IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.1081 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- BUXAR

==========

1. Sonu Singh S/o Shri Madan Singh Resident of Village- Bahuara, P.S.- Rajpur, District- Buxar .... Petitioner

Versus

1. The State of Bihar
2. Avinash Thakur S/o Late Gopal Thakur Resident of Village- Purainin Khurd, P.S.- Rajpur, District- Buxar.

.... Respondents

==========

Appearance :
For the Petitioner/s : Mr. Pramod Kumar Singh
Mr. Manendra Kumar Sinha
For the Respondent/s : Mr. Upendra Kumar, APP

==========

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date: 23-01-2017

Heard learned Counsel for the petitioner and learned Additional Public Prosecutor representing the State.

2. Two First Information Reports, Rajpur Police Station Case No. 133 of 2015 and Rajpur Police Station Case No. 134 of 2015, came to be registered on 19.07.2015, for an offence said to have taken place on 19.07.2015, at 16:30/16:35 hours. Both the cases disclose commission of offences punishable under Sections 147/148/149/302 of the Indian Penal Code and Section 27 of the Arms Act, 1959. The names of the deceased in both the case, i.e. Gopal Thakur and Madan Singh, are the same. In Rajpur Police Station Case No.

WEB COPY

133 of 2015, registered on the basis of fardbayan of Avinash Thakur, the petitioner is an accused. The petitioner is informant of Rajpur Police Station Case No. 134 of 2015, in which Avinash Thakur is an accused. Rajpur Police Station Case No. 133 of 2015 has given rise to Sessions Trial No. 249 of 2015; whereas Sessions Trial No. 292 of 2016 arises out of Rajpur Police Station Case No. 134 of 2015. Both the trials are pending in the Court of learned Sessions Judge, Buxar.

3. The petitioner had filed an application before the Court of learned Sessions Judge, Buxar, giving rise to Criminal Misc. (T.P.) No. 41 of 2016, seeking direction for trial of both the cases by the same Court on the ground of the same being "*case and counter case*". When the said application was made, Rajpur Police Station Case No. 134 of 2015 was not committed for trial. The said application of the petitioner has been rejected by learned Sessions Judge, Buxar, on the ground that trial arising out of Rajpur Police Station Case No. 133 of 2015, being Sessions Trial No. 249 of 2015, had progressed to a considerable extent and the case arising out of Rajpur Police Station Case No. 134 of 2015 was yet not committed.

4. The petitioner is aggrieved by the said order, dated 06.09.2016, passed, in Criminal Misc. (T.P.) No. 41 of 2016, by the learned Sessions Judge, Buxar, whereby

WEB COPY

application of the petitioner for transfer of the trial arising out of the second case to the same Court and their adjudication in accordance with the principle laid down for trial of *case and counter case* has been rejected.

5. During the pendency of this application, the said Rajpur Police Station Case No. 134 of 2015 has also been committed to the Court of Sessions for trial and, as has been noticed above, the trial has been registered as Sessions Trial No. 292 of 2016.

6. In the changed situation, the petitioner has confined his prayer for direction to the learned Sessions Judge, Buxar, to take up both the trials as the trials arising out of *case and counter case* and adjudicate them in accordance with the procedure laid down by the Supreme Court, in the case of **Sudhir and Others v. The State of Madhya Pradesh (AIR 2001 SC 826)**.

7. Learned Counsel appearing on behalf of the petitioner, apart from the Supreme Court's decision, in the case of **Sudhir** (supra), has placed reliance on Supreme Court's decisions, in the cases of **Kuldeep Yadav and Others v. State of Bihar (AIR 2011 SC 1736)** and **State of Madhya Pradesh v. Mishrilal (Dead) and Others (AIR 2003 SC 4089)**.

8. On perusal of the two First Information Reports,

WEB COPY

I have no hesitation in coming to the conclusion that they can be termed to be *case and counter case* inasmuch as there are two different versions of the same incident, leading to lodging of the two criminal cases.

9. There cannot be any two views that if there are case and counter case, arising out of the same incident, for the purpose of avoiding conflicting findings, it is always in the interest of justice that both the cases are tried by the same Court.

10. In the case of **Sudhir** (supra), the Supreme Court relied on its previous decision, in the case of **Nathilal v. State of U.P.**, reported in **(1990) Supp SCC 145**, which laid down the procedure to be followed in such situation. It would be apt to quote from Supreme Court's decision, in the case of **Nathilal** (supra), relevant portion of which reads thus:-

> "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

WEB COPY

> 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."

11. In the case of **Mishrilal** (supra), the Supreme Court reiterated what had been laid down in the case of **Nathilal** (supra).

12. What follows from the decisions, in the cases of **Nathilal** (supra), **Sudhir** (supra) and **Mishrilal** (supra), is:

(i) In case of *case and counter case*, it would be just, fair and proper that both the cases are tried by the same learned Judge, one after the other.

(ii) After recording of evidence in one case is completed, he must hear the argument in that case, but must not deliver the judgment; rather, keep it reserved.

WEB COPY

(iii) Thereafter, he must proceed to hear the counter case and after recording of the evidence, he must hear the arguments, but reserve the judgment in that case also.

(iv) The same learned Judge must thereafter dispose of the matters by two separate judgments.

(v) In deciding each of the case, he will have to rely only on the evidence recorded in that particular case and the evidence recorded in the counter case should not be looked into.

(vi) Each case must be decided thereafter on the basis of the evidence adduced in that particular case without being influenced in any manner by the evidence or arguments urged in the counter case.

(vii) After following the above procedure, the same learned Judge must pronounce both the judgments one after the other.

13. The above view finds strength from another Supreme Court's decision, in the case of **Kuldeep Yadav** (supra).

14. Having said thus in the background of discussions as above, since both the trials are pending in the

WEB COPY

same Court, i.e. in the Court of learned Sessions Judge, Buxar, I dispose of this application with a direction, in the light of the Supreme Court's decisions, as noted above, that learned Sessions Judge, Buxar, after closure of evidence in Sessions Trial No. 249 of 2015, shall, immediately thereafter proceed in Sessions Trial No. 292 of 2016, without pronouncing judgment in Sessions Trial No. 249 of 2015. Upon completion of hearing in both the cases, the learned Sessions Judge, Buxar, will pronounce judgment/judgments in both the cases. The learned Court below shall proceed to dispose of the trials in the manner described in paragraph 12 of this judgment and order.

15. The impugned order, dated 06.09.2016, passed, by learned Sessions Judge, Buxar, in Criminal Misc. (T.P.) No. 41 of 2016 is accordingly set aside.

16. This application is allowed with the observations and directions, as above.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	25.01.2017
Transmission Date	25.01.2017

WEB COPY