



Crl.RC.No.743 of 2015

R.N.MANJULA, J.

WEB COPY

On 14.03.2016, this Court has passed the following order in MP.No.1 of 2015 in Crl.A.No.743 of 2015:-

"Heard the learned counsel for the petitioner/appellant and the learned Additional Public Prosecutor.

2. It is submitted that this appeal arose out of S.C.No.21 of 2013. S.C.No.40 of 2013 pending on the file of learned Additional Sessions Judge, Rasipuram Namakkal District is counter case.

3. Now, it has been pointed out that S.C.No.40 of 2013 for offence under Section 302 IPC is posted for delivery of judgement on 15.03.2016.

4. In such circumstances, the learned Additional Sessions Judge Rasipuram, Namakkal District shall defer the pronouncement of the judgement on 15.03.2016.

5. The Registrar (Judicial) is directed to send this order by fax to the learned Additional Sessions Judge, Rasipuram, Namakkal District through the Principal Sessions Judge, Namakkal District."

2. In view of the above order, the trial Court has deferred the passing of judgement in SC.No.40 of 2013. This appeal has arisen out of the judgement passed in SC.No.21 of 2013. During the trial of that case, the other case in SC.No.40 of 2013, which is a case in counter was not brought to the knowledge of the the learned



Sessions Judge in order to conduct a simultaneous trial. Even while SC.No.40 of 2013 was pending, the case in SC.No.21 of 2013 was disposed and A3 & A4 were acquitted.

A1 & A2 were convicted and sentenced as below;-

<i>Rank of the accused</i>	<i>Convicted under</i>	<i>Sentence</i>
A1	Sections 148 & 294(b) IPC Section 307 IPC	10 years rigorous imprisonment and fine of Rs.1,000/- with a default to undergo 1 year rigorous imprisonment.
A2	Sections 148 & 294(b) r/w 149 IPC Section 307 IPC	10 years rigorous imprisonment and fine of Rs.1,000/- with a default to undergo 1 year rigorous imprisonment.

3. The above said judgement was challenged by the A1 and A2 by way of preferring this appeal. Had there been an opportunity to remand the case to the file of the trial Court itself in order to complete the trial of the other case in SC.No.40 of 2013 and pass a separate judgement in one and the same time, it would have helped to rectify the procedural flaw committed by the Sessions Court. In cross cases, it is obligatory for the courts to follow the procedure laid down under sec.223(d) Cr.P.C. In the judgement of the Hon'ble Supreme Court reported in **(2011) 5 SCC 324 (Kuldip Yadav and Others Vs State of Bihar)**, the importance for adopting such a procedure has been



elaborated and it is extracted as under:

WEB COPY

Procedure in respect of cross-cases

12. In order to understand the above issue, it is useful to refer to Section 223(d) of the Code which reads as under:

“223. *What persons may be charged jointly.*—The following persons may be charged and tried together, namely:

(a)-(c) * * *

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

(e)-(g) * * *

13. The above provision has been interpreted by this Court in the following decisions. In *Harjinder Singh v. State of Punjab* [(1985) 1 SCC 422 : 1985 SCC (Cri) 93] the question before the Court was whether under Section 223 of the Code it is permissible for the Court to club and consolidate the case on a police challan and the case on a complaint where the prosecution versions in the police challan case and the complaint case are materially different, contradictory and mutually exclusive. The question was whether the Court should in the facts and circumstances of the case direct that the two cases should be tried together but not consolidated i.e. the evidence be recorded separately in both cases and they may be disposed of simultaneously except to the extent that the witnesses for the prosecution which are common to both may be examined in one case and their evidence be read as evidence in the other.

14. After analysing the factual details, this Court has concluded: (*Harjinder Singh case* [(1985) 1 SCC 422 : 1985 SCC (Cri) 93] , SCC p. 426, para 8)

“8. In the facts and circumstances of this particular case we feel that the proper course to adopt is to direct that the two cases should be tried together by the learned Additional



Sessions Judge but not consolidated i.e. the evidence should be recorded separately in both the cases one after the other except to the extent that the witnesses for the prosecution who are common to both the cases be examined in one case and their evidence be read as evidence in the other. The learned Additional Sessions Judge should after recording the evidence of the prosecution witnesses in one case, withhold his judgment and then proceed to record the evidence of the prosecution in the other case. Thereafter he shall proceed to simultaneously dispose of the cases by two separate judgments taking care that the judgment in one case is not based on the evidence recorded in the other case.”

(underlining supplied)

15. In *Balbir v. State of Haryana* [(2000) 1 SCC 285 : 2000 SCC (Cri) 160] this Court considered clauses (a) and (d) of Section 223 of the Code and held that: (SCC pp. 286h-287a)

“... the primary condition is that persons should have been accused either of the same offence or of different offences ‘committed in the course of the same transaction’. The expression advisedly used is ‘in the course of the same transaction’. That expression is not akin to saying ‘in respect of the same subject-matter’. For several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences ‘committed in the course of the same transaction’.”

4. Since A3 & A4 were acquitted and no appeal has been filed either by the defacto complainant or by the prosecution for challenging their acquittal, they are not before this Court. Without hearing A3 & A4, the case cannot be remanded to the trial



court to be tried afresh along with the other case in SC.No.40 of 2013. Any judgement that might be passed in this appeal may also have an impact on the merits of the other case and that has to be avoided for now.

5. Under such circumstances, I feel it is appropriate to allow the trial court to pronounce the judgement in SC.No.40 of 2013. Depending on the result of the judgement in SC.No.40 of 2013, if any appeal is preferred, then atleast it would be possible for this Court to hear this along with other appeal if any, that might arise out of the judgement to be passed in SC.No.40 of 2013. Hence, I feel that the trial Court should be directed to pronounce the judgement and send a report about its disposal to this Court within a period of two weeks from pronouncing the judgement.

6. Accordingly, the learned Additional Sessions Judge, Namakkal is directed to pronounce the judgment in S.C.40 of 2013 within one month from the date of receipt of the copy of this order and send a report to this Court. However, the trial Judge should consider the merits of the case in SC.No.40 of 2013 without being influenced by the judgement of the Sessions Court passed in SC.No.21 of 2013.



WEB COPY



CrI.RC.No.743 of 2015

R.N.MANJULA, J.

sni

7. The Registry is directed to send this order by fax to the learned Additional Sessions Judge, Namakkal District forthwith for compliance. List the mater after the receipt of the report from the learned Additional Sessions Judge, Namakkal.

18.11.2021

Sni