

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

CRM-M- 13691 of 2018

Date of Decision : 16.10.2018

Dr. Parveen Kumar Sareen

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: Hon'ble Mr. Justice Gurvinder Singh Gill

Present:- Mr. R.S.Rai, Senior Advocate with Mr. Gautam Dutt, Advocate,
counsel for the petitioner.

Mr. Gaurav Garg Dhuriwala,
Senior Deputy Advocate General, Punjab

Gurvinder Singh Gill, J.

1. Petitioner, Dr. Parveen Kumar Sareen, who is one of the 13 accused facing trial in respect of two FIRs, the details of which are being stated below, being aggrieved by order dated 14.3.2018 passed by Court of Additional Sessions Judge, Amritsar, dismissing his application filed under section 216 and 217 of Cr.P.C., seeking amendment of the charge-sheet, has challenged the same by way of filing present petition.
2. The matter arises out of the infamous 'kidney scam', which rocked State of Punjab about 15 years back leading to lodging of two FIRs. A gist of the said a FIRs may be stated as follows:

- (i) **F.I.R. No. 101 dated 21.9.2002, P.S. 'D' Division, Amritsar under section 295-A, 371, 420, 467, 468, 471, 120-B IPC and under section 18, 19 and 20 of Transplantation of Human Organs Act 1994 :**

This FIR was lodged when it came to light that a trade of human organs was going on in Amritsar, wherein innocent persons were induced into parting with their kidneys in lieu of some amount and which used to be sold at hefty prices to rich patients. The entire scam was being run by some doctors in connivance with mediators/touts. Consequently, the FIR was lodged with general allegations as regards the illegal trade of human organs in violation of the provisions of Transportation of Human Organs Act, 1994 and also for committing various other offences under IPC. Thirteen accused are facing trial in this case.

- (ii) **F.I.R. No. 25 dated 1.2.2003 P.S. Civil lines Amritsar under section 363, 364, 302, 201, 465, 120-B IPC and under section 18, 19 and 20 of Transplantation of Human Organs Act 1994 :**

During the course of investigation of aforesaid F.I.R. No.101 dated 21.9.2002, it surfaced that in the year 2003, one Mulkh Raj Goel, whose both the kidneys had failed had contacted 'Kakkar Hospital' at Amritsar, where a deal was struck for providing a kidney to him for Rs.2.5 lakhs of a donor namely Sudesh Kumar. It transpired that said Sudesh Kumar was a labourer whose kidney was taken out for a petty amount and was transplanted in the body of Mulkh Raj Goel. However Sudesh donor was not provided adequate post-extraction treatment and consequently he expired. Sh. Kunwar Vijay Partap Singh, an IPS officer posted in Amritsar, on getting to know about the said facts got the aforesaid FIR

No.25 dated 1.2.2003 registered u/s 366,364,302,201,465,120-B IPC and u/s 18,19 and 20 of Transplantation of Human Organs Act, 1994, pertaining to the specific incident of death of Sudesh Kumar. Five accused are facing trial in this case who are also arrayed as accused in FIR 101 dated 21.9.2002.

3. The aforesaid matters were investigated and upon filing of final reports against the accused, charges were framed against the accused in both the cases. The petitioner had moved an application seeking his discharge in the FIR No. 25 1.2.2003 but the said application was dismissed by the learned trial Court vide order dated 2.8.2004 (Annexure P-6) which was assailed by the petitioner by way of filing Criminal Revision No. 2169 of 2004 in this Court which was also dismissed by this Court vide order dated 6.4.2005 (Annexure P-8). Aggrieved with dismissal of the revision petition, the petitioner preferred an appeal in Hon'ble Supreme Court i.e. Criminal Appeal No.1844 of 2011, but Hon'ble the Apex Court upheld the framing of charges vide order dated 2.11.2017, while being aware that it was a case of two separate trials. The relevant observations recorded therein read as under:

3. “ The charges framed in both the Sessions Cases are identical and the said exercise appears to have been committed due to inadvertence, we do not see how the aforesaid act on the part of the Court has caused any prejudice to the accused. The allegations against the appellant are clear and specific and there would be no occasion for this Court to hold that the order refusing discharge in any way suffers from any

legal infirmity. Be that as it may, we find no ground to interfere with the trial, instead we direct the learned Trial Court to complete the trial within 6 months from the date of receipt of the record which will be sent by the registry of this court to the learned Trial Court by a special messenger so as to reach the Trial Court within 7 days from today.

4. The learned Trial Court, if it has not already passed orders for amalgamation of the two cases will do so forthwith.”

4. Pursuant to passing of the aforesaid order, the petitioner moved an application dated 14.2.2018 u/s 216 and 217 Cr.P.C. before the trial Court for framing a fresh single charge-sheet in respect of both the FIRs so that a single consolidated trial is conducted in respect of both the FIRs. The learned trial Court, however, dismissed the said application vide order dated 14.3.2018 which is being impugned in the present petition. The relevant extract from impugned order dated 14.03.2018 reads as follows:

“Since specific accusations have been attributed to each of accused clearly and in this regard, in case FIR No. 101, already 62 witnesses have been examined and in other FIR, almost 22 witnesses. Whereas, Hon'ble Apex Court of India has directed this Court to decide the case within six months. Now apprehending that decision will be taken within six months, so in order to delay the decision accused has moved this application for reframing of single charge. However he could not disclose or point out, how he will be prejudiced in case, no single charge is framed and there remain two distinct charges for the same trial. Since no prejudice is going to be

caused to the accused in any manner, therefore this application moved by accused/applicant in order to delay the decision of case and to get the de-novo trial from the date it was originally started in November 2004 does not lie. Moreover this tactic of accused/applicant adopted to cause delay in decision of case cannot be allowed to defeat the provisions of law. Therefore, this application being devoid of merits is dismissed”

5. The learned counsel for the petitioner while assailing the impugned order has submitted that the trial Court fell in error in dismissing the application for framing fresh amended single chargesheet whereas the Supreme Court had categorically directed that both the cases be amalgamated. The learned counsel has submitted since the allegations in the second FIR arise from the alleged conspiracy of trade of human organs which is subject matter of earlier FIR, therefore holding of separate trials is not warranted. The learned counsel places reliance upon 2013(2) RCR(Criminal) 819 Amitbhai Anilchandra Shah Vs. The Central Bureau of Investigation & Anr. and also upon Lalu Prasad alias Lal Prasad Yadav v. State through CBI (A.H.D.), Ranchi, Jharkhand, 2003(4) R.C.R.(Criminal) 160.
6. On the other hand the learned State counsel has submitted that while the first the FIR was in respect of a larger conspiracy pertaining to the racket of trafficking of human organs, the second FIR pertains to death of one such donor whose kidney had been extracted for meagre monetary consideration and who was not provided proper post-surgery medical treatment resulting in his death and that in these circumstances although the specific incident of death reported in second FIR can be said to be a consequence of the larger conspiracy hatched earlier but since the conspiracy was not specifically for

causing death, the second incident can also be conveniently segregated and accused be tried separately. It has further been submitted that since at this stage when substantial evidence has already been recorded inasmuch as 66 PWs out of 93 cited PWs have already been examined in one case and 17 PWs out of cited 21 PWs have been examined in the other case, amendment of charge-sheet and holding a denovo trial would not serve any useful purpose and would only delay conclusion of trial which already stands delayed. The learned State counsel in order to hammer forth his aforesaid submission presses into service a judgement reported as 2017(2) RCR (Criminal) 901 State of Jharkhand vs. Lalu Prasad.

7. Having considered rival submissions and having perused order dated 2.11.2017, it is noticed that Hon'ble Supreme Court, while directing that the trials be concluded within 6 months had also directed that both the cases be 'amalgamated'. The word "amalgamation" has not been defined anywhere in Cr.P.C. The literal meaning of word "amalgamation" according to Webster's Dictionary is to compound or mix, to coalesce, as a result of growth, or to merge.
8. The word 'amalgamation', in relation to amalgamation of trials can certainly be interpreted to mean that both the trials merge together and proceed as one. Such merging of trials is particularly desirable when the trials are at initial stages as a joint trial would serve the purpose of avoiding multiplicity. In the present case while in case arising out of FIR No. 101 dated 21.9.2002, 66 out of 93 witnesses have already been examined, in the other trial arising out of FIR No. 25 dated 1.2.2003, 17 out of 21 witnesses have been examined. By framing a consolidated single charge-sheet at this stage and consequently

recalling the prosecution witnesses already examined so as to enable the accused to further cross-examine them would virtually amount to holding *de-novo* trial at this stage, which was never the intention of Supreme Court. Rather the intention was to expedite the proceedings of trials and to conclude within six months. In other words, by amending the charge-sheet at this stage the entire exercise of examining 66 witnesses in one case and 17 witnesses in another could virtually be set at naught if prosecution witnesses have to be recalled. In fact the presence of some of the prosecution witnesses already examined at this belated stage i.e. after more than 15 years of the occurrence may not even be possible, which would seriously prejudice the case of the prosecution. At this stage it would not be out of place to refer to following observations of Hon'ble Supreme Court in order dated 2.11.2017, a perusal of which would make it evident that the Supreme Court had never intended for holding *de-novo* trial and rather observed that no prejudice had been caused to the accused by holding of separate trials:

3. “ The charges framed in both the Sessions Cases are identical and the said exercise appears to have been committed due to inadvertence, we do not see how the aforesaid act on the part of the Court has caused any prejudice to the accused.”

9. The learned counsel for petitioner has however placed much reliance Amitbhai Anilchandra Shah's case(supra), a perusal of which, however, shows that the same was based on distinct facts inasmuch as it was a case where the accused had specifically conspired to abduct and eliminate three

persons and while two were killed shortly after the conspiracy, the third was killed after about one year.

10. The facts in cited case may be briefly stated as follows:

- (i) Initially, Gujarat police conducted investigation into killing of two individuals namely Soharabbudin and of his wife Kausarbi who were allegedly murdered on 26.11.2005 and 29.11.2005 respectively and filed charge sheet.
- (ii) Supreme Court, however did not accept the investigation conducted by the Gujarat Police and consequently directed the State police authorities to handover the case to the CBI vide order dated 12.01.2010. In the said decision, this Court expressed a suspicion that the alleged killing of one Tulsiram Prajapati could also be the part of the same conspiracy.
- (iii) The CBI, after investigation, found that the aforesaid Soharabbudin and his wife Kausarbi had been abducted alongwith one Prajapati and since Soharabbudin and his wife Kausarbi had been murdered, the third detenu Prajapati was an eye-witness and that he had been murdered later to eliminate evidence. The CBI after investigation lodged fresh FIR on account of murder of Prajapati. Said FIR dated 29.04.2011 was lodged against various police officials of the States of Gujarat and Rajasthan and others for acting in furtherance of a criminal conspiracy to screen themselves from legal consequences of their crime by murdering Tulsiram Prajapati on 28.12.2006 and showing it off as a fake encounter.
- (iv) It was held that the details mentioned in the chargesheet filed by CBI in respect of FIR registered by CBI is mere further investigation and the alleged killing of Tulsiram Prajapati was in continuance of and an inseparable part of the conspiracy which commenced in November, 2005 by abduction of Sohrabuddin, Kausarbi and Tulsiram Prajapati, leading to murders of Sohrabuddin and Kausarbi in November 2005; and which culminated into the final stage of alleged killing of Tulsiram

Prajapati in 2006 who was kept under the control of accused police officers since he was a material eye-witness. It was held so while noticing the stand taken by the CBI in various affidavits, status reports and chargesheet filed by the CBI wherein it was categorically stated that murder of Prajapati was in pursuance to the conspiracy hatched in 2005 as a consequence of which Sohrabuddin and his wife Kasurbi were murdered in November 2005. It was thus held that registration of fresh FIR is impermissible and violative of Article 21 of the Constitution of India.

11. The aforesaid facts clearly show that the factual position was distinct in the cited case wherein the conspiracy was categoric and specific for abducting three persons and as a result of which two were murdered shortly thereafter while third one was murdered later. Apart from the distinct facts, the glaring difference in the cited case is that the case was at very initial stage inasmuch as even the charges had not been framed let alone recording of any evidence, whereas in the present case the trials are virtually at their fag end with substantial evidence having been already recorded. The Supreme Court was apparently aware about the said position and it was perhaps on this account that no specific directions for consolidation of chargesheet was issued. The cue to this effect, can be discerned from the following extract from order dated 2.11.2017 passed by Supreme Court:

“ We find that the two separate charges are identical in content based on a combined allegations made in the two FIRs and the charge-sheets filed upon completion of investigation thereof. The charges framed in both the Sessions Cases are identical and the said exercise appears to have been committed due to

inadvertence, we do not see how the aforesaid act on the part of the Court has caused any prejudice to the accused.”

12. Thus despite noticing that two separate trials were proceeding, the Supreme Court while observing that no prejudice had been caused to the accused did not specifically order for framing of a single consolidated chargesheet.

13. In (2003) 11 SCC 786 *Lalu Prasad @ Lulu Prasad Yadav Vs. State through CBI*, which is also relied upon by the petitioner, the contention raised in Supreme Court for holding a joint trial was noticed as follows:

“It was submitted that, according to the prosecution, there was a large conspiracy involving the then Chief Ministers and other officers of the Animal Husbandry Department. It was submitted that according to the prosecution the object of the conspiracy was to withdraw/siphon out Government monies from various Treasuries which were earlier in the State of Bihar and now fall in the State of Jharkhand. It was submitted that the overt acts are alleged to have been committed in pursuance of this large conspiracy. It was submitted that in the overt acts there would be local people who are not part of the larger conspiracy. It was submitted that offences committed in pursuance of one conspiracy are offences committed in the course of the same transaction. It was submitted that the main accused namely the Appellants have been charged only on the basis of the large conspiracy. It was submitted that in all the cases, as against the Appellants, there would be same witnesses and same documents. It was submitted that there are 58 witnesses who would be common in all the 6 cases. It was submitted that there are approximately 100 documents which are also common in all the 6 cases. It was submitted that the

prosecution had admitted, in paragraphs 10 to 12 of the affidavit in reply filed before the Special Judge, that there was a single conspiracy and that the above-mentioned witnesses and documents were common. It was submitted that if these witnesses have to depose separately in all the 6 cases, there was a strong possibility of their evidence being different and of there being conflict of decisions. It was submitted that the Appellants would have to hear the evidence of the same witnesses in 6 trials.”

14. The Supreme Court, in aforesaid case, while noticing that some of the cases had not even reached the stage of framing of charges held that the application for joint trial was premature and consequently dismissed the appeal while also observing as follows:

"14. Before we part it must be mentioned *that it had been complained that the appellants would be forced to hear the same evidence 5/6 times*. If the appellants or any of them feel aggrieved by this and if they so desire, they may apply to the Special Judges that evidence recorded in one case and documents marked as an exhibit in one case be used as evidence in other cases also. This would obviate their having to hear the same evidence in 5/6 different cases. We are sure that if such an application is made, the same will be considered by the Special Judge on its merit, after hearing all the other accused". (Emphasis Supplied).

15. The legal position regarding holding a joint trial has been discussed in detail and summed up in 2017(2) RCR (Criminal) 901 State of Jharkhand vs. *Lalu Prasad*, wherein in a case of multiple prosecution of accused in separate cases, the counsel, while refereing to the facts of the said case, had contended

that there was a core group of 20 common accused in all the prosecutions i.e. nine politicians and eleven senior administrative officers who allegedly hatched the main conspiracy to siphon off funds from treasuries earmarked for Animal Husbandry Department of erstwhile State of Bihar and since the alleged modus-operandi employed by the conspirators was identical for all the treasuries and funds were siphoned off as and when an opportunity occurred and there was no evidence that separate conspiracies were hatched to defalcate the funds from different treasuries at different points of time and the accused already stood convicted for an offence u/s 120-B IPC in another case, second prosecution is not permissible being barred by Article 20(2) of Constitution of India and Section 300 Cr.P.C.

16. The Hon'ble Supreme Court, however turned down the aforesaid contention and held that despite being a single large conspiracy, each defalcation would constitute an independent offence. The relevant extract reads as follows:

“ 35. We are unable to accept the submissions raised by learned senior counsel. Though there was one general charge of conspiracy, which was allied in nature, the charge was qualified with the substantive charge of defalcation of a particular sum from a particular treasury in particular time period. The charge has to be taken in substance for the purpose of defalcation from a particular treasury in a particular financial year exceeding the allocation made for the purpose of animal husbandry on the basis of fake vouchers, fake supply orders etc. The sanctions made in Budget were separate for each and every year. This Court has already dealt with this matter when the prayers for amalgamation and joint trial had been made and in view of the position of law and various provisions discussed above, we are of the opinion that separate trials which are being made are in accordance with provisions of

law otherwise it would have prejudiced the accused persons considering the different defalcations from different treasuries at different times with different documents. Whatever could be combined has already been done. Each defalcation would constitute an independent offence. Thus, by no stretch, it can be held to be in violation of Article 20(2) of the Constitution or Section 300 Cr.P.C. Separate trials in such cases is the very intendment of law. There is no room to raise such a grievance. Though evidence of general conspiracy has been adduced in cases which have been concluded, it may be common to all the cases but at the same time offences are different at different places, by different accused persons. As and when a separate offence is committed, it becomes punishable and the substantive charge which has to be taken is that of the offence under the P.C. Act etc. There was conspiracy hatched which was continuing one and has resulted into various offences. It was joined from time to time by different accused persons, so whenever an offence is committed in continuation of the conspiracy, it would be punishable separately for different periods as envisaged in section 212(2), obviously, there have to be separate trials. Thus it cannot be said to be a case of double jeopardy at all. It cannot be said that for the same offence the accused persons are being tried again.”

17. Hon'ble Apex Court further held as follows:

“39. The *modus operandi* being the same would not make it a single offence when the offences are separate. Commission of offence pursuant to a conspiracy has to be punished. If conspiracy is furthered into several distinct offences there have to be separate trials. There may be a situation where in furtherance of general conspiracy, offences take place in various parts of India and several persons are killed at different times. Each trial has to be separately held and the accused to be punished separately for the offence committed in furtherance of conspiracy. In case there is

only one trial for such conspiracy for separate offences, it would enable the accused person to go scotfree and commit number of offences which is not the intendment of law. The concept is of 'same offence' under Article 20(2) and Section 300 Cr.P.C. In case distinct offences are being committed there has to be independent trial for each of such offence based on such conspiracy and in the case of misappropriation as statutorily mandated, there should not be joinder of charges in one trial for more than one year except as provided in section 219. One general conspiracy from 1988 to 1996 has led to various offences as such there have to be different trials for each of such offence based upon conspiracy in which different persons have participated at different times at different places for completion of the offence. Whatever could be combined has already been done. Thus we find no merit in the submissions made by learned senior counsel appearing on behalf of accused persons.”

18. The Supreme Court, even on an earlier occasion, in Natwar Lal Sakar Lal Mody v. The State of Bombay 26 (1984) DLT 64 considered the question of joint trial of persons and while affirming the basic principle that separate trial is the rule and joint trial is an exception held that it is within the discretion of the Court to permit such a joint trial or not, having regard to the circumstances of each case.
19. At this stage it will not be out of place to mention that in fact when the petitioner had moved an application before Trial Court seeking his discharge in the second FIR i.e FIR No. 25 dated 1.2.2003, a specific ground had been raised therein that that once a FIR No. 101 of 2002 had already been registered in respect of the offences of alleged illegal transplantation of human organs, the second FIR based on the same set of allegations could not

have been lodged. The learned Trial Court, however declined the application. Even Hon'ble High Court refused to interfere with the said order and dismissed the revision petition by passing a detailed order dated 6.4.2005 wherein also the said issue had been raised. Thus it is apparent that the said issue was specifically agitated and when the order dated 6.5.2005 of this Court was assailed in Supreme Court, even the Supreme Court did not choose to set aside the charges framed in respect of the second FIR.

20. In view of aforesaid circumstances coupled with the fact that the trials are virtually at the fag end and that no prejudice can be said to have been caused to the accused, as was also observed by Supreme Court in order dated 2.11.2017, and that *denovo* trial would unnecessarily delay the proceedings of the trial and add to further incarceration and inconvenience to the accused, there is certainly is no ground for framing a consolidated chargesheet at this belated stage.
21. On the other hand in case the application filed by petitioner u/s 216 and 217 Cr.P.C. is accepted and charge-sheet is amended at this stage by framing a single consolidated charge-sheet, the witnesses may have to be re-called in terms of provisions of section 217 Cr.P.C., which read as follows:

217. Recall of witnesses when charge altered. - Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed-

- (a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the court, for reasons to be recorded in writing, considers that the prosecutor or the

accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

- (b) also to call any further witness whom the Court may think to be material.

22. Recalling witnesses for their cross-examination would virtually lead to holding a *de-novo* trial at the stage, and given the large number of witnesses in the present case, the same would be a marathon exercise, which was never the intention of Hon'ble the Supreme Court as the Supreme Court has in fact given directions for expeditious disposal of the cases and to conclude the same within 6 months.
23. In view of the discussion made above this Court does not find any infirmity in order dated 14.3.2018 passed by Trial Court whereby the application moved on behalf of accused for framing a consolidated chargesheet has been declined. However, the Trial Court, in order to give effect to the order of Supreme Court, is directed to ensure that both the case are clubbed and decided together and to take the following steps for the same:
 - (i) The trial court shall ensure that both the cases are taken up together on the same day so that the visits of the accused to the Courts are cut down to the minimum and they don't have appear time and again.
 - (ii) Both the cases shall be finally decided together on the same day by the same Presiding Officer.
 - (iii) The witnesses which are common in both the cases shall be summoned on the same day in respect of both the cases so that their testimony can be recorded in both the cases on the same day and they are not required to be called time and again. It is clarified that since separate charge-

sheets have been framed in both the cases and it is not a joint trial, the evidence recorded in one trial can not be read in the other trial since it is the cardinal principle of criminal jurisprudence that evidence recorded in one case cannot be read against accused in another trial. The trial Court shall ensure that there is no such lapse in recording of evidence as such lapse could render the trial vitiated. In case statement of any PW recorded in one case has been ordered to be read in evidence in the other case, the same be recorded afresh unless all the accused are willing to make a statement in writing to the effect that they have no objection for such evidence being read against them in either of the case and do not wish to get his statement recorded afresh.

- (iv) That in order to implement order of Supreme Court for disposal of the cases within 6 months, the trial court shall fix the shortest possible dates in the cases and take all possible steps for securing timely presence of prosecution witnesses. An advance schedule of dates be prepared for summoning the witnesses and summons be issued well ahead of dates fixed for summoning them.
- (v) The prosecution and the SSP concerned shall ensure the presence of the witnesses on the day the matter is fixed for recording their statements. The trial Court shall co-ordinate with the District Attorney and Commissioner/SSP concerned for ensuring that the needful is done expeditiously.

24. The petition is dismissed with aforesaid directions.

16.10.2018

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No