

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.1740 OF 2014

ORDER:

Aggrieved by the order dated 20.08.2014 passed in CrI.M.P. No.338 of 2014 in Sessions Case No.465 of 2011 on the file of the Assistant Sessions Judge at Miryalaguda, wherein an application seeking adjournment of S.C. No.465 of 2011 was rejected, the present CrI.R.C. is filed under Sections 397 and 401 Cr.P.C.

The facts in issue are as under :

On the basis of a report given by the petitioner herein, a case in Crime No.356 of 2008 of Miryalaguda II Town Police Station, Nalgonda District, came to be registered against six named persons and others belonging to City Cable, Miryalaguda, for the offences punishable under Sections 143, 452, 436, 323 read with 34 IPC. The six named persons include the respondents 2 to 4 herein and others. Police investigated into the matter and filed a charge-sheet against the respondents 2 to 5 herein for the above mentioned offences. The said case was taken on file as P.R.C. No.8 of 2011 on the file of Judicial First Class Magistrate, Miryalaguda and thereafter committed to the Court of Sessions, which came to be numbered as S.C. No.465 of 2011.

The gist of the allegations in the charge sheet show that A-1 is the Managing Partner of City Cable, Miryalaguda and A-2 to A-4 are cable operators in City Cable, Miryalaguda. There were some disputes between A-1 and L.W.1, who is Managing Partner of Ravi Teja T.V. Network, Miryalaguda. On 01.12.2008 the cable operators of Ravi Teja Network dragged cable wire at Santhingar, 25th ward, Miryalaguda, which is the link operating area of City Cable popular channel and in-cable maintained by A-2 to A-4. While raising an objection, A-1 to A-4 are alleged to have damaged the cable wire of Ravi Teja Network and

a portion of motorcycle bearing No.A.P.24-6066 belonging to one J.Srinivas, who is an operator in Ravi Teja T.V. communications. In the said quarrel, the accused beat him with sticks causing injuries. A-1 and others also threatened the operator of Ravi Teja communications with dire consequences. On the same day i.e., on 01.12.2008 at about 9.30 p.m., A-1 to A-4 went to Ravi Teja communications office located at Sagar Road, Miryalaguda and set fire material belonging to Ravi Teja T.V. communications by pouring kerosene causing immense loss to L.W.1. When L.Ws.2 to 4 came and intervened, the accused also beat them with hands and fled away. In respect of this incident, a case in Crime No.356 of 2008 came to be registered for the above mentioned offences.

The police investigated into the matter and filed charge-sheet against the accused, which after committal came to be numbered as S.C. No.465 of 2011. In the said case, charges were framed as per the procedure against respondents 2 to 4 herein for the above mentioned offences and trial also commenced. It is said that about 9 witnesses were examined by the prosecution. But, however, the informant did not enter into the box till date, which made the court to issue Non-Bailable Warrant against him. While things stood thus, the petitioner herein filed CrI.M.P. No.338 of 2014 and CrI.M.P. No.342 of 2014 seeking adjournment of the case and stay of the trial in S.C. No.465 of 2011 respectively, on the ground that the protest petition vide C.F.R. No.5551 of 2013 on the file of the Judicial First Class Magistrate, Miryalaguda filed against the respondents and three other accused, who were deleted by the police while filing the charge-sheet, is pending. The said applications pending adjudication were rejected. Aggrieved by which the present Revision is filed.

The learned counsel for the petitioner submits that grave injustice would be caused to the petitioner if both the cases are not consolidated and tried together. He submits that since the incident is

one and the same and in order to avoid conflicting judgments, it would be appropriate if both the cases are clubbed together.

On the other hand, the learned counsel for the respondents opposed the application contending that there is no provision under law, which warrants clubbing of both the cases and since the trial in the first case is almost complete, the question of stalling the proceedings in the earlier case till the second case reaches that stage, is impermissible and contrary to the provisions of the law.

It is to be noted that this Court while admitting the Revision on 04.09.2014 passed the following order :

“Learned counsel for the petitioner is permitted to take out notice personally to serve on respondent Nos.2 to 5/Accused 1 to 4 of the S.C.No.465 of 2011 covered by P.R.C. No.8 of 2011 and file proof of service into Registry.

Post on 22.09.2014.

Till then there shall be interim stay of trial of S.C. No.465 of 2011 pending committal of the P.R.C. so far as against the additional accused 5 to 7, as both P.R.C. cases to be tried and outcome of the same crime out of the same transaction.”

In view of the above order, it is brought to the notice of this Court that trial in the Sessions Case No.465 of 2011 is stayed and the protest petition was taken on file and after committal the same came to be numbered as S.C. No.291 of 2014. The record reveals that earlier the protest petition filed by the petitioner herein was returned by the trial Court on the ground that the main case is already committed to the Court of Sessions. The reason given by the learned Sessions Judge for dismissing the application was that the petitioner has come to the Court at a belated stage. Assailing the said order, the petitioner herein filed Crl.R.C. No.2179 of 2013 before this Hon’ble Court. By an order dated 26.03.2014, this Court set-aside the order of the trial court in returning the protest petition and directed the trial court to dispose of the protest petition on merits within four weeks from the date of receipt of copy of the said order. Pursuant thereto, the Judicial First Class Magistrate at Miryalaguda by his order dated 13.07.2014 allowed the

protest petition and took cognizance of the case against A-5 to A-7 for the offences punishable under Sections 143, 452, 436, 323 read with 149 IPC. It is to be noted that in the said protest petition the petitioner herein cited four witnesses including himself.

As stated earlier, the main ground urged by the learned counsel for the petitioner is that since the incident being one and the same, it will be appropriate if both the cases are consolidated and clubbed together. But the learned counsel for the respondents submits that since 210 Cr.P.C. is not applicable at this stage and in the absence of any other provision, the question of both the cases being clubbed together would not arise.

As seen from the record, the incident in both the cases is said to have taken place on 01.12.2008, wherein the accused trespassed into the office of the complainant and set ablaze the material found in the said office. In respect of the said incident, a case in crime No.356 of 2008 of Miryalaguda II Town Police Station came to be registered against A-1 to A-7. But the police filed charge-sheet only against A-1 to A-4 by deleting A-5 to A-7. The learned counsel for the respondents submits that since the first case i.e., S.C. No.456 of 2011 is at the fag-end of the trial, the question of staying the proceedings in the said S.C. would not arise till the second case reaches that stage.

At this stage, it would be relevant to extract Section 223 Cr.P.C., which is as under:-

Section 223 of Cr.P.C : 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;

An issue somewhat identical to the case on hand came up for consideration before the Apex Court in **Harjinder Singh v. State of Punjab and others**^[1]. In the said case, the question was “Whether it

is permissible under Section 223 Cr.P.C. for the Court to club and consolidate the case on police challan and a case on a complaint where the prosecution versions in police challan and complaint case are mutually different, contrary and mutually extensive. Dealing with the said aspect, the Court held that the proper course to adopt is to direct the two cases to be tried together by the learned Additional Sessions Judge but not consolidated i.e., the evidence should be recorded separately in both the cases one after the other except to the extent that the witnesses for the prosecution who are common to both the cases be examined in one case and their evidence be read as evidence in the other. Thereafter the Sessions Judge was directed to simultaneously dispose of the cases by two separate judgments by taking care that the judgment in one case is not based on the evidence recorded in other case.

In **Kewal Krishnan v. Suraj Bhan**^[2] the Apex Court dealt with the situation where two cases exclusively triable by the Court of Sessions, one instituted on police report under Section 173 Cr.P.C., and other initiated on criminal complaint arose out of the same transaction. The court held the two cases should be tried separately but by the same court.

In **Balbir v. State of Haryana**^[3], also, the Apex Court while dealing with an identical situation where two different cases were put up before the Sessions Court accusing two different persons, observed as under :

“The version was diametrically divergent without anything in common except that the murdered person was the same. In such cases the most appropriate procedure to be followed by a Sessions Judge should be the same as followed in the present case, i.e., the two trials were separately conducted one after the other by the same court before the same judge and judgments in both cases were separately pronounced on the same day.”

As contended by the learned counsel for the petitioner that Section 210 Cr.P.C., cannot be invoked into the case on hand, it is to be noted

that in order to avoid conflict judgments, it would be appropriate if both the cases are tried by the same judge and the judgments are pronounced on the same day since the incident is one and the same.

In **Harjinder Singh v. State of Punjab and others**^[4] the Apex Court dealt with the situation “whether the version in both the cases was found to materially different.”

Even in **Balbir’s case (3 supra)** the Apex Court dealt with the murder of one person, but with two different versions of the incident before the Sessions Court. Invoking Section 223 Cr.P.C., the Apex Court held that in such a case the appropriate procedure to be followed by the Court should be the same as followed i.e., two trials be separately completed one after another before the same court, same Judge and Judgments in both the cases to be pronounced separately on the same day.

Situation on hand is slightly different, though there is no dispute that the manner in which the incident took place in both the cases is one and the same but there is a variation with regard to the number of persons, who participated in the attack. It may be true that the Sessions Case against A-1 to A-4 is at the fag-end of the trial, and the Sessions Case against A-5 to A-7 is still at its inception viz., at the stage of framing of the charges, but one thing which is common in both the cases is that the incident is one and the same. Insofar as witnesses are concerned, P.W.1 in S.C. No.465 of 2011 and P.W.1 in the second case S.C. No.291 of 2014 is one and the same. The other witnesses who are shown in the private complaint viz., Nukala Ravinder Reddy, Siddem Anil Reddy, Dubba Srinivas Reddy and Mekala Srinivas Reddy were not shown as witnesses in the charge-sheet filed by the police.

Since the Sessions Case No.465 of 2011 is already stayed by this Court at the time of admission of the Revision and since the second

case which was at the C.F.R. stage at the time of filing of this Revision is now numbered and committed to the Court of Sessions, it would be appropriate if the judgment in both the cases is delivered on the same day but by conducting different trials, except that of recording the evidence of P.W.1, so as to avoid conflicting judgments.

Accordingly, the Criminal Revision Case is disposed of by directing the learned Sessions Judge to conduct two trials separately one after the other i.e., the evidence should be recorded separately in both the cases one after the other except to the extent of the witnesses, who are common in both the cases, and in both cases to be delivered on the same day.

C. PRAVEEN KUMAR, J

Date:02.04.2015

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[\[1\]](#) (1985) 1 SCC 422

[\[2\]](#) AIR 1980 SC 1780

[\[3\]](#) 2000(1) SCC 285

[\[4\]](#) (1985) 1 SCC 422