

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(CRL) 743/2013

Reserved on: 18.12.2015
Date of decision: 09.02.2016

CHANDINI SRIVASTAVA Petitioner
Through Mr.N.Hariharan, Sr. Advocate
with Mr.Vaibhav Sharma &
Mr.Siddharth S. Yadav,
Advocates.

versus

CBI & ORS Respondents
Through Mr.Narender Mann, SPP with
Mr.Manoj Pant & Ms.Utkarsha
Kohli, Advocates.
Mr.Sheikh Issar Ahmad,
Advocate for R3 & R4.
Mr.Abhimanyu Bhandari,
Ms.Jacklin Talwar &
Ms.Roohina Dua, Advocates
for R5 to R7.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. The petitioner, Smt.Chandni Srivastava, an accused in FIR No. RC/AC-1/2011/A0001 has put up a challenge to the order dated 02.02.2013 passed by the then District & Sessions Judge, Delhi in T.P (Criminal) No.386/12 whereby the prayer made on behalf of the petitioner for clubbing the two charge sheets filed in the aforesaid case namely charge sheet No.3/2011 and 4/2011 and holding one trial for both the charge sheets, was rejected.

2. The facts leading to lodging of the FIR No. RC/AC-1/2011/A0001, are as hereunder.
3. CBI received reliable source information that one B.L.Bajaj was having close contact with one Mr.A.K.Srivastava who had taken over as Chairman cum Managing Director of National Aluminum Company (NALCO), a Government of India undertaking, having its office at Bhubaneswar. The information further revealed that aforesaid B.L.Bajaj was acting as a middleman for A.K.Srivastava for arranging bribe money by corrupt and illegal methods from the bidders/suppliers of NALCO and was handing over the same to Mr.A.K.Srivastava.
4. According to the information, aforesaid B.L.Bajaj was in close contact with Gurvinder Singh Bhatia, Chairman cum Managing Director of Bhatia Group of companies which had its corporate office at Indore. The aforesaid firm was engaged in trading of imported and indigenous coal with various private companies and PSUs through its sister companies, viz. M/s.Bhatia International Ltd and Bhatia Coal Sales Ltd, having their offices at Indore. It was informed that B.L.Bajaj, for obtaining favours for Bhatia group of companies, obtained huge sum of money as illegal gratification on behalf of A.K.Srivastava from G.S.Bhatia and under instructions from A.K.Srivastava, converted the illegal gratification into gold for delivering it to him. Gold was purchased from Triputi Jewellers, Noida for the aforesaid purpose. When the jeweller informed Mr.B.L.Bajaj for delivery of gold at his residence, he was instructed that Smt.Anita Bajaj, his wife would collect it from Triputi Jewellers. Thus, as per the instructions of her husband (B.L.Bajaj), Smt.Anita

Bajaj collected three gold bricks from Triputi Jewellers on 24.02.2011 and brought it home. A.K.Srivastava and B.L.Bajaj had decided to deposit the gold, so purchased through their wives (Smt.Chandni Srivastava wife of A.K.Srivastava and Smt.Anita Bajaj, wife of Sh.B.L.Bajaj) in the lockers maintained at Bank of Maharashtra, Shahjanpur road or Bank of India, Mayur Vihar, Phase-I, Delhi on 25.02.2011.

5. On the aforesaid information, FIR No. RC/AC-1/2011/A0001 was registered on 25.02.2011.

6. After the registration of the aforesaid case, a trap was laid at Bank of Maharashtra, UPSC, Shahjanpur road, New Delhi. The trap team which comprised CBI officials as well as independent witnesses spotted Chandni Srivastava (petitioner) and Mrs.Anita Bajaj coming to the bank together. Smt.Chandni Srivastava, though, alone, contacted the bank officer and after signing the locker operation register, went inside the strong room to operate the locker. The trap team thereafter swooped down and made Smt.Chandni Srivastava and Smt.Anita Bajaj captive whilst they were coming out of bank after operating the locker. On being accosted with the fact that 3 kg gold bricks were deposited in the locker, Chandni Srivastava and Anita Bajaj became perplexed and did not state anything.

7. The CBI thereafter got the locker opened and on that occasion, for opening the locker, Smt.Anita Bajaj signed the locker operation register. From the locker, Indian currency notes, 10 gold bars, 8 gold bangles, one Tanishq mini gold biscuit of 25 grams and 4 gold coins were found. Apart from this, gold jewellery worth Rs.9.5 lakhs was

also found in the locker. The total valuation of 10 kg gold bars and other gold items was assessed at Rs.2,13,81,150/-.

8. Further investigations revealed that the aforesaid locker, namely locker No.27, Bank Account No. 60045917165, Bank of Maharashtra, Shahjahan Road, UPSC, New Delhi was opened by Chandni Srivastava by impersonating as Anita Bajaj by producing forged identity proof of Smt.Anita Bajaj but by affixing her own photograph on the photocopy of the PAN card of Anita Bajaj and photocopy of the voter identity card of Anita Bajaj. The signatures on various documents namely account opening form, locker opening agreement and locker operation register were found to be of Anita Bajaj in the handwriting of Chandni Srivastava.

9. On the basis of the aforesaid evidence collected during the investigation, charge sheet No.3/2011 dated 20.04.2011 was filed against A.K.Srivastava, B.L.Bajaj, Chandni Srivastava, Anita Bajaj, G.S.Bhatia, Jaswinder Singh Bhatia and Sh.Ratan Pal Singh Bhatia under Section 120B read with Sections 7 & 12 of the P.C.Act, 1988.

10. Further investigations in the matter was conducted in order to establish the role of other accused persons as well as the source of some of the gold bars which were recovered.

11. A separate charge sheet was submitted for conspiracy to obtain and operate a benami locker by Smt.Chandni Srivastava (petitioner) vide charge sheet No.4/2011 which was also submitted on the same date. The contents of charge sheet No.4/2011 referred to above, reveal that materials were available for trying A.K.Srivastava, B.L.Bajaj,

Chandni Srivastava and Anita Bajaj for commission of offence under Sections 419/466/471 and 474 of the IPC.

12. Thus it was submitted on behalf of the petitioner that after the registration of the FIR No. RC/AC-1/2011/A0001, a trap was laid where Chandni Srivastava (petitioner) was found to be operating the locker which stood in the name of Anita Bajaj and on opening of the locker, gold bars and other gold jewellery which were unaccounted for, was recovered. The trap was thus part of the investigation of the same FIR which was lodged on source information that the bribe money which was collected by Mr.B.L.Bajaj on behalf of Mr.A.K.Srivastava was advisedly converted into gold bars, which were purchased by co accused Anita Bajaj from a jewellery shop in Noida and then Anita Bajaj and Chandni Srivastava, both, went to the bank for depositing the same in the locker. It was submitted that though CBI filed two charge sheets namely charge sheet No.3/2011 under Section 120B IPC read with Sections 7 & 12 of the Prevention and Corruption Act, 1988 before the learned Special Judge, New Delhi and the other namely charge sheet No.4/2011 under Sections 419/466/467 and 474 and 120B IPC before the learned CMM, Delhi. In charge sheet No.3/2011, which was submitted in the Court of the Special Judge, P.C.Act, the accused persons who were sent up for trial were A.K.Srivastava (respondent No.2), B.L.Bajaj (respondent No.3), Chandni Srivastava (petitioner), Anita Bajaj (respondent No.4), G.S.Bhatia (respondent No.5), Jaswinder Singh Bhatia (respondent No.6) and Sh.Ratan Pal Singh Bhatia (respondent No.7) and in charge

sheet No.4/2011 only the two couples namely A.K.Srivastava, Chandni Srivastava, B.L.Bajaj and Anita Bajaj were charge sheeted.

13. Learned counsel for the petitioner, therefore, submitted that both the charge sheets were the result of the investigation of the same case; the charge sheets were filed by the same officer and in both the charge sheets, there were common witnesses and common documents but for respondent Nos.5, 6 & 7. The accused persons in both the charge sheets were the same (except the respondent Nos.5 to 7) the petitioners being in both of them. Thus the evidence delineated in charge sheet No.4/2011 was also part of the offence committed in same transaction and, therefore, per force, had to be clubbed together for joint trial.

14. The aforesaid prayer was strongly opposed by the learned counsel appearing for the CBI on the ground that the two separate charge sheets were filed with respect to two different set of allegations and the offence of using forged documents for opening up a locker in a bank was not at all part of the same transaction whereby bribe money was obtained and converted into gold. Separate set of accused persons were sent up for trial in the aforesaid two charge sheets and the offences also were of a different genre. Similar opposition to the prayer of the petitioner was made by respondent Nos.5, 6 & 7, namely that the charge sheets were in relation to different accused persons, the offences charged in both the charge sheets were of different nature and should the charge sheets No.3/2011 and 4/2011 be amalgamated/consolidated, the rights of respondent Nos.5 to 7 with

respect to their first appeal before the Court of Session would be lost/truncated, causing prejudice to them.

15. The learned Court below, after discussing the facts of the case and the two charge sheets, held that the accused persons who are not common in both the charge sheets, would be prejudiced in case of a joint trial as they would lose the right of appeal before the Sessions Judge as the offence for which they have been charge sheeted would be tried by a Court of Magistrate whereas for P.C.Act, the trial would be held by the Special Court.

16. In order to appreciate the contention of the parties, it would be first necessary to refer to the provisions of Sections 218 to 223 of the Code of Criminal Procedure.

17. Section 218 of Cr.P.C. provides that for every distinct offence, there would be a separate charge and every such charge shall be tried separately unless the accused persons, by an application in writing so desire and the Magistrate is of the opinion that such person is not likely to be prejudiced thereby, and in that event, the Magistrate may try together all or any number of charges framed against such persons.

16. To such rule of separate charge and a separate trial for each distinct offence, certain exceptions have been laid down in Sections 219 to 223 of the Cr.P.C. and which exceptions are based on rational principles. In Section 219 of the Cr.P.C., joint trial for offences of the same kind not exceeding three in number and committed within a period of 12 months is permitted for avoidance of multiplicity of proceedings. Section 220 of the Cr.P.C. permits of one trial even if many offences are committed, if such offences form part of the same

transaction; the rationale for such an exception being that in such circumstances, separate trials may lead to conflicting judgments. In case of any doubt about what offence has been committed, Section 221 of the Cr.P.C. permits of framing of any number of charges which could be tried together, provided the offences are connected and the accused could also be convicted for an offence with which he is not expressly charged but might have been charged. Section 223 of the Cr.P.C. permits of a joint trial of several persons in specified cases, where various offences committed by them are connected with each other. Section 219 and Section 223 of the Cr.P.C. are quoted below:

Section 219. Three offences of same kind within year may be charged together.

"(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local law: Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

Section 223. 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;

(b) person accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) person accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last- named offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges: Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the 1 [Magistrate or Court of Session] may, if such persons by an application in writing, so desire, and 2 [if he or it is satisfied] that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together."

18. In the case in hand, the locker though was opened sometimes prior to the lodging of the first information report by Smt.Chandni Srivastava and Smt.Anita Bajaj in conspiracy with A.K.Srivastava and B.L. Bajaj, but the trap in the Bank of Maharashtra was laid only after

registration of the FIR No. RC/AC-1/2011/A0001 on the same day. The trap was laid on substantive information that Smt.Anita Bajaj and Chandni Srivastava, wives of B.L.Bajaj and A.K.Srivastava were coming to the bank to operate the locker for depositing three gold bars which were purchased from a jewellery shop in Noida. That during the course of raid it was observed that even though Anita Bajaj and Chandni Srivastava entered the bank premises together but Chandni Srivastava alone operated the bank locker by signing the locker operating register. After the trap was laid, the CBI got the locker opened and it was opened only on the signature of Anita Bajaj when the keys of the locker was found to be in the possession of Chandni Srivastava. The CFSL report regarding the signatures on various documents like account opening form, locker operating agreement and locker operating register, were found to be in the name of Anita Bajaj but the signature was in the handwriting of Chandni Srivastava. Thus, even the purpose of impersonation and using of forged documents as genuine for opening of the locker in a bank by the wives of two accused persons, namely B.L.Bajaj and A.K.Srivastava, was part of the same conspiracy and was executed for facilitating the stashing of the bribe money, converted into gold and other tangible forms.

19. The following facts raise a presumption about the offences described in two different charge sheets being part of the same transaction:-

(i) The two charge sheets have been filed after investigation of one FIR namely RC/AC-1/2011/A0001;

(ii) The trap in the bank was laid on the same day of the registration of the FIR;

(iii) Four of the accused persons are common in both the charge sheets;

(iv) Majority of the documents and witnesses are common in both the charge sheets.

20. Thus, if two trial are conducted with respect to the aforesaid two charge sheets, it might lead to conflicting judgments. There would be another danger of the evidence and material in one case being made known to the witnesses and accused in the other case, incurring the risk of miscarriage of justice. The respondent Nos.5, 6 & 7, though, are not chargesheeted in charge sheet No.4/2011, they would definitely not be prejudiced on any score except for the fact that they, if convicted, would not be able to file an appeal before the Sessions Court. Their right to appeal, though, would not in any condition be curtailed or truncated, as against the judgment of conviction, they can always approach the superior Court for their remedies. In any view of the matter, there is no provision of second appeal in any criminal case. Thus it matters not even if respondent Nos.5, 6 & 7 are left with no option to file an appeal, in case of conviction, before the Sessions Court. On the contrary, with two separate trials, there could be an instance of serious prejudice with respect to four of the accused persons who are common in both the charge sheets.

21. What is of importance in deciding whether persons may be tried jointly for different offences is that the offences must have been committed in the course of same transaction.

22. In State of *A.P vs. Cheemalapati Ganeswara Rao and Anr.*, AIR 1963 SC 1850, the Supreme Court dealt with the same provision but under the Code of 1898. The Supreme Court held that what had to be ascertained was whether offences arise out of acts so connected together so as to form the same transaction for the same to be clubbed together. The Supreme Court observed as hereunder:-

“What is meant by “same transaction” is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any Court which has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction. The connection between a series of acts seems to us to be an essential ingredient for those acts to constitute the same transaction and therefore, the mere absence of the words “so connected together as to form” in cls. (a), (c) (sic) and (d) of S. 239 would make little difference.”

23. In *Mohan Baitha vs. State of Bihar*, AIR 2001 SC 1490, the Supreme Court interpreted Section 220 of the Code and observed as hereunder:-

“It may be noticed that under Section 220 of the Code of Criminal Procedure, offences more than one committed by the

same persons could be tried at one trial, if they can be held to be in one series of acts, so as to form the same transaction. The expression "same transaction" from its very nature is incapable of an exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be in one transaction. It is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. But the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not. Therefore, a series of acts whether are so connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria".

24. The broad test, therefore, for ascertaining whether offences charged form part of the same transaction is whether the other set of offences, even though distinct and separate, have been committed for facilitating the commission of the main offence. If the offences alleged involve similar system or persons and there is a hint of continuity of action, it is then part of the same transaction. If the substratum of the series of acts is common, then those acts do constitute same transaction.

25. The allegation in the FIR No. RC/AC-1/2011/A0001 is that reliable information was received that B.L.Bajaj was acting as a middleman for obtaining bribe money from respondent Nos.5, 6 & 7 for providing them undue favours through Mr.A.K.Srivastava, Chairman cum Managing Director, NALCO and then converting such bribe money into tangible form of gold for facilitating its delivery; for

which bank account was opened with locker facilities by impersonating and using fake documents. The only purpose for impersonation and using of forged documents could be to provide a safe cover for A.K.Srivastava and Chandni Srivastava in accepting bribe money.

26. Thus, the *modus operandi* appears to have been decided between four of the accused persons including the petitioner, rendering the two offences in two charge sheets being part of the same transaction. It matters not if respondent Nos.5, 6 & 7 were not involved in opening of the bank locker by impersonation and using fake documents but one cannot lose sight of the fact that the account and the locker were opened for the purposes of depositing gold bars which were purchased out of the bribe money, allegedly given by the respondent Nos.5, 6 & 7. Thus even if the respondent Nos.5, 6 & 7 have not played any active role in opening of the bank account and the locker, nonetheless the offence would form part of the same transaction for which four of the accused persons including the petitioner ought to be tried in one trial and not in two different trials.

27. If two trials are held, it would only cause miscarriage of justice. Respondent Nos.5, 6 & 7, it is made clear, would not lose on any count as they would be tried with respect to the respective charges framed against them.

28. Thus it would only be in consonance with the procedural propriety that the two charge sheets be tried together by amalgamating the same before the Special Judge.

29. The case of the petitioner is squarely covered by clause (d) of Section 223 of the Cr.P.C., which provides for charging and trying together persons accused of different offences committed in the course of same transaction.

30. Thus the Court below was not justified in holding that the offences delineated in charge sheet No.4/2011 was not part of the same transaction and on which premise, the prayer of the petitioner for clubbing the two charge sheets and consolidating the same for the purposes of one trial was rejected.

31. The impugned order dated 02.02.2013, therefore, is set aside.

32. The Special Court is hereby directed to proceed with the trial after clubbing in the two charge sheets referred to above. Needless to state that the Metropolitan Magistrate before whom charge sheet No.4/2011 has been submitted would transmit the same to the Court of Special Judge, who is in seisin of the trial in charge sheet No.3/2011.

33. The petition is allowed.

Crl.M.A.5771/2013 & Crl.M.A.11753/2015

1. In view of the petition having been allowed, these applications have become infructuous.

2. The applications are disposed of accordingly.

ASHUTOSH KUMAR, J

FEBRUARY 09, 2016

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