

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

**CRM No.M-29816 of 2018 (O&M)
Date of Decision: October 11, 2018**

Gurinder Singh

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

Ms.Monika Jalota, DAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The petitioner has filed this petition under Section 482 Cr.P.C. against respondent State of Punjab for quashing of order dated 14.05.2018 passed by learned Special Judge, Mohali and to issue direction for clubbing all three challans for one joint trial in case FIR No.10 dated 17.08.2017 under Sections 406, 409, 420, 467, 468, 471, 477A, 120-B IPC and Section 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, registered at Police Station State Vigilance Bureau, District Mohali.

Notice of motion was issued. Learned State counsel appeared and contested the petition.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that challan has been presented in the present case before the Court under Section 173 Cr.P.C. and thereafter, supplementary challans were presented by the police. Learned Special Judge, Mohali, passed following order on 03.04.2018:-

“This challan was received by way of entrustment on 19.03.2018 and the same was put up before the learned Duty Judge as the undersigned was on leave on the said date. Report of Ahlmad seen. It be registered. Perusal of the challan makes out that it is a supplementary challan. The main challan is already been presented before this court and is pending for 03.04.2018. In these circumstances, this supplementary challan is order to be merged with the main challan. Now the case is adjourned to 03.04.2018 for supply of copy of documents free of cost.”

Then, learned Special Judge, Mohali, on 14.05.2018 passed following order in this case:-

“Today the case was fixed for consideration on charge, but on behalf of accused Paramjit Singh Ghuman, an application has been filed for granting time for scrutiny of challan and adjournment for consideration on charge. In the interest of justice, case is adjourned to 21.5.2018 for consideration on charge.

It has also come to my notice that during the investigation with regard to the present FIR No.10 dated 17.8.2017, the Investigating Agency has investigated the different works/projects allotted to accused Gurinder Singh by other co-accused and the prosecution has been furnishing different supplementary challans with regard to the different projects, however in the same FIR. The present challan bearing PC CNR No.PBSA01001015- 2018 pertains to the construction of Shahpurkandi Hydel Channel from RD 41, 825 to 3172M with concrete lining and Construction of Shahpur Kandi Hydel Channel from RD 3936 to 6283 with concrete lining and Construction of Nara Dam and its appurtenant works, whereas the supplementary challan presented by the prosecution bearing CNR No.PBSA01001927-2018 pertains to disproportionate assets accumulated by the accused, as well as the construction of sub surface drainage system in law lying pockets of various villages in south western District of Punjab and laying of interceptor drains along Sirhind Feeder and Rajasthan Feeder down stream village Channo including operation and maintenance for five years. Both the challans

were ordered to be merged vide order dated 19.3.2018.

But, when both these challans were perused at the time of framing of charge, it has been felt that it is difficult to try both the challans together, as there are different accused and different witnesses pertaining to different works.

Consequently, I deem it proper to try both the above referred challans separately for the sake of convenience and for effective decision and as such, both the above referred challans are ordered to be separated.

It is pertinent to mention here that if in future the prosecution presents any further supplementary challan in the same FIR, it will also be tried separately.”

From the perusal of the order dated 14.05.2018, I find that the Court, which earlier passed the order that supplementary challan be merged with the main challan, has now ordered that challans be separated. Learned Special Judge, Mohali, further ordered that if in future the prosecution presents any further supplementary challan in the same FIR, it will also be tried separately. Then, on 09.07.2018, another order was passed by learned Special Judge, Mohali, which is as under:-

“Today learned Addl. P.P for the State has stated that the present session trial bearing CIS No. PC-18/2018 CNR No.PBSA01001927-2018 and another Session trial bearing CIS No.25/2018 CNR No.PBSA01004037-2018 titled as State Vs. Vimal Kumar and others may be merged together, as they pertained to the same projects. It is pertinent to mention here that vide order dated 14.5.2018 in a case titled as State Vs. Gurwinder Singh and others bearing CIS No.PC13-2018, it was ordered that the challans preferred by the Vigilance Bureau in FIR No.10/17.8.2017, Police Station Vigilance Bureau Flying Squad-1 Punjab Mohali, will be treated as separate challans, but taking into account that the accused in the present case even though are different from the case titled as State Vs. Vimal Kumar and others referred to above, but the allegations made in both these challans/session trials against all the accused are pertaining to the same projects and as such both these cases need to be tried together and thus, both these cases are ordered to be merged together.

In a consolidated case titled as State Vs. Vimal kumar and others, Sh. Vikas Sharma Adv., filed wakalatnama on behalf of accused Vimal Sharma. On behalf of accused Sanil Parkash Sahu, an application has been moved under Section

227 Cr.P.C for discharge of the applicant. Copy supplied. Reply of this application be filed on 17.7.2018. Arguments on this application shall also be heard on the said date.

All the other remaining accused in both the cases have been asked if they want to file any such application for discharge, to which, all of them had relied in negative.

Case is now adjourned to 17.7.2018 for arguments on charge as final opportunity.

As on 5.7.2018, accused Gurwinder Singh, Harwinder Singh, Paramjit Singh and Gulshan Nagpal were not produced by the Jail Authorities, explanation of Jail Superintendent Patiala was called, who furnished his explanation by stating that on the warrants of these four accused on 6.6.2018, they were ordered to be produced on 4.7.2018 and when all these accused were produced before the Court on 4.7.2018, they were ordered to be produced on 13.7.2018. However perusal of the files/Session cases of FIR No.10/2017 shows that two different trials are pending against the same accused involved in FIR No.10/2017 and one of which was fixed for 4.7.2018 and other was fixed for 5.7.2018 and even perusal of the custody warrants issued by this Court also corroborate these facts. In these circumstances, Superintendent Central Jail Patiala is warned to remain careful in future, while producing the under trial accused before the Court on the dates fixed in different trials pending before this Court. Intimation in this regard be sent to the Superintendent Central Jail Patiala.”

The perusal of the orders passed by learned Special Judge, Mohali, shows that all these orders were passed without hearing learned counsel for the accused. Learned counsel for the petitioner-accused contended that the trial Court is passing contradictory orders by firstly saying that challans be tried together and then by saying that these challans be tried separately and even in future, if any supplementary challan is presented, the same be tried separately and then again passed the order that two challans be merged/clubbed and that too without hearing the accused.

As the perusal of the orders shows that petitioner-accused has not been heard before passing of the orders, therefore, the above order qua clubbing or separating the trial, are set aside to that extent. Learned Special

Judge, Mohali, is directed to pass fresh order after hearing both the parties

that whether all these challans are to be clubbed together or to be tried separately etc., as per law.

Therefore, present petition stands allowed in above-said terms.

October 11, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No