THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.11531 of 2017

ORDER

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in C.C.No.476 of 2016 (Crime No.118/2014 of Nagarjuna Sagar Police Station) on the file of Junior Civil Judge, Macherla, Guntur District, for the offences punishable under Sections 409, 420, 468 & 471 IPC.

The facts of the case in nutshell are that, the petitioner/A-5 while working as Additional Programme Officer in Mahatma Gandhi National Rural Employment Guarantee Scheme (for short 'MGNREGS), Macherla Mandal, along with respondents 5 & 6/A-4 & A-7, fabricated false thumb impressions and signatures in the concerned registers, showing the names of fictitious persons for completing the work of filling the pond with earth in Pasuvemula Village and misappropriated the amount, thereby, committed offences punishable under Sections 409, 420, 468 & 471 IPC. One M. V. Venkata Raju, Additional P.O and Programme Officer (FAC), MGNREGS-A.P., Macherla Mandal, Guntur District, lodged a report with the police. On the strength of the report, the police registered a case in Crime No.118 of 2014 on the file of Nagarjunasagar Police Station, Guntur District, for the offence punishable under Section 409 IPC and took up investigation.

During investigation, the Investigating Officer examined 175 witnesses, recorded their statements and filed charge sheet against seven accused and the present petitioner is one among them, who is arrayed as Accused No.5 in the said charge sheet. In the charge sheet, specific allegation is made against each of the accused in different paragraphs.

It is alleged in the charge sheet that, A-1 is a customer service provider committed misappropriation of Rs.52,829/- & Rs.18,1136/- without paying the amount to the beneficiaries on the pretext of, non-availability of funds in the account. Similarly, Chintalacheruvu Lakshmamma @ Lakshmi (A-2) & Mekala Bhiksham s/o Kotaiah (A-3) being the Mandal Coordinators of Koppunuru Village misappropriated Rs.21,041/-.

The specific allegations made against the petitioner herein (A-5), including A-4 & A-7 are extracted hereunder, for better appreciation of the case"

> "**A4-R.S. Naik, A-5-A. Rama Rao and A-7-K. Kamala** created records by made false entries in the concerned registers, showing the names of various groups for the work of filled up pond with earth at Pasuvemula village under MGNREGS, affixed signatures and thumb impressions on the concerned registered and misappropriated a tune of amount Rs.4,75,582/-. In this misappropriation nothing work went on in the village but accused created the record with all false entries and the same submitted to the concerned officers, drew the amount and misappropriated the amount for their personnel use illegally."

Similarly, J. Satyanarayana (A-8) misappropriated an amount of Rs.3,333/- for the work done by one Thirdhala Naga Mani w/o Bitchaiah and Thirdhala Bitchaiah s/o Raghavaiah in Veeranjaneyapuram village. Hence, the incharge officer of the village under MGNREGS-A.P scheme i.e Project Officer, verified the records and ordered audit of the accounts and found the above illegalities committed by the petitioner and others, at different places i.e. Byravunipadu, Thallapalli, Veeranjaneyapuram, Pasuvemula, Koppunuru villages.

In this context, it is pertinent to note that, the petitioner herein/A-5 allegedly misappropriated the amount to the tune of Rs.4,75,582/- while he was working at Pasuvemula Village and the other accused misappropriated the amounts at different villages, as stated above. Further, the Investigating Officer, filed common charge sheet against all the accused for different incidents of misappropriation in different villages. The case was taken on file by the Junior Civil Judge at Macherla and issued summons to the petitioner and other accused.

The main ground urged by the petitioner is that, he is only an Additional Programme Officer, along with A-4 & A-7, allegedly obtained false thumb impressions and signatures in the concerned register, showing the names of fictitious persons for completing the work of filling the pond with earth in Pasuvemula Village and misappropriated the amount, thereby, committed offences punishable under Sections 409, 420, 468 & 471 IPC. The main grievance of the petitioner-A-5 in the grounds is that, he has nothing to do with the alleged fabrication and filing of charges against this petitioner along with the other accused, though the offences allegedly taken place at different villages and accounts maintained by them are different, single charge sheet against all the accused is impermissible, as it amounts to mis-joinder of accused persons and there is always possibility of unconscious prejudice to the accused, due to evidence adduced in other crimes, which would be irrelevant, if the accused were tried together. Moreover, the witnesses for various offences in respect of each work undertaken by accused are separate and distinct and therefore, common trial cannot be conducted. It is urged that, to avoid prejudice to the accused, the case against this petitioner has to be completed to have fair trial and disposed of by the Magistrate, uninfluenced by the evidence adduced by the prosecution pertaining to the offence committed by the other accused. It is also urged that, misjoinder of accused persons itself is sufficient to quash the proceedings.

During hearing, Sri M. Chalapati Rao, learned counsel for the petitioner contended that, to avoid unconscious prejudice against this petitioner, the case against him has to be separated, as the offence allegedly committed by the other accused are at different villages like Byravunipadu, Thallapalli, Veeranjaneyapuram, Koppunuru villages, but, whereas, the specific incident allegedly committed by this petitioner is at Pasuvemula Village, which is a distinct village from the other villages, where the other accused committed alleged misappropriation. Moreover, the act of misappropriation also is not arising out of the same incident. Therefore, common trial is impermissible.

In support of his contentions, learned counsel for the petitioner placed reliance on **The State of A.P. v. Cheemalapati Ganeswara Rao and another**[1], **Gullanna Nagaraju, Karnataka State v. State of Andhra Pradesh, rep. by Public Prosecutor**[2], **Narayan Prasad and others v. State of Rajasthan**[3], **State of Kerala v. Wolf Hang Kannad Finert**[4] and **Balbir v. State of Haryana and another**[5]. On the strength of law declared by various Courts in the judgments referred supra, learned counsel for the petitioner requested this Court to order separate trial of the case against this petitioner to avoid unnecessary and unconscious prejudice and to have fair trail, enabling this petitioner to prove his innocence.

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[1] AIR 1963 SUPREME COURT 1850
[2] Unreported judgment of this Court in Crl.R.C.No.970 of 2017 dated19.10.2017
[3] 1999 (4) Crimes pg 86
[4] 1995 (3) Crimes pg 384
[5] (2000) 1 Supreme Court Cases 285

Whereas, the learned Public Prosecutor for the State of Andhra Pradesh would contend that, though the different incidents committed by the different accused are at different villages, the Investigating Agency filed common charge sheet against all the accused, since the offence committed by them are punishable under the same provisions of law, therefore, the request of the learned counsel for the petitioner cannot be accepted. Learned Public Prosecutor placed reliance on the judgment of the Apex Court in **R. Dinesh Kumar alias Deena v. State, represented by Inspector of Police and others**[6] and prayed for dismissal of the criminal petition.

Considering rival contentions and perusing the material available on record, the point that arise for consideration is:

"***whether, misjoinder of petitioner/A-5 in C.C.No.476 of 2016 (Crime No.118/2014 of Nagarjuna Sagar Police Station) on the file of Junior Civil Judge, Macherla, Guntur District, is liable to be quashed".***

P O I N T:

The petitioner/A-5 while working as Additional Programme Officer in Mahatma Gandhi National Rural Employment Guarantee Scheme (for short 'MGNREGS), Macherla Mandal, along with respondents 5 & 6/A-4 & A-7, allegedly fabricated fake thumb impressions and signatures in the concerned registers, showing the names of fictitious persons for completing the work of filling the pond with earth in Pasuvemula Village and misappropriated the amount to the tune of Rs.4,75,582/-. Thereafter, the audit report was called for and the audit report disclosed the said factum of misappropriation by the accused. A report was lodged with the

[6] (2015) 7 Supreme Court Cases 497

police, who in-turn examined various witnesses, who are 175 in number in all the incidents of misappropriation and filed charge sheet before the Junior Civil Judge, Macherla, Guntur District, who in-turn took cognizance of the offences punishable under Sections 409, 420, 468 & 471 IPC.

The petitioner committed the offence allegedly, while working as Additional Programme Officer in Mahatma Gandhi National Rural Employment Guarantee Scheme (for short 'MGNREGS), Macherla Mandal, along with respondents 5 & 6/A-4 & A-7 at different villages i.e. at Byravunipadu, Thallapalli, Veeranjaneyapuram, Koppunuru villages, and it is his contention that he has nothing to do with the offences, as the specific incident allegedly committed by this petitioner is at Pasuvemula Village, which is a distinct village from the other villages and moreover, the place of misappropriation also is not arising out of the same incident, thus, the petitioner cannot be joined with them to avoid unconscious prejudice and based on the testimony of witnesses, examined by the prosecution in support of the offences committed by the other accused at different villages and to have fair trail.

Admittedly, in the charge sheet, it is alleged that this petitioner along with the other accused allegedly misappropriated an amount of Rs.4,75,582/- at Pasuvemula Village. But, the alleged offences committed by the other accused are not arising out of the same transaction/village. In such case, the petitioner cannot be joined as an accused in the same charge sheet, as it amounts to misjoinder to charge sheet.

The provision which deals with joinder of parties is Section 223 Cr.P.C. The object of Section 223 Cr.P.C is to avoid multiplicity of trials. The general rule of criminal trial is that for every distinct offence of which any person is accused there shall be a separate charge and every charge shall be tried separately. But, this general rule is qualified by certain exceptions laid down under Section 223 Cr.P.C, in which several accused may be charged and tried together. In deciding the question whether or not more person than one can be tried together, the Court has to consider the nature of the accusation made by the prosecution. Where accusation *prima facie* justifies a joint trial of more persons than one, the validity of such a trial cannot be challenged if the said accusation is not established according to law. The point of time at which the accusation is to be considered in the time when the accusation is made and not when the trial is concluded and the result known.

Section 223 of Cr.P.C is merely an enabling provision, and does not in any way trammel the direction of the Court. Section 223 Cr.P.C confers a discretion on a Court to try person accused of an offence before it either jointly or separately, but the discretion is judicial one has to be exercised according to certain well-established principles (vide **Sardara v. Emperor**[7]). The manner in which discretion is to be exercised must depend upon the facts and circumstances of each case. Section 223 Cr.P.C is not mandatory provision but is permissible. Joinder of charges under Section 223 Cr.P.C should not be resorted, if there is risk of embarrassment to the accused. Bearing in mind the fact that the provisions in the 'former part' of Chapter XVII are applicable to charges made with the aid of this section only "**so far as may be**", it would not be right to construe this section as being subject to the provisions of Sections 218 to 221. The expression "**so far as**

[7] 1945 L 286

may be" emphasizes the act that while the earlier provisions have to be borne in mind by the Court while applying this section, it is not those provisions but the latter, i.e this section which is to have an overriding effect. (vide **State of A.P. v. C. Ganeswara Rao**[1]). Clauses (a) to (g) of Section 223 Cr.P.C are not mutually exclusive. It is open to the Court to avail itself cumulatively of the provisions of the different clauses of Section 223 Cr.P.C for the purpose of framing charges and the charges so framed will not be in violation of the law, the provisions of Sections 218, 219 and 220 notwithstanding.

The word **'same transaction'** used in Clause (a) imply that all the accused should have acted in concert or association and they do not apply to a case in which the allegations against the accused are mutually exclusive. They mean an offence arising out of the same act or series of acts and cannot mean anything else. (vide **Amar singh v. State**[8]).

The condition expressed in the words ***"persons accused of the same offence committed in the course of the same transaction"*** does not say "**rightly accused**" or "accused and convicted". In order to determine whether several persons can be jointly tried as having committed the same offence or not, the Court has to look to the accusation, i.e. the case set by the prosecution in the charge itself and if it can be held that the accused persons have committed offence in the course of the same transaction then they can be joined together, not otherwise, and it is not necessary to consider that the final result of the case would be. There must be evidence on the side of the prosecution to prove that there was any prior consultation or community or purpose

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[8] 1954 Punjab 106

amongst the accused so as to justify their joint trial. (vide **Amolak Mulchand v. Emperor**[9]).

The word **"same transaction"** comprise all the acts of all the persons concerned done in the course of carrying through the affair in question and the *prima facie* test is continuity of action and unity of purpose. Therefore, in view of the wording specified under Section 223 Cr.P.C, is continuity of action and unity of purpose, which is predominant to decide whether the offence committed by the other accused is during the same transaction.

Persons accused of different offences committed in the course of the same transaction can be tried together. As to what is the same transaction must depend upon the facts and circumstances of each particular case. The expression **"the same transaction"** and purpose. The test in such cases is that the acts done may be so related to each other in point of purpose or as cause and effect or as principal and subsidiary acts as to constitute one continuous action. In order that the different acts will make up one transaction, it must be inherent in them that from the very beginning of the earliest act or the first act, the other acts should either be in contemplation or should from the very nature of the transaction in view, form the components part of one whole.

Thus, the main purpose of joint trial or joinder of parties of various accused is to invoke the jurisdiction under Section 223 Cr.P.C to try more than one accused persons, the acts done by the other accused must be in the same transaction or consequence of same transaction, by applying the test referred supra. But, in the present case, the petitioner/Accused No.5 while working as

[9] 1933 N 368

Additional Programme Officer in 'MGNREGS at Pasuvemula Village, allegedly misappropriated an amount of Rs.4,75,582/- along with Accused Nos.4 & 7, though the other accused committed offences of misappropriation of different amounts at different villages. But, the police filed charge sheet against all the accused i.e. A-1 to A-7, though the other accused also allegedly committed offences of misappropriation in different villages like Byravunipadu, Thallapalli, Veeranjaneyapuram, Pasuvemula, Koppunuru villages. They are maintaining separate registers and books and their works are different. Therefore, it is difficult to comprehend that the acts done by the other accused and the present petitioner/A-5 are arising out of the same transaction, though the nature of offence committed by all the accused is one and the same, they are not out of the same transaction or consequences of the same transaction. Misappropriation of particular amount of each of the accused is a distinct incident and such incident would not form part of the same transaction. Therefore, the joint trial of several accused in contravention of Section 223 Cr.P.C is invalid, illegal and is not curable under Section 264 Cr.P.C and there can be no waiver. In the present case, the petitioner is arrayed as Accused No.5. The petitioner himself approached this Court to quash the proceedings on the ground of misjoinder of charges/parties. But, on the ground of misjoinder of charges/parties, in contravention of Section 223 Cr.P.C is not a ground to quash the proceedings. But, at best, the Court may order separate trial, separating the petitioner along with the other accused who allegedly committed the same offence in the same transaction, if the Court finds that it would cause prejudice to the petitioners/accused.

Learned counsel for the petitioner, in support of his contention, would draw the attention of this Court to judgment in **Cheemalapati Ganeswara Rao**[1] case, where, the Supreme Court held that where an objection to misjoinder of charges contrary to the provisions of the Code is taken at an early stage of the trial there is time enough to rectify the error. But where such objection is raised for the first time only in the High Court, what the Court has to consider is whether prejudice has in fact been caused to the accused by reason of the multiplicity of charges or misjoinder, if any, of the charges. Merely because the accused persons are charged with a large number of offences and convicted at the trial, the conviction cannot be set aside by the Appellate Court unless it in fact came to the conclusion that the accused persons were embarrassed in their defence with the result that there was a failure of justice.

Further, the Supreme Court held that, a charge is a precise formulation of a specific accusation made against a person of an offence alleged to have been committed by him. Sections 234 to 239 permit the joinder of such charges under specified conditions for the purpose of a single trial. Such a joinder may be of charges in respect of different offences committed by a single person or several persons. If the joinder of charges was contrary to the provisions of the Code it would be a misjoinder of charges. Section 537 (pre-amended Cr.P.C) prohibits the revisional or the appellate court from setting aside a finding, sentence or order passed by a court of competent jurisdiction on the ground of such a misjoinder unless it has occasioned a failure of justice. Even if the Court was to assume that there has been a misjoinder of charges in violation of the provisions of Sections 233 to 239 of the Code, the High Court is incompetent to set aside the conviction of the respondents without coming to the definite conclusion that misjoinder had occasioned failure of justice. Therefore, the combined effect of the provisions is that, if the alleged offence committed by the other accused is out of the same transaction, then, the Court can try and decide and try all the accused together and decide the culpability and complicity of the accused. When the incidents or transactions are different, it amounts to misjoinder of parties, hit by Section 223 Cr.P.C and contrary to the purport of Section 223 Cr.P.C.

Similarly, in **Balbir**[5] case, the Supreme Court had an occasion to deal with Clauses (a) and (d) in Section 223 Cr.P.C, which are as under:

The following persons may be charged and tried together, namely:

> ***(a) persons accused of the same of fence committed in the course of the same transaction;***
>
> ***(d) persons accused of different of fences committed in the course of the same transaction.***

In both the aforesaid clauses the primary condition is that persons should have been accused either of the same of fence or of different of fences "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"*** It is pertinent to point out that the same expression is employed in Section 220(1) of the Code also (corresponding to Section 235(1) of the old Code). The meaning of the expression "in the course of the same transaction" used in Section 223 is not materially different from that expression used in Section 223(1). It is so understood by this Court in **Cheemalapati Ganeswara Rao**[1] case. The following observation in the said judgment is contextually quotable:

> "The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently, they would not form part the same transaction but would constitute a different transaction or transactions. Therefore, even if the expression "same transaction" alone had been used in Section 235(1) it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression 'same transaction' occurring in Clauses (a), (c) and (d) of Section 239 as well as that occurring in Section 235(1) ought to be given the same meaning according to the normal rule of construction of statutes."

It is further held that, 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 commonality of purpose or design, where there is continuity of action, then all those persons involved can be accused of the same or different of fences ***"committed in the course of the same transaction"***. But if in one case the accused is alleged to have killed a person without any connection with the accused in the other case, then it cannot be treated as the same offence or even different offences ***"committed in the course of the same transaction"***. If such two diametrically opposite versions are put to joint trial, the confusion which it can cause in the trial would be incalculable. It would then be a mess and then there would be no scope for a fair trial. Hence the attempt to bring the two cases under the umbrella of Section 223 of the Code has only to be foiled as untenable.

Learned counsel for the petitioner also relied on the judgments of Rajasthan and Kerala High Courts in **Narayan Prasad**[3] and **Wolf Hang Kannad Finert**[4] cases, in both the judgments, both the High Courts made it clear that, Section 223(a) Cr.P.C. provides that persons accused of the same offence committed in the course of same transaction may be charged and tried together. It is obvious that it is enabling provision. The general rule is that every person is entitled to insist that his case should be tried separately. A joint trial in the circumstances mentioned in Section 223 is not compulsory and the Court has a discretion to order separate trials if that serves the purpose of justice at best. The burden to justify the joint trial is always on the prosecution. It has to be accepted that it would be very hard and almost oppressive to any set of persons, to charge them together unless the whole of the evidence against all of them is precisely the same.

In **Mohan Baitha v. State of Bihar**[10], the facts of the case are as follows: 'In the complaint, it was alleged that five persons committed offences under Sections 304-B, 498-A, 120-B and 406 IPC. Ultimately, after investigation, a charge sheet was filed. Before the Magistrate concerned has taken further action in the criminal proceedings, the accused persons filed an application before the High Court seeking a direction to the Magistrate not to proceed in the matter. One of the grounds urged was that since the incident constituting the offence punishable under Section 304-B IPC had taken place at Jahanaganj in the State of Uttar Pradesh, the Court at Bhagalpur lacks territorial jurisdiction. The High Court dismissed the said petition. Therefore, the accused

[10] AIR 2001 SUPREME COURT 1490

persons approached the Supreme Court. The Supreme Court having referred to the facts of the case and the provisions of law that are relevant held as follows:

> ***"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 ore 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."***

This decision is relied upon to explain the definition/meaning of the expression ***'same transaction'***. Eventually, in this decision, it was held that 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 criteria stated in the decision. Therefore, common sense and the ordinary use of language must decide whether on the facts of a particular case, a series of acts can be held to be forming part of the same transaction. It is clear from the ratio that it is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two ore 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.

In unreported judgment of this Court in **Gullanna Nagaraju**[2] case, the learned single Judge of this Court referred to other judgments of various High Courts in **Ram Raj Chaudhury v. Emperor**[11], **Kuriakose Chaoko v. State**[12], **M.L. Sharma v. Central Bureau of investigation**[13], **Mohan Baitha**[10] **and Lalu Prasad @ Lalu Prasad Yadav v. State of Bihar**[14]. After careful scrutiny of the law laid down in the above judgments, the learned single Judge of this Court, concluded that, if the allegations made in the complaint against all the accused do not form part of the same transaction, the Court by exercising discretion, can pass appropriate order for separate trial. In view of the law declared by Apex Court and persuaded by law declared by other High Courts referred in the above judgments, it is obvious that, only when the offences committed by various accused, arrayed in the same calendar cases committed the offences, arise out of the same transaction, they can be tried together and the question of misjoinder of parties under Section 223 Cr.P.C would not arise. But, if the offences are independent and different transactions, the Court cannot exercise such jurisdiction and they cannot be tried together.

Learned Public Prosecutor for the State of Andhra Pradesh, while supporting joint trial of the accused, would draw attention of this Court to the judgment of Apex Court in **R. Dinesh Kumar alias Deena**[6] case, where, the Apex Court held that, Section 223 of the Code of Criminal Procedure provides for the joint trial of different accused in certain circumstances. It enumerates different

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[11] AIR 1946 PATNA 74
[12] AIR 1951 TRAVANCORE-COCHIN 90
[13] 2008 Cri.L.J 1725
[14] 2000 Law Suit (part) 653

contingencies in which different persons may be charged and tried together. Section 235(1), while providing for the joint trial for more than one offences, indicates that there must be connection between the acts and the transaction. According to this provision there must thus be a connection between a series of acts before, they could be regarded as forming the same transaction. 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. 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 Allahabad High Court in **T.B. Mukerji v. The State**[15] insofar as it dealt with the general principles of the joint and separate trials, held that, no doubt, as has been rightly pointed out in this case, separate trial is the normal rule and joint trial is an exception. But while this principle is easy to appreciate and follow where one person alone is the accused and the interaction or intervention of the acts of more persons than one does not come

[15] AIR 1954 All 501

in, it would, where the same act is committed by several persons, be not only inconvenient but injudicious to try all the several persons separately. This would lead to unnecessary multiplicity of trials involving avoidable inconvenience to the witnesses and avoidable expenditure of public time and money. No corresponding advantage can be gained by the accused persons by following the procedure of separate trials. Where, however, several offences are alleged to have been committed by several accused persons it may be more reasonable to follow the normal rule of separate trials. But here, again, if those offences are alleged not to be wholly unconnected but as forming part of the same transaction the only consideration that will justify separate trials would be the embarrassment or difficulty caused to the accused persons in defending themselves.

Further, the Supreme Court held that the principle enunciated in **Ganeswara Rao[1]** case is that where several persons are alleged to have committed several separate offences, which, however, are not wholly unconnected, then there may be a joint trial unless such joint trial is likely to cause either embarrassment or difficulty to the accused in defending themselves.

The law on this aspect is not in dispute, as per the judgment relied on by the learned Public Prosecutor and what requires to try all the different accused at a time in one calendar case is the offences committed by them should be arising out of the same transaction, prejudice, embarrassment or difficulty to the accused to defend himself. Even if, the definition of the same transaction, as enunciated in the judgment referred supra, if applied to the present facts of the case, the petitioner/Accused No.5 allegedly committed an offence of misappropriation along with A-4 & A-7 to a tune of Rs.4,75,582/- at Pasuvemula Village, being an Additional Programme Officer in Mahatma Gandhi National Rural Employment Guarantee Scheme. But, the other offences committed by the other accused are in different places and in different capacities. There is no direct or indirect connection between the acts of various accused in different villages to hold that the offences committed by the other accused A-4, A-5 & A-7 arising out of the same transaction. The dates of misappropriation, books of accounts maintained by the other accused in different villages is totally different and those offences cannot be tried along with this petitioner, since, it would cause unconscious prejudice to the petitioner, since there is a possibility of unconscious prejudice, embarrassment, difficulty to the accused likely to be caused on account of alleged misappropriation.

The evidence to prove the guilt of this petitioner along with A-4 & A-7 in C.C.No.476 of 2016 is totally different. The books of account or any other electronic record maintained at the office at Pasuvemula Village by the petitioner/Accused No.5 has nothing to do with the records kept with other villages. The witnesses proposed to be examined by the prosecution to prove the guilt of the accused are only the labourers engaged for work of filling the pond with earth in Pasuvemula Village, but not the others. Therefore, at best, the witnesses who belong to Pasuvemula Village are relevant witness to speak about this incident, but not others i.e. they are listed witnesses from 139 to 166 and the common witnesses are the complainant and other official witnesses. The documents proposed to be marked before the Court are also different. Therefore, to avoid unnecessary confusion in examining the witnesses and marking documents and unconscious prejudice to this petitioner, it is appropriate to try this petitioner along with the other accused A-4 & A-7 in C.C.No.476 of 2016 separately.

The Investigating Agency filed common charge sheet, though they are conscious that the offences allegedly committed by the petitioner is common with the other offences and they are independent incidents. But, it appears from the conduct of the Investigating Agency that they wanted to shirk their responsibility by filing a single charge sheet without visualizing the ill-consequences that will flow from such single charge sheet and the prejudice embarrassment and difficulty in defending that will be caused to the petitioner and other accused, if tried together and arraying this petitioner along with A-4 & A-7 in one calendar case as accused would cause inconvenience to set up a specific defense by this petitioner. Apart from that, neither the incidents are not arising out of the same transaction nor there is any direct or indirect connection among the incidents. Therefore, I find that, it is a fit case to direct the Magistrate concerned to separate the case against the petitioner herein/Accused No.5, A-4 & A-7 and try separately to avoid prejudice and inconvenience in setting up defence to this petitioner and to ensure fair trail.

Though the petitioner/Accused No.5 claimed quashment of the proceedings, such inherent jurisdiction cannot be exercised in the present set of facts, for the reason that, such inherent powers can be exercised only to give effect to the orders passed by the Court to prevent abuse of process of the Court or to secure the ends of justice.

In **State of Haryana** v. **Bhajan Lal**[16] this Court considered in detail the scope of provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
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> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
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> (3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
>
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
>
> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
>
> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

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[16] 1992 Supp. (1) SCC 335

Even if the principles in **Bhajan Lal**[16] case are applied to the present facts of the case, this case would not fall within the guidelines laid down by the Apex Court. On the other hand, trial of the petitioner/Accused No.5 along with the other accused would cause prejudice and inconvenience to set up a specific defense and to avoid such prejudice and inconvenience, it is appropriate to issue a direction to separate the case of the petitioner/Accused No.5 along with A-4 & A-7 to try them separately, instead of quashing the proceedings.

In view of my foregoing discussion, I find no ground to quash the proceedings, by exercising power under Section 482 Cr.P.C. The Junior Civil Judge, Macherla, Guntur District, is directed to separate C.C.No.476 of 2016 against this petitioner/Accused No.5, A-4 & A-7, try and dispose of the matter in accordance with law, since A-4, A-5 & A-7 jointly committed the offences at Pasuvemula Village and misappropriated an amount of Rs.4,75,582/-, allegedly.

With the other direction, the criminal petition is disposed of.

Consequently, miscellaneous applications pending if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Dated:03.01.2018

SP