

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

CRM No.M-1117 of 2015 (O&M)

Date of decision: 16.02.2015

Bijender

...Petitioner

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN**

Present: Mr. Sandeep Kotla, Advocate for the petitioner.

Mr. Ashish Yadav, Addl. A.G., Haryana  
for the State-respondent No.1.

Mr. Samrat Malik, Advocate  
for respondents Nos. 2 to 8.

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**Jitendra Chauhan, J. (Oral)**

This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of the order dated 19.12.2014, passed by the learned Sessions Judge, Panipat in case FIR No.235 dated 16.06.2011, registered under Sections 148, 149, 323, 302, 506 and 216 IPC, at Police Station Sadar, Panipat and complaint case No. 15/2014 dated 06.12.2013, whereby the clubbing the FIR case and the complaint was declined.

It is contended that the FIR in question and the complaint relates to the same incident and are between the same parties. The petitioner moved an application with a prayer that the FIR case as well as the complaint case be clubbed together for further hearing which was declined, vide order dated 19.12.2014 (Annexure P-6), holding that facts in both cases are not common and only one accused out of ten accused is involved in the complaint case which was lodged after two and five years of the registration of the FIR.

The learned counsel for the petitioner cites **Phool Singh Vs. State of Haryana and others**, 2005(2) RCR (Criminal) 527 and **Sudhir Vs. State of M.P.**, 2001(1) RCR (Criminal) 743.

On the other hand, the learned State counsel assisted by the learned counsel for respondents Nos. 2 to 8 submits that both the incidents are distinct and separate. The FIR in question was registered on 16.06.2011. All the PWs in the FIR stand examined and the matter is fixed for recording of the defence evidence. Thus, he states that trial in the FIR case is at the fag end. The incident pertains to 16.06.2011 and the FIR was promptly registered by respondent No.4, whereas, the complaint in the instant case was filed on 16.12.2013, after due deliberations, wherein, only the summoning order has been issued and is at the preliminary stage. The respondents have suffered a protracted trial of three years and petitioner has filed the application on 01.12.2014 with a view to

delay the trial in the FIR case. He further refers to para 14 of the complaint filed by the petitioner which clearly indicates that the complainant was not even aware of the second incident. The parties involved in the FIR case and the complaint case are also not the same.

This Court has considered the rival contentions of learned counsel for the parties.

Section 210 of the Code of Criminal Procedure reads as under:-

*“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.*

*(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject- matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.*

*(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or*

*try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.*

*(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”*

This Section deals with the cases wherein pending enquiry in a complaint case, the Magistrate comes to know that the investigation by the police is also in progress for the same offence against the same person or some of them. In such a situation, the Magistrate shall stay the proceedings in complaint case and call for report of the police. But where the police has already filed the report and complaint is filed afterwards the procedure of Section 210 will not apply.

It is worthwhile to mention here that the police case is fixed for final arguments.

The contention of the learned counsel for the petitioner that both the incidents emerge from the same incident is misconceived and merits rejection, as the place of occurrence and the accused are different in the police case and the complaint case.

The first incident took place on 16.06.2011 at about 9.00

am in front of the house of Bijender, petitioner. A complaint case regarding this incident was filed on 06.12.2013 in which, vide order dated 05.11.2014, accused, namely, Virender son of Roop Chand, Vikas, Ajeet and Sumit sons of Vijrender, Rohtash, Tejbir and Rajesh sons of Balwan Singh were summoned to face trial, under Sections 325, 323, 120-B, 148, 149, 452 and 506 IPC, by the Judicial Magistrate 1<sup>st</sup> Class, Panipat. In this incident, it is alleged in the complaint, that on 16.06.2011 at about 9 am, there had been exchange of hot words between Bijender and Rakesh (since dead) and his father Virender in respect of earlier panchayat elections and in respect of repairing of village lanes especially the lane in front of the house of Bijender but some villagers had intervened and separated them. At that time Rakesh (since deceased) and his father Virender had given a threat to Bijender to see him in the evening and kill him.

Whereas, the second incident took place on 16.06.2011, at about 5.00 pm, Bijender son of Sarupa, Ram, Lachhman, Neeraj and Kuldeep entered into the house of Ajit son of Birender Singh and gave injuries with their respective weapons. In this incident, Rakesh died later on, on account of the injuries. Regarding this incident, a challan was presented in the Court on 20.01.2012, in FIR No. 235 dated 16.06.2011, under Sections 148, 149, 323, 302 and 506 IPC.

This case is ripe for final arguments.

In Pal @ Palla Vs. State of Uttar Pradesh, 2010(4) RCR (Criminal) 511(SC), the Hon'ble Supreme Court observed that the complaint case and FIR arising out of same incident – version in complaint case and Police report totally different though arising out of same incident – in such a situation complaint case and police case not be clubbed together, but tried separately by the same Presiding Officer. It has been further observed that 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.

The case law cited by the learned counsel for the petitioner titled as Mustafa Ahmed Dossa Vs. State of Maharashtra, 2011(3) RCR (Criminal) 437 (SC), Phool Singh Vs. State of Haryana and others, 2005(2) RCR (Criminal) 527 (SC) and Sudhir Vs. State of M.P., 2001(1) RCR (Criminal) 743 (SC), are not of much help to the petitioner.

Though both the incident pertains to the same date but are not related to the one and the same incident. The FIR case and the complaint case are two separate and distinct incidents. There is a delay of about 2½ years in lodging the criminal complaint. From the

zimni orders, it emerges that the present petitioner is deliberately delaying the conclusion of the trial in the FIR case. Considering the fact that two distinct and separate incidents took place on the same date i.e. 16.06.2011, wherein, the place of occurrence and time of occurrence are different, therefore, the clubbing if allowed shall cause delay in the disposal of the already ripe case and injustice to the respondents.

In view of the above, the present petition is hereby dismissed.

16.02.2015

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**(JITENDRA CHAUHAN)**  
**JUDGE**