

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 2410 OF 2014

ORDER:

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The petitioner, who is the informant in S.C. No.83 of 2008 on the file of the I Additional District Judge, Chittoor, filed the present application under Sections 397 and 401 Cr.P.C. aggrieved by the order dated 25.11.2014 passed in CrI.M.P. No.1077 of 2014 wherein an application filed by the State under Section 223(d) of Cr.P.C., seeking joint trial of S.C. No.83 of 2008 along with S.C. No.330 of 2010, was rejected by the I Additional District and Sessions Judge, Chittoor.

Before proceeding further, it would be necessary to refer to facts in both the cases :

The facts in S.C. No.83 of 2008 are as under :

A-1, who was an active member of T.D.P. was elected as 26th ward Municipal Councilor of Chittoor Municipality on T.D.P. ticket. He is alleged to have targeted the petitioner herein who is an Ex.M.L.A. of Chittoor town and a staunch follower of Congress party. As such there existed a political rivalry between these two leaders. In the month of December 2005 there was an attack on A-1 (Katari Mohan) by an unknown offender while he was returning home in his Tata India Car. Immediately he got himself shifted to Bangalore Hospital for better treatment. A case in Crime No.179 of 2005 under Section 307 IPC came to be registered against culprits and a suspicion was entertained against the petitioner.

The averments in the charge-sheet disclose that in Crime No.179 of 2005, A-1 was attacked, at the instance of the petitioner herein. It is alleged that A-1 made a plan to do away with the life of the petitioner herein, but his efforts proved futile. He is alleged to have been continuing the same with the assistance of his nephew Chintu @ Chittu @ Chandrasekhar, a marine engineer by engaging hired assassins from other states. While things stood thus, on 09.02.2007 at about 8.30 a.m., some unknown assailants entered into the office of the petitioner and opened fire with a country made revolver. Though the petitioner escaped, his gunman and one Navarasu an employee of Chittoor Municipality died. In respect of this incident, a

case in Crime No.15 of 2007 of Chittoor Police Station came to be registered. Police investigated into the said crime and filed a charge-sheet, which after committal, came to be numbered as S.C. No.83 of 2008.

The facts in S.C.No.330 of 2010 are as under :

On 31.12.2007 at about 8.50 a.m., while the petitioner herein along with his four P.S.Os. were proceeding towards Sai Baba Temple, in a Qualis vehicle bearing No. KA-03-MN-3456 for performing Pooja and when the vehicle reached the entrance of Reddy and Reddy colony, the first accused (Katari Mohan) his nephew Chandrasekhar and others got down from unnumbered Karnataka registration car, which was parked in front of Vinayaka temple. On the directions of Katari Mohan and Chandrasekhar, one Arjun is alleged to have pressed remote, resulting in a land mine blast. As a result of the same, the vehicle in which the petitioner was travelling flew into the air and fell down in the middle of the road. The injured were immediately removed to the hospital and after treatment they were taken to Vellore for better treatment. On the way one Surendra is alleged to have died. On the basis of a report given by the petitioner herein, a case in Crime No.145 of 2007 of Chittoor I Town Police Station came to be registered and police after investigation filed a charge-sheet, which after committal came to be numbered as S.C. No.330 of 2010.

Since both the incidents are connected, i.e., the plan was to eliminate the petitioner and the motive for the commission of the offence being one and the same, the learned counsel for the petitioner seeks joint trial of both cases under Section 223(d) of Cr.P.C. He further submits that these two offences form part of same transaction and that they being related to one another in point of purpose, both the cases have to be tried jointly.

In support of his contention he relied upon the judgments of the Apex Court in **Balbir v. State of Haryana and another, Peter and others v. Kurian and a Bench Judgment of the Bombay High Court in Adnan Bilal Mulla v. State of Maharashtra.**

Per contra, the learned counsel for the respondent opposed the application on the ground that both the incidents are different and did not take place in the course of same transaction. According to him, the first incident occurred in the month of February 2007 whereas the second incident in the month of December 2007.

Though the principal accused is common in both the cases are same but the other accused are different and the witnesses to the case are also different. Since these two incidents are different having nothing in common, except the principal accused being same, he submits that the joint trial is unwarranted. He further submits that even if a joint trial is to be conducted, it is for the accused to make such an application and not for the State or the informant. He further submits that the trial in one case is almost at the fag end as 80 witnesses are examined till date whereas in the other case, the trial is yet to commence. In view of the above, he submits that the present application filed under Section 223(d) of Cr.P.C., is misconceived and that the order passed by the trial Court warrants no interference.

Before proceeding further, it would be useful to refer to Section 220 and 223 Cr.P.C.

220.Trial for more than one offence.-

(1) If, in one series of acts so connected together as 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.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section 212 or in sub-section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code(45 of 1860).

223.What persons may be charged jointly.-

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;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code(45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) Persons accused of any offence under Chapter XII of the Indian Penal Code(45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do

not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

In **Balbir v. State of Haryana (1 supra)**, the Apex Court was dealing with the case where the deceased was shot at near a bus-stand. He was removed in an injured condition by his nephew and his uncle to hospital where he was pronounced dead. P.W.4(nephew) proceeded to the police station and launched the complaint accusing the present appellant and his brother as the persons who shot the deceased. The police registered an FIR on the strength of report against two accused. P.W.7- Assistant Sub Inspector of Police held inquest on the dead body of the deceased on the same day and during the investigation, the appellant was found to be not the culprit and instead one 19 year old youngster G was found to have shot at the deceased. G was arrested and on the strength of a statement elicited from him a country made pistol, a used cartridge and a live cartridge were recovered from beneath the heap of fodder grain stocked in his house. G was finally charge-sheeted by the police and eventually that case was committed to the Court of Session. P.W.4 filed a complaint before the Magistrate alleging that the real culprit of the murder is the appellant and his brother and that the police investigation was totally misdirected due to the influence of the real culprits. The Magistrate, on receipt of the complaint, proceeded therewith and eventually committed that case also to the Court of Session. Two separate trials, one against G and another against the appellant and his brother were conducted before the same Court of Additional Sessions Judge. The said Sessions Judge pronounced two separate judgments acquitting G and convicting the appellant under Section 302 IPC. No appeal was filed against the acquittal of G and hence the Division Bench of the High Court heard the appeal filed by the appellant alone. Challenging the judgment of the High Court, an appeal was preferred before the Apex Court. The point that was sought to be considered before the Apex Court was whether two Sessions cases should have been tried separately (as is done in the present case) or whether they should have been jointly tried?" Dealing with the said situation and interpreting 223(a) and (d) Cr.P.C., the Apex Court held that the procedure adopted by the trial Court in conducting the two separate trials is correct since two diametrically opposite versions are put to joint trial and the confusion which it can cause in the trial would be incalculable.

In **Peter and others v. Kurian**, a learned single Judge of the Kerala High Court was dealing with a case where in respect of one incident two cases one at the instance of the police report and another by way of filing complaint. On an application, the learned Magistrate directed both the cases to be tried together but not consolidated. Aggrieved by the same, a quash petition came to be filed before the High Court seeking quashing of the same. After referring to Section 223 Cr.P.C. and the judgments of the High Court and Kerala High Court, the learned single Judge

disposed of the same with a direction to the Magistrate to conduct joint trial of both the cases in the manner indicated above. Hence, the above mentioned case may also not apply to the case on hand.

In **Adnan Bilal Mulla v. State of Maharashtra**, the Bombay High Court was dealing with a situation where the accused of Mumbai bomb blasts cases can be jointly tried with other accused. The three bomb blasts took place between 06.12.2011 and 13.03.2012. They occurred within a span of about three months and all the blasts were in thickly populated areas. In all the three cases common people were targeted. The three blasts prima facie had similar pattern and mode of attack. A common thread ran through all these incidents. Though initially these cases were registered at different police stations, by an office order dated 12.07.2003 they were clubbed together and the Investigation was directed to be conducted under a Chief Investigation Officer. The incidents were found to be so connected together so as to form part of the same transaction. Besides, the accused have been charged with conspiracy. The criminal conspiracy alleged is to commit terrorist acts or to commit preparatory acts towards terrorist acts, to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or section of the people by aiding and abetting each other to commit terrorist acts or acts preparatory to terrorist acts in or around Mumbai by use of bombs. Under those circumstances, a Bench of the Bombay High Court felt that the incidents which took place within a span of three months, form part of same transaction and they have to be tried jointly.

The apex Court in **Mohan Baitha v. State of Bihar** while referring to Section 220 of the Code held that offences more than one committed by the same person could be tried at one trial if it can be held to be in one series of acts, so as to form the same transaction. The court held that expression “same transaction” from its very nature is incapable of an exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be one transaction. The Apex Court held that it is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. But the court observed that proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not. Ultimately, the Court held that a series of acts whether are so connected together as

to form part of the same transaction is purely a question of fact to be decided on the aforesaid criteria.

Relying upon the judgments referred to above, the learned counsel for the petitioner strenuously contends that the common thread in the present case is also to eliminate the petitioner herein and as such both the incidents though took place at two different points of time they have to be tried jointly. I am afraid the said argument cannot be accepted for the reason that though motive is common but the manner in which the incident took place in both the incidents is totally different. Apart from that, these two incidents are purely personal attacks registered in two different police stations and investigated by two different officers.

Further, there is no proximity between the two incidents which are sought to be tried together. The place of incidents, the manner in which the said act came to be executed are totally different. Except motive, the place of incident, the witnesses to be examined and most of the accused in both the cases are totally different. Hence, it cannot be said that these two incidents form part of same transaction so as to be tried together.

Coming to the objections raised by the learned counsel for the respondent with regard to initiation of proceedings at the instance of the State/informant, the Apex Court in **Lalu Prasad alias Lalu Prasad Yadav v. State through CBI (A.H.D.), Ranchi, Jharkhand**, while dealing with Section 223 of the Cr.P.C., observed that it is the accused who has to make an application for joint trial. As most of the other accused persons have not applied for joint trial, the court observed that when their stand is not known, the Court cannot entertain the request for a joint trial.

Even in **Peter and others v. Kurian (4 supra)** which was relied upon by the learned counsel for the petitioner, a learned single Judge of the Kerala High Court after referring to proviso to Section 223 Cr.P.C. held that even cases not falling under any of the categories enumerated in the section can nevertheless be jointly tried if the accused express the desire in writing to have such joint trial as no prejudice is caused to the accused. In fact, even Section 218(1) of the Code mandates that every charge for different offences should be tried separately, with an option to the accused to request the Court for conducting a joint trial. From the above, it is clear that when an accused makes a request for joint trial, the Court has to presume that no prejudice would be caused to him by adopting that course.

In the instant case, no such application was filed by the accused. The proceedings are sought to be initiated at the instance of the State and thereafter the aggrieved person filed Revision before the Court. Further, the material on record discloses that in one Sessions Case nearly 80 witnesses are already examined and other Sessions Case trial is yet to commence. Viewed from any angle, I see no grounds to order a joint trial. Hence, the Criminal Revision is likely to be dismissed.

Accordingly, the Criminal Revision is dismissed.

As a sequel to it, miscellaneous petitions pending if any in this Criminal Revision, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:22.04.2015

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