the solitary practice that one trial judge must hear the case and the cross case. If it is found that the police has filed the final report without chrgesheeting anyone, in that case the Addl. Sessions Judge may pass the appropriate judgment on appreciation of the evidence and in accordance with law. But in the event the chargesheet is filed against the accused the Addl. Sessions Judge shall complete the trial in the cross case before pronouncement of the judgment in the other case and he shall pronounce the judgment one after the other as enunciated in ***Nathi Lal vs. State of UP.***

Having directed thus, this petition stands disposed of.

**JUDGE**

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