

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 1034 OF 2016

Shahnaz Bano, D/o Rahim Khan, aged about 19 years, R/o Village Pandripani, Police Station Bilaigarh, District Balodabazar-Bhatapara (C.G.)

... Petitioner

Versus

1. Daulatram Sahu, S/o Late Faguram Sahu, aged about 39 years.
2. Itwari Sahu, S/o Late Munsiram Sahu, aged about 36 years.
3. Dilchand Sahu, S/o Late Jagannath Sahu, aged about 36 years.
4. Gitesh Kumar Sahu, S/o Late Shyamlal Sahu, aged about 23 years.
5. Anandram Sahu, S/o Late Netram Sahu, aged about 63 years.
All R/o Pandripani, Police Station Bilaigarh, District Balodabazar-Bhatapara (C.G.)
6. State of Chhattisgarh, through District Magistrate, Balodabazar (C.G.)

... Respondents

For Petitioner	:	Mr. Adil Minhaj, Advocate.
For Respondent-State	:	Mr. Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/12/2016

1. The present petition under Section 482 of CrPC has been preferred by the Petitioner seeking for a limited prayer that the criminal case filed by the present Petitioner, registered as Criminal Case No. J481 of 2015, pending before the Court of Judicial Magistrate First Class, Bilaigarh, be taken up for analogous hearing along with Sessions Trial No. 16 of 2015 pending before the Second Additional Sessions Judge, Balodabazar.
2. Learned Counsel for the Petitioner, Shri Adil Minhaj, submits that it is a case where the present Petitioner is the complainant in crime number 51 of 2015 which was registered at Police Station Bilaigarh, District Balodabazar; the date of incident is 5.2.2015 and the time was at around 8:00 am in the morning. The place of incident that has been shown is the house of the present Petitioner. He further submits that the case of which

the joint trial is being sought, the crime number of which, is 50 of 2015 and where the complainant is one Dharamlal Sahu who is the witness in the case where the father of the present Petitioner is an accused and the case was also lodged at Police Station Bilaigarh, District Balodabazar on the same day i.e., 5.2.2015 and the time of incident is also shown as 7:30am-8:00am in the morning and the place of incident in the said case is also shown as in front of the house of Rahim Khan near the house of the Dharamlal Sahu.

3. According to Shri Minhaj, it is a case where both these complaints which have been lodged, arose out of the same common incident between the same parties wherein the accused in one case is the witness in the other case and *vice versa*. He further submits that it is a case where unless a joint trial is ordered there is all possibility of a conflicting view being taken in respect of the same incident and most of the witnesses in both the cases are also common, and thus prayed for a joint trial.

4. Shri Shukla, learned Government Advocate, however opposes the petition on the ground that there is a different time stipulated in the FIR lodged in both the cases and the place of incident also is shown to be at a different location and therefore they cannot be said to be arising out of the same incident and the present petition deserves to be rejected on this ground alone.

5. Having considered the rival contentions put forth on behalf of either side and on perusal the record, if the spot map in the case diary of both the cases is perused it would clearly reflect that the spot which has been shown where the incident arose, is same in both the cases. Likewise, the neighbouring which has been shown in the spot map is also the same in both the cases. In addition, if we look into the time of incident also it is

almost the same as in one case it appears to be between 7:30am to 8:00am approximately and in the other case it is shown as 8:00pm approximately. Thus, from the said given factual details itself it apparently appears that it was the same incident which got spread from one place to the other in the same vicinity and it was in continuation and, therefore, for all practical purposes, it has to be presumed to be arising out of one incident. In the given facts and circumstances of the case, this Court is of the opinion that a strong case for a joint trial has been made out by the Petitioner. Accordingly, it is ordered that both the cases, i.e., Criminal Case No. J481 of 2015 pending before the Judicial Magistrate First Class, Bilaigarh and Sessions Trial No. 16 of 2015 pending before the Second Additional Sessions Judge, Balodabazar, be clubbed together and proceeded jointly.

6. The view of this Court stands fortified by the decision of the Supreme Court rendered in the case of **Sudhir & Others v. State of Madhya Pradesh, AIR 2001 SC 826**, wherein in paragraph 10 it has been held as under :

“10. We are unable to understand why the legislature is still parrying to incorporate such a salubrious practice as a statutory requirement in the Code. The practical reasons for adopting a procedure that such cross cases shall be tried by the same court, can be summarised thus: (1) It staves off the danger of an accused being convicted before his whole case is before the court. (2) It deters conflicting judgments being delivered upon similar facts; and (3) In reality the case and the counter case are, to all intents and purposes, different or conflicting versions of one incident.”

Further, in paragraph 11 referring to a judgment reported in **1990 Supp. SCC 145 (Nathi Lal & ors. vs. State of U.P.)**, the Supreme Court has held:

“11. In fact, many High Courts have reiterated the need to follow the said practice as a necessary legal requirement for preventing conflicting decisions regarding one incident. This

court has given its approval to the said practice in **Nathi Lal & ors. vs. State of U.P.**, 1990 Supp SCC 145. The procedure to be followed in such a situation has been succinctly delineated in the said decision and it can be extracted here:

"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."

7. Accordingly and in view of above, it is ordered that, Criminal Case No. J481 of 2015 pending before the Court of Judicial Magistrate First Class, Bilaigarh be transferred to the Court of Second Additional Sessions Judge, Balodabazar to be clubbed together with Sessions Trial No. 16 of 2015 and both the cases shall be proceeded jointly in accordance with the directions given by the Supreme Court in the case of **Nathi Lal and Others v. State of U.P.**, 1990 Supp SCC 145.

8. The Criminal Misc. Petition stands allowed.

Sd/-
(**P. Sam Koshy**)
Judge