

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

CRM-M No.1545 of 2018

Date of Decision: 14.05.2018

Seimens Limited

.....Petitioner

Vs

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.S. Cheema, Sr. Advocate with
Mr. A.S. Cheema, Advocate
for the petitioner.

Mr. M.D. Sharma, AAG, Haryana.

Mr. Prabir Bhattacharyya, respondent No.2 in person.

RAJ MOHAN SINGH, J.

[1]. Petitioner has prayed for consolidation of proceedings pending before different Courts of Judicial Magistrates First Class, Gurugram to one Court as well as proceedings pending before different Courts of Additional Sessions Judges, Gurugram to one Court in the interest of justice.

[2]. Learned counsel for the petitioner submitted that cases (Annexures P1 to P7) are pending before different Courts of Judicial Magistrates First Class, Gurugram and cases (Annexures P8 to P12) are pending before different Courts of Additional Sessions Judges, Gurugram having overlapping facts

between the same parties and therefore, they are required to be clubbed in one Court of Judicial Magistrate First Class and Additional Sessions Judge in respective cases.

[3]. Following cases are pending before the Courts of Judicial Magistrates First Class, Gurugram:-

SR. No.	Nature of Proceedings	Comments	Pending before
1	Prarbir Bhattacharyya Vs. Ajay Malhotra COMI/174/2015	Criminal Application U/S 340 Cr.P.C under Section 193 (read with 191), and/or Section 181 of IPC, and or Section 2(b), 15(2) of the Contempt of Courts Act	Ms. Indu Bala, JMIC, Gurugram, Haryana
2	Prabir Bhattacharyya Vs. Yashwant Batwal COMI/208/2015	Criminal Application U/S 340 Cr.P.C under Sections 193(read with 191), 199, 181 of IPC and application u/s 15(2) and 2(b) of Contempt of Courts Act for offences u/s 2(c)(i) to 2(c)(iii)	Mr. Kamran Khan, JMIC, Gurugram, Haryana

3	Prabir Bhattacharyya Vs. Sunil D. Mathur and others CRM No. 103 of 2016	Criminal Application U/S 340 Cr.P.C under Sections 181, 193, 196, 199, 417, 418, 420, 406 of IPC read with Sections 34/109/120-B IPC	Mr. Manish Kumar, JMIC, Gurugram, Haryana
4	Prabir Bhattacharyya Vs. Rajiv Sachdeva and others C.C No.84 of 2013	Complaint under Sections 193 and/or 196 and/or 200 and/or 406 of the IPC, read with Sections 109 and/or 120-B and/or 34 and/or 511 of the IPC	Ms. Indu Bala, JMIC, Gurugram, Haryana
5	Prabir Bhattacharyya Vs. Siemens Limited and others COMI/323/2015	Complaint under Sections 193 read with Sections 191/192 and/or 196 and/or 199 and/or 200 and/or 181 of the IPC, further read with Sections 34 and/or 109 and/or 120-B and/or 511 of the IPC	Ms. Indu Bala, JMIC, Gurugram, Haryana

6	Prabir Bhattacharyya Vs. Frank Emmel and others COMI 155 of 2016	Complaint under Sections 193 read with Sections 191/192 and/or 196 and/or 199 and/or 200 and/or 181 of the IPC, further read with Sections 34 and/or 109 and/or 120-B and/or 511 of the IPC	Ms. Indu Bala, JMIC, Gurugram, Haryana
7	Sangeeta Vaid Vs. Prabir Bhattacharyya Contempt Pet.1/2014	Contempt petition against Mr. Prabir Bhattacharyya under Section 11 and 12 of the Contempt of Courts Act, 1971	Mr. Amit Nain, JMIC, Gurugram, Haryana

Perusal of the aforesaid cases would show that out of aforesaid 7 cases, 4 cases at serial No.1, 4, 5 and 6 are pending before the same Court. Case at serial No.2 is application under Section 340 Cr.P.C and the same is not listed before the same Court against whose order the cause of action is stated to have arisen. Case at serial No.7 is filed by the petitioner side and not by respondent No.2.

[4]. Similarly, following cases are pending before the Courts of Additional Sessions Judges, Gurugram:-

SR No.	Nature of proceedings	Comments	Pending before
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1	Prabir Bhattacharyya Vs. M/s Siemens Power Engineering (P) Limited And others CRM No.116 of 2015	Criminal Application U/S 340 Cr.P.C, under Sections 182, 193 (read with Section 191/192), 196, 199, 209 of IPC and application u/s 15(2) and 2(b) of Contempt of Courts Act for offences u/s 2(c)(i) to 2(c)(iii)	Mr. RK Mehta, ASJ, Gurugram
2	Prabir Bhattacharyya Vs. Sunil D. Mathur and others CRM No.232 of 2016	Criminal Application U/S 340 Cr.P.C under Sections 182, 193, 196, 199, 200, 465, 468, 471, 419, 420 of IPC read with Sections 34/109/120-B IPC	Mr. RK Mehta, ASJ, Gurugram
3	Prabir Bhattacharyya Vs. M/s Siemens Power Engineering (P) Limited and others Rev. Pet No.683 of 2013	Seeking quashing of the order dated 16.03.2013 dismissing the CC No.75 of 2012	Mr. RK Mehta, ASJ, Gurugram

4	Prabir Bhattacharyya Vs. Rajiv Sachdeva and others Rev Pet No.269 of 2015	Seeking quashing of the order dated 22.07.2015, dismissing CC No.161 of 2012	Mr. RK Mehta, ASJ, Gurugram
5	Prabir Bhattacharyya Vs. Rajiv Sachdeva and others CRR No.548 of 2017	Seeking quashign of the order dated 30.01.2015, dismissing CC No.120 of 2014	Mr.AS Bishnoi, ASJ, Gurugram

Perusal of the aforesaid list would show that cases at serial No.1 to 4 are listed before the same Court. Only case at serial No.5 is listed before some other Court. The aforesaid consolidation was done as per order dated 17.08.2017 passed in CRR No.1678 of 2017 at the instance of respondent No.2.

[5]. Learned Senior Counsel for the petitioner by referring to the observations made by the High Court in number of cases stated that action of respondent No.2 is *mala fide* and in the interest of justice, all the cases before the trial Court as well as Lower Appellate Court be consolidated before the same Court so as to avoid conflicting judgments and to ensure speedy trial of the cases.

[6]. Learned Senior Counsel highlighted the conduct of respondent No.2 and alleged that repeated litigations filed by

respondent No.2 are aimed to harass and humiliate the senior officers of the petitioner/Company by abusing the process of law. Learned Senior Counsel further submitted that respondent No.2 is a compulsive litigant who was earlier serving with the petitioner/Company and after termination of his services, he is all out to take revenge from the petitioner/Company by filing multiple complaints which are frivolous and not maintainable.

[7]. Learned Senior Counsel relied upon **Zee News Ltd. Vs. State and another, 2016 Cri LJ 3706 (Delhi)** and **Amrik Singh Gandhi Vs. M/s Premier Tyres Ltd., 1982 CriLJ 1723**

and contended that the High Court can act in terms of Section 407 Cr.P.C either on the report of the Lower Court or on the application of the party interested, or on its own initiative/*suo motu*. The expression 'party interested' is of wide import and is not limited to include only the complainant and the accused. The expression used in Section 407(2) Cr.P.C is of wider import. The transfer of cases can be made even if, the process has not been issued in the complaint case and the accused has not been summoned upon taking of cognizance by the Court. Learned Senior Counsel further submitted that if the aforesaid provision is read in conjunction with Section 483 Cr.P.C, the interference by this Court at this juncture would be in consonance with the law laid down in the aforesaid cases. The duty of the High Court

to exercise continuous superintendence over Courts below in terms of Section 483 Cr.P.C is to ensure expeditious and proper disposal of cases by the Magistrates. The consolidation of cases would definitely go in a long way for speedy disposal of the cases before the Courts below. Learned Senior Counsel also submitted that command of procedural law requires supervision of this Court in order to ensure speedy and proper disposal of the cases by the trial Court/Lower Appellate Court.

[8]. Per contra, respondent No.2 who has appeared in person submitted that the petitioner has concealed material facts. By referring to **Nandini Satpathy Vs. P.L. Dhani and others, (1978) 2 SCC 424,** respondent No.2 submitted that it is a duty of the witness (on summoning) to appear in the Court and to give testimony. The cases are still at pre-summoning stage. Respondent No.2 refuted the allegations of the petitioner. The list of cases given by the petitioner though admitted, but the first list of cases is claimed to be the result of concealment of material information as all the complaints are at pre-summoning stage. Petitioner is not even accused or summoned witness in Criminal Complaint No.84 of 2013 and Contempt Petition No.1 of 2014. In COMI/174/2015, COMI/208/2015, COMI/323/2015, CRM No.103 of 2016 and COMI/155/2016, petitioner is only a summoned witness and has no *locus standi* to seek transfer of

said cases at pre-summoning stage. Respondent No.2 further submitted that the petitioner has concealed material facts in respect of application under Article 20(3) of the Constitution of India. CRM No.103 of 2016 was practically dismissed and all the applications under Article 20(3) of the Constitution of India are exactly based on same facts. Petitioner has not challenged the dismissal of the application in any manner. Respondent No.2 also relied upon **State of Bombay Vs. Kathi Kalu Oghad, AIR 1961 SC 1808, Godrej Soap Ltd. Vs. State, (1991) 1 CALLT 198, People Insurance Co. Ltd. Vs. Sardar Sardul Singh Caveeshar, AIR 1962 Punjab & Haryana 101, State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604, Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and others, 1983 AIR 67, Chandra Deo Singh Vs. Prokash Chandra Bose and another, 1964(1) SCR 639, Smt. Nagawwa Vs. Veeranna Shivallngappa Konjalgi, AIR 1976 SC 1947 and Adalat Prasad Vs. Rooplal Jindal and others, (2004) 7 SCC 338.**

[9]. Both the parties have tried to argue the case on merits with reference to nature of cases pending before the Courts below.

[10]. As earlier observed, the consideration by this Court on merits of the case may prejudice the case of either party before

the trial Court/Appellate Court. The controversy before this Court is only confined to consolidation of seven complaints which are pending before different Courts of Judicial Magistrates First Class, Gurugram and five appeals which are pending before different Courts of Additional Sessions Judges, Gurugram. Out of seven cases/complaints before Judicial Magistrates First Class, four of the complaints are before the same Magistrate. Complaint at serial No.7 was filed by the petitioner i.e. Contempt Petition No.1 of 2014 against respondent No.2. The case at serial No.2 is not before the same Court against whose order the application under Section 340 Cr.P.C has been preferred. Similarly, in second list of cases/appeals pending before the Additional Sessions Judges, Gurugram, out of five cases, four cases are already before the same Court. Only a case at serial No.5 filed by respondent No.2 i.e. CRR No.548 of 2017 is pending before another Court. The transfer application filed by the petitioner has already been rejected and the said order has attained finality. The complaints are still at pre-cognizance stage. In COMI/174/2015, COMI/208/2015, COMI/323/2015, CRM No.103 of 2016 and COMI/155/2016, petitioner is shown to be a summoned witness. [11]. The legal position arising out of the arguments of the petitioner that the High Court in the light of powers conferred in

terms of Section 407 read with Section 483 Cr.P.C can transfer the case even at pre-cognizance stage would be in the context of some consideration on merits.

[12]. At this stage, keeping in view the assertion made by learned counsel for the petitioner and denial made by respondent No.2, it can be seen that all the complaints are at pre-summoning stage. The *locus standi* of the petitioner to seek transfer of the cases would be a debatable issue. Petitioner has already filed transfer applications which were dismissed. Petitioner himself has disclosed dismissal of the applications in para No.5 (f) and (g) of the petition. Since the cases are at pre-cognizance stage, therefore, the conduct of respondent No.2 would be tested by the trial Court with reference to evidence. At this stage, it would be premature to comment upon the conduct of respondent No.2 and therefore, in the light of dismissal of transfer applications, the consolidation of cases before the same Court would not be in consonance with law. Perusal of the first list of cases would show that out of seven cases, four cases are already listed before the same Court. The case at serial No.7 is filed by the petitioner side only, therefore, only one case i.e. CRM No.103 of 2016 will be considered by the different Criminal Court. The case at serial No.2 of the list has its own configuration in view of non-listing of application under Section

340 Cr.P.C before the same Court.

[13]. Taking into consideration the facts and circumstances of the case, this Court is not inclined to hear arguments on merits, lest it may prejudice the case of either sides at the trial. At this stage, I deem it appropriate to dismiss the petition, however petitioner would be at liberty to question the maintainability of the complaints in accordance with law.

[14]. Nothing expressed hereinabove would be construed to be an opinion on ultimate merits of the case.

May 14, 2018

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No