

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-24619-2016 (O&M)
Date of decision: 17.02.2018

Harpinder Singh

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Kulvir Narwal, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

Mr. Vinay Puri, Advocate for
Mr. D.K. Bhatti, Advocate
for respondents No.3 to 5, 7 & 8.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for clubbing of the case FIR No.72 dated 03.06.2012 under Sections 307, 323 read with Section 34 of the Indian Penal Code (for short 'IPC'), registered at Police Station Goraya, District Jalandhar City (Annexure P-1) as well as the complaint case No.RBT 10/01/2013 instituted on 22.01.2013 under Sections 326, 325, 324, 323, 148 and 149 IPC (Annexure P-2) pending in the Court of JMIC, Phillaur, as per provision of Section 210 Cr.P.C.

Learned counsel for the petitioner submits that the Sessions case, arising out of the FIR No.72, dated 03.06.2012, is now pending before the Additional Sessions Judge, Jalandhar, whereas the complaint case No.RBT

10/01/2013 instituted on 22.01.2013, arising out of the same incident as cross case, is pending before the JMIC, Phillaur. He further submits that both the cases may be clubbed together as per provisions of Section 210 Cr.P.C., in the light of judgment passed by the Hon'ble Supreme Court in case of **Pal @ Palla Vs. State of Uttar Pradesh, 2010 (4) RCR (CrI.) 511** that both the cases should be tried simultaneously and decided together by the same Court.

Learned counsel for the petitioner has further submitted that though the case arising out of FIR No.72 is triable by the Court of Sessions and the cross-case is pending before the Judicial Magistrate 1st Class, Phillaur, same can be tried together by the Court of Sessions, being the cross-case arising of the same occurrence. Counsel for the petitioner has relied upon **Sudhir Vs. State of M.P., 2001 AIR (SC) 826**, wherein, in similar circumstances, the Hon'ble Supreme Court has held as under: -

“In this context, we may point out that a Sessions Judge has the power to try any offence under the Indian Penal Code. It is not necessary for the Sessions Court that the offence should be one exclusively triable by a Court of Sessions. This power of the Sessions Court can be discerned from a reading of Section 26 of the Code. When it is realised that the Sessions Judge has the power to try any offence under the Indian Penal code and when a case involving offence not exclusively triable by such court is committed to the Court of Sessions, the Sessions Judge has to exercise a discretion regarding the case which he has to continue for trial in his court and the case which he has to transfer to the Chief Judicial Magistrate. For this purpose we have to read and understand the scope of Section 228 (1) in the light of the above legal position. The sub-section is extracted below:

"If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which -

(a) is not exclusively triable by the Court of session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused."

The employment of the word "may" at one place and the word "shall" at another place in the same sub-section unmistakably indicates that when the offence is not triable exclusively by the Sessions Court it is not mandatory that he should order transfer of the case to the Chief Judicial Magistrate after framing a charge. In situations where it is advisable for him to try such offence in his court there is no legal obligation to transfer the case to the Chief Judicial Magistrate. One of the instances for not making the transfer is when a case and counter case have been committed to the Sessions Court and one of those cases involves an offence exclusively triable by the Sessions Court and the other does not involve any such offence.

In the present case, the Sessions Judge ought not have transferred the second case to the Chief Judicial Magistrate as he did, but he himself should have tried it in the manner indicated in Nathi Lal (supra). To facilitate such a procedure to be adopted we have to set aside the order passed by the Sessions Judge in the second case. We do so.

Resultantly, we allow the appeal arising out of S.L.P. (Crl) No.4007 of 2000, and set aside the order of the High Court as well as the order passed by the Sessions Court by which the case was transferred to the Chief Judicial Magistrate. We direct the

Sessions Court concerned to try and dispose of the first case and the second case in the manner set out in Nathi Lal's case (supra). In view of the above direction, the impugned order in the appeal arising out of S.L.P. (Crl.) No.3840 of 2000, will remain undisturbed.”

Similar view has been taken by this Court in **Phool Singh Vs. State of Haryana and others, 2005 (2) RCR (Criminal) 527** placing reliance upon the judgment of the Hon'ble Supreme Court in **Sudhir's** case (supra).

In reply, learned counsel for respondents No.3 to 5, 7 & 8 has submitted that the FIR case pending before the Court of Sessions is at the advanced stage, as the prosecution evidence is concluded, whereas in the complaint case pending before the Judicial Magistrate, the evidence is being recorded.

Learned State counsel has also not disputed the factual position about the stage of trial in both the cases.

After hearing learned counsel for the parties, I find merit in the present petition.

It is not in dispute that the trial arising out of FIR No.72 as well as the criminal complaint relates to the same occurrence and are version and cross-version. In view of the judgment of the Hon'ble Supreme Court in **Sudhir's** case (supra), it will be appropriate if both the cases i.e. one, which is now pending before the Court of Additional Sessions Judge and another case, which is pending before the Judicial Magistrate 1st Class, Phillaur, are decided by one Court and the judgment is pronounced simultaneously by the Court on the same date.

However, it is clarified that the evidence in FIR case is to be read in that case only and evidence in the complaint case is to be read in that case

only. It is also clarified that the proceedings in both the cases are not clubbed together and it is only directed that both the cases will be decided by one Court on the same date.

Accordingly, it is directed that the Judicial Magistrate 1st Class, Phillar shall commit the proceedings of the complaint case for trial to the Court of Additional Sessions Judge, where the FIR case is pending. The Additional Sessions Judge shall thereafter proceed with the trial in the complaint case in accordance with law. After the evidence in both these cases is concluded and the cases become mature for arguments, the arguments in both the cases will be heard on the same date and both the trials will be disposed of as per the law laid down by the Hon'ble Supreme Court in **Sudhir's** case (supra).

Present petition is accordingly disposed of with the aforesaid directions.

A copy of this order be sent to the District and Sessions Judge, Jalandhar for necessary compliance.

[ARVIND SINGH SANGWAN]
JUDGE

17.02.2018
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No