

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

**CRM No.38658 of 2018**  
**in/and**  
**CRM-M No.2675 of 2018 (O&M)**  
Date of Decision: 31.10.2018

Gursharan Singh ....Petitioner

Versus

State of Punjab and others ....Respondents

**BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

Present:- Mr. P.B.S. Goraya, Advocate  
for the petitioner.

Mr. C.L. Pawar, Sr. D.A.G., Punjab.

Mr. Sumeet Goel, Advocate  
for the CBI.

Mr. Bikramjit Aroura, Advocate  
for respondents No.3 to 8.

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**DAYA CHAUDHARY, J.**

**CRM No.38658 of 2018**

This application has been moved for preponing of date in the main case, which is fixed for hearing on 10.12.2018.

Notice in the application.

On asking of the Court, Mr. C.L. Pawar, Sr. D.A.G., Punjab, who is present in the Court, accepts notice on behalf of respondent-State.

Notice on behalf of CBI has been accepted by Mr. Sumeet Goel, Advocate.

Notice on behalf of respondents No.3 to 8 has been accepted by

Mr. Bikramjit Aroura, Advocate.

For the reasons recorded in the application and having no objection from the counsel opposite, the same is allowed and the main case is taken up for hearing today itself i.e 31.10.2018.

**CRM-M No.2675 of 2018**

The present petition has been filed under Section 482 Cr.P.C read with Section 210(2) Cr.P.C read with Section 407 Cr.P.C for transfer of complaint case No.COM/0000672/2014 (Case no.27 of 31.05.2016) titled as “Gursharan Singh vs Sarabjit Singh and others” under Sections 302/148/149/120-B IPC and Section 25/27/54/59 of the Arms Act pending in the Court of Judicial Magistrate Ist Class, Tarn Taran to the Court of Special Judge, CBI, Mohali, where trial for the same offence is pending vide RC No.9(5) of 2015 dated 05.10.2015 under Sections 120-B, 498-A, 304-B IPC and Sections 3 and 4 of the Dowry Prohibition Act registered at Police Station SCB, CBI, Chandigarh.

A further prayer has also been made for issuance of a direction that both the case i.e complaint case as well as State case be clubbed and tried together to avoid conflicting judgments relating to same occurrence.

Briefly, the facts of the case, as made out in the present petition, are that FIR No.51 dated 18.08.2011 was registered against respondents No.3 to 8 under Section 306 IPC at Police Station Chohla Sahib District Tarn Taran on the basis of complaint made by the petitioner. It was a case of murder and a petition bearing **CRM-M No.27041 of 2011** was filed before this Court for transferring the case to CBI. Vide order dated 31.07.2015, the investigation of the case was transferred to CBI. Petitioner earlier filed a complaint against accused persons under Sections

302/148/149/120-B IPC and Section 25/27/54/59 of the Arms Act before the Illaqa Magistrate, District Tarn Taran. However, during pendency of the complaint case, after investigation of the case by CBI, the challan was presented under Section 173 Cr.P.C against accused persons by the Special Court, CBI, Punjab and by taking cognizance of the offence, charges were framed under Sections 304-B, 498-A, 120-B read with Section 3 and 4 of the Dowry Prohibition Act. Said case is fixed for recording of prosecution witnesses. The accused persons in both the cases i.e criminal as well as FIR case are the same and both the cases related to same offence i.e regarding the death of deceased Manik Bhinder, who is daughter of the petitioner.

Learned counsel for the petitioner submits that as per provisions of Section 210 Cr.P.C., both the cases are required to be tried together to avoid conflicting and contradictory judgment relating to same occurrence. Learned counsel also submits that the learned CBI Court has already started proceedings with the trial and the next date of hearing is 01.11.2018 and in the complaint case, the accused have been summoned by the learned Magistrate, District Tarn Taran.

Said fact has not been disputed by learned counsel for the respondents that the occurrence in both the cases is same.

After hearing the learned counsel for the parties, I am of the considered view that language of Section 210(2) clearly indicates that in respect of the same offence, if complaint case is filed and the police report has also been filed then the Magistrate is under an obligation to try both the cases together. The object of sub-section (2) of Section 210 appears to be that by filing the complaint, the private complainant may not interfere with

the course of justice. In the absence of such a provision, a person accused in the FIR would always manage to file a complaint and would be able to succeed in issuance of process. Section 210 is reproduced hereunder, for the facility of reference.

*“201. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence. - (1) when in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.*

*(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.*

*(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”*

A perusal of sub-section (1) and sub-section (2) of Section 210 of the Act, shows that the policy of the Code which aims at avoiding the conflict between the investigation to be carried by the police on the basis of

an FIR or an enquiry to be initiated by the Magistrate by taking cognizance of the offences alleged to have been committed by an accused on the basis of a complaint. The proceedings in the complaint are required to be stayed by the Magistrate or he can refer the complaint under Section 156(3) to the police. However, in case, the police report has been submitted and a complaint has been filed in respect of the same offence then under sub-section (2) of Section 210, the Magistrate is under obligation to order trial of both the cases together.

Having no objection from the other side and in view of provisions of Section 210 of the Cr.P.C and also the fact that both the cases relate to one incident and parties are also the same, hence, in case, both the cases are not tried together, there can be a possibility of conflicting views and just to avoid the conflicting and contradictory judgment relating to same occurrence, the trial is necessary to be conducted by the same Court.

By considering the facts and circumstances of the case and in view of provisions of mandate of Section 210 of the Code, it is evident that the occurrence in both the cases is same, I am of the considered view that complaint case No.COM/0000672/2014 (Case no.27 of 31.05.2016) titled as “**Gursharan Singh vs Sarabjit Singh and others**” under Sections 302/148/149/120-B IPC and Section 25/27/54/59 of the Arms Act pending in the Court of Judicial Magistrate Ist Class, Tarn Taran is required to be transferred to the Court of Special Judge, CBI, Mohali, where trial for the same offence is pending vide RC No.9(5) of 2015 dated 05.10.2015 under Sections 120-B, 498-A, 304-B IPC and Sections 3 and 4 of the Dowry Prohibition Act registered at Police Station SCB, CBI, Chandigarh.

Ordered accordingly.

The petition stands allowed in the above said terms.

31.10.2018  
**gurpreet**

**(DAYA CHAUDHARY)**  
**JUDGE**

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |