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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM No.12792 of 2017 IN/AND
CRM-M-45884 of 2016
Date of decision: April 26, 2017**

Paramjit Kaur

.....Applicant-Petitioner

Versus

Central Bureau of Investigation and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Bipan Ghai, Senior Advocate with
Mr. Paras Talwar, Advocate for the applicant-petitioner.

Ms. Rajni Gupta, Addl. AG Punjab.

Mr. Sumeet Goel, Retainer counsel for CBI.

Mr. P.S. Ahluwalia, Advocate
for complainant-respondent No.3.

A.B. CHAUDHARI, J (Oral)

CRM No.12792 of 2017

Heard.

Application is allowed and the date fixed in the main case,
i.e. 24.07.2017 is preponed. At the request of learned counsel for the
parties, the same is being taken up for hearing today itself.

CRM-M-45884 of 2016

Rule. Heard forthwith with the consent of learned counsel
for the rival parties.

Following is the prayer for the present petition:-

*“Petition under Section 482 of Cr. P.C. for quashing of FIR
and Report under Section 173 Cr. P.C. and consequential*

proceedings thereto in case FIR No.39 dated 23.02.2013 for offence under Section 302/34 IPC P.S. Kotwali, Patiala District Patiala being illegal and abuse of process of law as for the same offence the CBI after investigating the same case under the direction of this Hon'ble Court has filed report under Section 173 Cr. P.C. in RC-5-(S)/2014/SCB/CHG dated 30.06.2014 registered under Section 302/34 IPC but final report submitted under Section 306 IPC and the same is proceedings before the Special Judge, CBI of Patiala”.

It is not in dispute that in respect of the same occurrence, Punjab police, after investigation filed challan before the trial Court alleging the offence under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC').

CBI who was entrusted with the investigation by this Court, also made investigation and also filed challan for offence under Section 306 IPC against accused persons.

The challans are pending in two different course, namely, Special Judge, CBI Punjab, Patiala and the Sessions Court at Patiala.

Learned counsel for the parties before me are *ad idem* that only one Court would be able to try these two cases since they arrived out of same occurrence and it would be the CBI Court at Patiala which would be the proper Court to try the challans filed in respect of the same occurrence. Since this Court had ordered investigation by CBI at a later point of time, I think CBI Court would be appropriate Court for dealing in the matter.

Learned counsel for the complainant has cited before me the

decision in the case of Harjinder Singh versus State of Punjab and others, 1985 (1) R.C.R. (Criminal) 289 and in particular Para 8 thereof. I quote the following portion from Para 8 which read thus:-

“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, without 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. In Kewal Krishan's case, supra, this Court had occasion to deal with a situation as the present, where two cases exclusively triable by the Court of Sessions, one instituted on a police report under Section 173 of the Code and the other initiated on a criminal complaint, arose out of the same transaction. The Court observed that to obviate the risk of two courts coming to conflicting findings, it was desirable that the two cases should be tried separately but by the same court. xxxx.”

In my opinion, Para 8 above of the Apex Court judgment lays down to allow in the situation at hand. However, this Court will not be in a position to decide in accordance with the law laid down in Para 8 for the simple reason that in both these challans, statements under section

161 of Code of Criminal Procedure, 1973, other evidence collected by the investigating agency and so and so forth and the arguments for the purpose of applying the law laid down in Para 8 above, will have to be first heard by the trial Court. In so far as the aspect regarding consolidation of cases for recording common evidence or regarding evidence simultaneously or recording the evidence separately all are the matters to be taken care of and consciously decided by the trial Court on the basis of the materials before it. Therefore, straight-jacket formula in relation to Para 8 of the above said judgment cannot be applied and application of Para 8 will have to be made in the light of materials before the trial Court in the form of final report that has been filed by both the investigating agencies. In that view of the matter, following order is passed:-

ORDER

- (i) Petition is partly allowed;
- (ii) It is ordered that the challan filed by the Punjab Police in the Court of Additional Sessions Judge, Patiala shall stand transferred to the Court of Special Judge, CBI, Patiala to be tagged with the CBI case No.RC-5-(S)/2014/SCB/CHG dated 30.06.2014.
- (iii) CBI Court shall now take up decision in accordance with the observations made by me above.

(A.B. CHAUDHARI)
JUDGE

April 26, 2017
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No