

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

239

**Criminal Misc. No. M-15806 of 2015
Date of decision: 07.09.2015**

Ram Chander

....Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No**
- 2. To be referred to the Reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Mr. Rajesh Khandelwal, Advocate for the petitioner.

Mr. Baljinder Singh Virk, DAG, Haryana.

Mr. Shokeen S. Verma, Advocate for respondents No.2 & 3.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 407 read with Section 482 Cr.P.C. for transfer of Session case No.86 SC arising out of FIR No.713 dated 16.07.2013 registered under Section 307 read with Section 34 IPC at Police Station Sadar Hisar, pending before the Court of Sessions Judge, Hisar and another case i.e., Session case No.17-SC arising out of FIR No.707 dated 14.07.2013 registered under Sections 376, 452, 323, 506 IPC at Police Station Sadar Hisar pending

in the Court of Special Court, Hisar, to one Court at District Hisar.

Learned counsel for the petitioner submits that both the incidents are inter-connected, consequent whereupon an FIR No.707 dated 14.07.2013 was registered against respondent No.3. Subsequently, as a counterblast, a cross-case i.e. FIR No.713 dated 16.07.2013, under Sections 307/34 IPC was registered at Police Station Sadar Hisar at the instance of brother of accused persons against the petitioner, his son, daughter-in-law and his brother. Learned counsel also submits that since the origin of both the aforesaid cases is the same incident and in the interest of both the parties, both the cases should be heard by one Court. In support of his contentions, he has relied upon judgement of Hon'ble the Apex Court in case titled as **Sudhir and others vs. State of M.P., 2001 SCC (Criminal)** 387 and submits that in the aforesaid case, identical issue was raised wherein it has been held that in such like situation, the judgement of the case which is at the final stage is to be kept pending till the trial of other case is complete.

Learned counsel for respondents No.2 and 3 submits that one Session case i.e., Case No.86 arising out of FIR No.707 dated 14.07.2013 is at the advanced stage as the statements of prosecution witnesses have already been recorded and it is now fixed for final arguments but only because of the interim order dated 14.05.2015 passed by this Court, the case could not be heard.

Heard arguments advanced by learned counsel for the

parties and have also perused the documents available on record.

Admittedly FIR No.707 dated 14.07.2013 was registered under Sections 376, 452, 323, 506 IPC at Police Station Sadar Hisar against respondent No.3 and subsequently, a cross case bearing FIR No.713 dated 16.07.2013 was also registered under Section 307 read with Section 34 IPC at Police Station Sadar Hisar at the instance of accused against the petitioner, his son, his daughter-in-law and his brother. The argument of learned counsel for the petitioner is that since both the aforesaid cases have originated from the same incident, therefore, both the cases are required to be heard by one Court as has been held in **Sudhir's case (supra)**.

Section 407 Cr.P.C., which is relevant for deciding the controversy in the present case, is reproduced as under: -

“407. Power of High Court to transfer cases and appeals. (1) Whenever it is made to appear to the High Court—

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order—

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case, or appeal, or class of cases or appeals, be transferred from a criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial of to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except

when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least-twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case of appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

Provided that such stay shall not affect the

subordinate Court's power of remand under section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197.”

Although the power under Section 407 Cr.P.C. has been provided to transfer the case but law is also well settled that a litigant cannot choose the Court of his own choice and as such, only under exceptional circumstances and keeping in view the facts and circumstances of a case, the discretionary powers provided under Section 407 Cr.P.C. regarding transfer of the case, can be exercised.

It has been held in **Sudhir's case (supra)** that when two

criminal cases relating the same incident are pending and the trial of one case may be at advance stage but the trial, which is likely to conclude, the judgment can be reserved and thereafter, other case can be tried if the same is triable by the Court of Sessions. The counter case along with the other arising out of same affair should always, if practicable, be tried by one Court, and each party would represent themselves as having been the innocent victims of the aggression of the other.

Same issue was there before Hon'ble the Supreme Court in **Nathi Lal vs. State of U.P., 1990 Supp. SCC 145**, wherein it was held as under: -

"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."

In the present case, trial in session case arising out of FIR No.707 dated 14.07.2013, under Sections 376, 452, 323 and 506 IPC is at advanced stage as statements of prosecution witnesses have already been recorded and it is now fixed for final arguments but only because of interim order passed by this Court vide order dated 14.05.2015, the judgment could not be pronounced. The trial of both the cases are going on in separate Courts at District Hisar whereas both the FIRs are result of same occurrence. The application moved for transfer of the case has been rejected without considering the merits of the case and without any application of mind.

It is well settled law that in case, there are counter of cross cases, in such like situation, both the cases should be decided by one Court so that there cannot be inconsistency and same would be in the interest of both the parties. It is also necessary to mention here that the

trials of both the cases are before the equivalent Courts and both the cases can be tried by one Court only.

In view of the facts as mentioned above, it is held that in the interest of both the parties, both the cases should be tried by one Court. Accordingly, in the fitness of the things, both the cases are directed to be heard by the Court where the trial is at the advanced stage. The other Court is directed to send the record of the case to the concerned Court. It is also directed that the judgment of the case be kept reserved till the trial in the second case is concluded.

September 07, 2015
sonia g./neetu

(DAYA CHAUDHARY)
JUDGE