

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No. M-33743 of 2015 (O&M)
Date of Decision: 10.12.2015

Yogesh Kumar

...Petitioner(s)

Versus

State of Haryana & another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. N.S. Shekhawat, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

Mr. Chanderhas Yadav, Advocate
for the complainant.

HARI PAL VERMA J.

Petitioner has filed the present petition under Section 482 CrPC impugning the order dated 21.9.2015 (Annexure P-1) passed by learned Additional Sessions Judge, Narnaul, whereby the application moved by him for trying the complaint case as well as the case based on police report jointly, was dismissed. Further prayer has been made seeking direction to the trial Court to hold separate trials in both the complaint case as well as the case based on

police report simultaneously and to decide the cases on same day, as both the cases pertain to same occurrence and are therefore, cross-version cases.

Learned counsel for the petitioner has contended that the FIR No.315 dated 4.8.2011 under Sections 148, 149, 323, 325, 452, 506, 307 IPC, Police Station Mohindergarh was registered against the petitioner and others and challan was also filed. Since the case being exclusively triable by the Court of Session, it was committed to the Court of learned Sessions Judge, Narnaul, where the trial is on the verge of completion. Learned counsel further submitted that the petitioner and others had also suffered injuries, for which, they had also filed a complaint, but the police colluded with the respondent no.-2 Bhagwan Singh who is complainant in the FIR case. He further submitted that a DDR dated 6.8.2011 was registered, but no action was taken against the accused. On account of inaction on the part of the police for sufficient long time, the criminal complaint was filed by Rajender son of Nathu Ram (who belonged to petitioner's side) on 24.12.2012 in the Court of learned Sub Divisional Judicial Magistrate, Mahendergarh which is now fixed for pre-charge evidence on 23.2.2016.

Learned counsel for the petitioner has placed upon judgments of Hon'ble the Apex Court in the cases of **Harjinder Singh v. State of Punjab 1985(1) RCR (Criminal) 289** and **Pal @ Palla v. State of Uttar Pradesh 2010(4) RCR (Criminal) 511** to support his contention that when there are cross-version cases, in such a situation,

the complaint case and the FIR case be not clubbed together but the same should be tried separately by the same Presiding Officer.

Learned counsel for the complainant-respondent no.2 has filed reply and has disputed the contentions raised on behalf of learned counsel for the petitioner. He has argued that the present FIR No.315 dated 4.8.2011 registered at the behest of complainant - Bhagwan Singh against the petitioner and others and the complaint filed by the petitioner i.e. Criminal Complaint No.347 of 2012 have arisen from two separate incidents, as the incident mentioned in FIR No.315 dated 4.8.2011 was of 3.8.2011 at 8.30 a.m. whereas as per the version recorded in DDR No.6 dated 6.8.2011, the incident was stated to have occurred at 5.30 A.M. Therefore, both the cases belong to different incidents.

Reply on behalf of the respondent-State has also been filed, wherein they have denied the collusion of the police with the complainant in the FIR case and have submitted that it was the petitioner's side which was the aggressor and they had inflicted serious injuries to respondent no.2-Bhagwan Singh. Since no cognizable offence was made out by the petitioner, therefore, the complaint submitted by accused Rajender was recorded in the daily diary register vide rapat No.6 dated 6.8.2011. Moreover, the complainant Rajender could not produce any x-ray film or x-ray report to substantiate his injuries.

I have heard learned counsel for the parties.

Provisions of Section 210 of the Code of Criminal Procedure, which provide the procedure to be followed when there

is complaint case and police case in respect of same offence, 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.”

Moreover, a perusal of the Daily Diary Report dated 6.8.2011 shows that the incident occurred at around 5.30 A.M., whereas in the FIR No.315 dated 4.8.2011, the time of occurrence was somewhere at around 8.30 A.M., though learned counsel for the petitioner has tried to justify his stand by stating that the time has

wrongly been recorded. The report reveals that the FIR case is at very advance stage of trial and it will not be justifiable to interfere into the same, particularly in view of the fact that it was only after initiation of proceedings against the petitioner when challan was submitted and charge was framed against him, he filed complaint case on 24.12.2012, which is now fixed for pre-charge evidence on 23.2.2016, whereas the FIR case is fixed for pronouncement of judgment. Interestingly, the petitioner's side while filing criminal complaint on 24.12.2012 has not even disclosed that the challan has been presented against them. Therefore, this Court feels that the sole motive of filing the complaint was just to delay the proceedings in the FIR case. Thus, by not incorporating the fact that the challan has already been presented against the petitioner in the complaint case and by not disputing this fact in the complaint, the petitioner has virtually accepted that the incident is a different one.

Therefore, considering the fact that the proceedings in the complaint case are yet to begin, as the case is fixed for pre-charge evidence, whereas the FIR case is now fixed for pronouncement of judgment, no case for interference in the impugned order dated 21.5.2015 is made out.

Thus, the present petition is dismissed.

December 10, 2015
AK

(HARI PAL VERMA)
JUDGE