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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **TR.P.(CRL.) 89/2016**

CHANDRA BHUSHAN & ORS. ....Petitioners

Through: Mr. Pankaj Kumar, Advocate.

Versus

STATE & ANR. .... Respondents

Through: Mr. Tarang Srivastava, Additional  
Public Prosecutor for State with  
SI Jaichand, P.S. Mukherjee Nagar.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**ORDER**

% **11.12.2017**

1. The complainant/respondent No.2 was represented by his counsel on 13.02.2017. There is no representation today.
2. This petition seeks transfer of trial of the case in FIR No. 157 of 2008 registered at Police Station Mukherjee Nagar, Delhi, for the offences punishable under sections 323/341/354/34 IPC from the Court of the Metropolitan Magistrate, Rohini, Delhi, to the court of the Additional Sessions Judge, Tis Hazari, Delhi, wherein the trial in FIR No. 156/2008 registered at Police Station Mukherjee Nagar, Delhi, for the offences punishable under sections 323/354 of IPC and section 3 (i) (x) (xi) (xv) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities Act) 1989, (SC/ST Act) is pending, because both the cases arise out of the same incident.

3. The learned counsel for the petitioner relies upon the dictum of the High Court of Gauhati in ***Girijananda Bhattacharya & Anr. Vs. The State of Assam & Ors., 1978CriLJ259***, in particular, paragraphs 10, 11 and 12 thereof, which read as under:-

*“10. The following relevant observations of Jackson, J. in Krishna Pannadi v. Emperor reported in AIR 1930 Mad 190 : 31 Cri LJ461, on the moot question, are quoted herein below:*

*There is no clear law as regards the procedure in counter cases, a defect which the legislature ought to remedy.*

*It is a generally recognized rule that such cases should be tried in quick succession by the same Judge, who should not pronounce judgment till the time the hearing of both cases is finished.*

*This precludes the danger of an accused being convicted before his whole case is before the Court, and also prevents there being conflicting judgments upon similar fact by But at the same time the rule involves obvious difficulty. It seems to infringe the fundamental principle that the Court must not import any facts into a case which are not to be found upon the record. To take an illustration, suppose in the first of the cases the accused succeeds in showing that the prosecution has failed to prove its charge, and then in the second case the same accused as complainant goes into the witness box and breaks down in cross-examination so as to convince the Court that the truth lies with the other side. Can the Court be expected to dismiss this circumstance from its mind, and if it does not do so, what legal justification is there for it into the case already heard?*

*The only way in which such a procedure can be justified is by setting up a fiction that the case and the counter case are really one' and this jiction should be made a reality by statute.*

*If a Court were empowered to link cases, as they link files in a secretariat there would also be the incidental advantage of a great saving of time. At present in each case the evidence of every witness must be fully recorded and what P.W. 1 says for the prosecution in one case must all be written out again when he repeats it as D.W. 1 in the other case.*

*But whether there be a statutory enactment or not the point remains that for practical purposes a case and its counter and it is this that general observations particularly germane to the present case.* (Emphasis supplied).

11. Although the observation of Jackson, J. is dated 16th October 1929 unfortunately no change has been brought in the Cr.PC laying down a procedure regarding the trial of counter cases at least no such provision of law could be pointed out before me by the learned counsel appearing on behalf of the parties.

12. Prime reasons for trial of cases and counter cases arising out of the same incident by a Presiding Officer, therefore, may be summed up as under;

- 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.

*There are innumerable decisions of various High Courts and it would be multiplying the numbers alone but would serve no purpose excepting a preparation of a chart or catalogue of cases on the point. ”*

4. The learned counsel for the State submits that in the dictum of ***State Vs. Kalyan Singh, AIR 2017 SC 2020***, the Supreme Court held as under:

*“.... 24. In the present case, the power of transfer is being exercised to transfer a case from one Special Judge to another Special Judge, and not to the High Court. The fact that one Special Judge happens to be a Magistrate, whereas the other Special Judge has committed the case to a Court of Sessions would not make any difference as, as has been stated hereinabove, even a right of appeal from a Magistrate to the Sessions Court, and from the Sessions Court to the High Court could be taken away under the procedure established by law, i.e., by virtue of Section 407 (1) and (8) if the case is required to be transferred from the Magistrate at Rae Bareilly to the High Court itself. Hence, under Section 407, even if 2 tiers of appeal are done away with, there is no infraction of Article 21 as such taking away of the right of appeal is expressly contemplated by Section 407(1)(iv) read with Section 407(8). In the circumstances, Antulay’s judgment which dealt with the right of a substantive appeal from a Special Judge to the High Court being taken away by an order of transfer contrary to the non obstante clause in Section 7(1) of the Criminal Law Amendment Act, 1952 would not apply in the facts and circumstances before us.....”*

5. In the circumstances, it would be in the interest of justice to direct that both the cases be tried in the same court i.e. in the Court of the learned ASJ, Tis Hazari, Delhi where the trial in FIR No. 156/2008, for the offences punishable under sections 323/354 of IPC and section 3(i)(x) (xi)(xv) SC/ST Act is pending. It is so directed. The parties shall appear before the court concerned on 28.02.2018 where the trial of case under SC/ST Act is pending. The District Judge, Rohini Courts, Delhi, is requested to have the case file of FIR No.157/2008 pending before the Metropolitan Magistrate concerned physically transferred to the aforesaid court handling the matter

relating to section 3(i)(x)(xv) of the SC/ST Act arising out of FIR No.156/2008.

6. The Registry is directed to send a copy of this order to the District Judge concerned for compliance.

7. The petition is allowed in the above terms.

**NAJMI WAZIRI, J.**

**DECEMBER 11, 2017**

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