

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1078 OF 2015

Sunil s/o Nimba Patil,
Age 40 years, Occu. Agri.,
R/o Mukati, Tq. And
District Dhule
(Presently in Jail)

..PETITIONER

VERSUS

The State of Maharashtra

..RESPONDENT

Mr Kishor C. Sant, Advocate for petitioner;
Mrs B.B. Gunjal, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 31st August, 2015

ORAL ORDER :

Heard.

2. Learned Counsel appearing on behalf of the petitioner has prayed for consideration of "B" summary report No.02 of 2015 in Sessions Case No.87 of 2014, on the ground that the same is arising out of counter complaint filed by the present applicant/accused, in the Sessions Trial. So as to draw support, learned Counsel has relied upon the judgment of the Apex Court, in the matter of **Sudhir & ors. vs. State of M.P.**, reported in **AIR 2001 SC 826**.

3. According to the learned Counsel, the Apex Court in the above cited judgment and the judgment in the matter of **Nathi Lal vs. State of U.P.**, reported in **1990 Supp. SCC 145**, has issued a mandate that in an eventuality of a counter complaint, the same be tried together. In view thereof, he submits that the application Exh.40 should have been granted by the learned Sessions Court, by calling upon Summary Report No.02 of 2015 from the Judicial Magistrate First Class, Court No.3.

4. Learned Addl. Public Prosecutor, appearing on behalf of the respondent submits that the order passed by the learned Sessions Court is in tune with the prayer made in Exh.40, as according to her, the statute does not laid down any provision for tagging up Sessions Trial along with Summary Report No.2 of 2015. According to her, the revision is liable to be dismissed.

5. In the judgment rendered in matter of Sudhir & ors. vs. State of M.P. (cited supra), the Apex Court has observed in paragraphs no.10 and 11, as under :-

“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: (I) 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.

12. 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 v. State of U.P., 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:

"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."

6. In the background of the law laid down by the Apex Court (quoted supra), in my opinion, it will be appropriate to allow the present petition.

7. It is directed that the learned Sessions Judge, while trying Sessions Case No.87 of 2014, shall call for summary report No.2 of 2015 from the files of 3rd Judicial Magistrate First Class, Dhule and shall decide them together.

8. Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

amj