

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION No. 622 OF 2018

Chandrakant Babu Hakke and Ors ...Petitioners
Vs.
The State of Maharashtra and Anr. ...Respondents.

Mr. Umesh Mankapure, for the Petitioners
Mr. Ajay Patil, APP for the State

CORAM : SMT. BHARATI DANGRE, J.
DATE : SEPTEMBER 25, 2019

P.C.:

1. The Petitioners arraigned as accused in C.R. No. 224 of 2014, committed as RCC No. 10/2016 have approached this Court being aggrieved by an order passed below Exhibit '46' by the JMFC, Kavathemahankal on 8th January, 2018. The said order came to be passed on an application filed by one Tanaji Fonde, an Informant in C.R. No. 224/2014 in which the Petitioners are implicated as accused. By the said application, request was made for committal of the case to the Sessions Court on the ground that the cross case is already committed to the Sessions Court, Sangli. It was submitted before the JMFC that another criminal case vide RCC No. 48/2016 arising out of C.R. No. 223/2016 is already committed to the Sessions Judge, Sangli. The reason put forth in

the application is that the two cases revolved around the same incident, involved same set of witnesses and, therefore propriety demands that the cases be tried together. The application was vehemently opposed on the very premises that the two cases are cross cases. The Learned Magistrate allowed the said application and committed the said case to the Sessions Judge, Sangli by invoking the provisions of Section 323 of the Code of Criminal Procedure and directed the appearance of the Petitioners before the Sessions Court on the returnable date.

2. The Learned Counsel for the Petitioners would argue that such a method was unknown to the Code of Criminal Procedure and he submits that since the said two cases were not cross cases, the invocation of power under Section 323 by the Learned Magistrate was erroneous.

3. I need not expatiate on the issue as to whether the Magistrate could have invoked the power under Section 323 as the issues stand concluded by the Supreme Court in the case of **Sudhir And Others vs. State of M.P. [(2001) 2 Supreme Court Cases 688]**. The grey area which was sought to be replenished by the said judgment was in relation to a case and a counter case, both committed to the Court of Sessions as both cases involve

offences triable exclusively by the Sessions Court. But after hearing the preliminary arguments, the Sessions Judge was of the opinion that in one case no offence triable exclusively by the Sessions Court was involved, whereas in the other case, a charge for offences including one triable exclusively by the Sessions Court could be framed and it is necessary, in such a situation, that the Sessions Court should transfer the former case to the Chief Judicial Magistrate for trial as envisaged in Section 228(1) of the Code of Criminal Procedure. On the peculiar facts of the case and on examining the procedure contemplated under the Code of Criminal Procedure, their Lordships observed as under:

8. *It is a salutary practice, when two criminal cases relate to the same incident, they are tried and disposed of by the same court by pronouncing judgments on the same day. Such two different versions of the same incident resulting in two criminal cases are compendiously called “case and counter-case” by High Courts and “cross-cases” by some other High Courts. Way back in the nineteen hundred and twenties a Division Bench of the Madras High Court (Waller and Cornish, JJ.) made a suggestion (Goriparthi Krishtamma, In re that “a case and counter-case arising out of the same affair should always, if practicable, be tried by the same court; and each party would represent themselves as having been the innocent victims of the aggression of the other”.*

9. *Close to its heels Jackson, J., made an exhortion to the then legislature to provide a mechanism as a statutory provision for trial of both cases by the same court (vide Krishna Pannadi V. Emperor). The learned Judge said thus : “There is no clear law as regards the procedure in counter-cases, a defect which the legislature ought to remedy. It is a generally recognized*

rule that such cases should be tried in quick succession by the same Judge, who should not pronounce judgment till the hearing of both cases is finished.”

10. *We are unable to understand why the legislature is still parrying to incorporate such a salubrious practice as a statutory requirement in the Code. The practical reasons for adopting a procedure that such cross-cases shall be tried by the same Court, can be summarized thus :- (1) It staves of the danger of an accused being convicted before his whole case is before the Court. (2) It deters conflicting judgments being delivered upon similar facts. (3) In reality the case and the counter-case are, to all intents to purpose, different or conflicting versions of one incident.*

Resultantly, the Apex Court held that the Sessions Judge ought not to have transferred the Sessions Case to the Chief Judicial Magistrate as he committed but, he himself could have tried it and the order passed by the Sessions Judge was therefore, set aside.

4. The authoritative pronouncement of the Apex Court squarely applies to the facts of the present case and the invocation of the powers by the JMFC under Section 323 of the Cr.P.C. for the reasons cited in the impugned order, substantially serves the process of justice and since it was already observed by the JMFC that it would involve the same set of witnesses, the committal of the RCC No. 48/2016 to the Sessions Courts, the direction that it to be tried along with Sessions Case No. 61/2016 calls for no

interference.

5. At this stage, the learned counsel for the Petitioners also makes a feeble attempt to argue on the facts of the case and submits that the two cases registered in the form of two C.Rs. are not cross cases. With the assistance of the learned counsel for the Petitioners and the learned APP, I have examined the First Information Reports and the spot panchnamas, which forms a part of the charge-sheet in both the cases. There is no iota of doubt in my mind that the incident referred to in both the FIRs is the same, except the nature of injuries suffered by the injured persons based on which, in C.R. No. 223 of 2014 offence under sections 307, 223, 226 are invoked, apart from that Sections 143, 147, 148 and 149 came to be added. Whereas, in C.R. No.224 of 2014, an offence under Section 323 was invoked along with Sections 143, 147, 148, 149. The spot panchnama clearly refers to the same place where the incident occurred. Comparison of the statement of the First Informant also refers to the same place of incident and of-course the version of one batch of accused refer to the place in his own perception, with reference to his own field.

The learned counsel for the Petitioners has rightly relied upon the definition the term “Cross Cases” as defined in Law

Lexicon. It means “Two different versions of the same incident resulting in two criminal cases are compendiously called as “ cross cases”. This is what exactly I can gather on reading the two First Information Reports and the charge sheets.

6. For the reasons, recorded above the criminal writ petition is devoid of any merits and substance it is dismissed by upholding the order passed by the learned JMFC. It is made clear that the observations made above are limited to the context in which the issue is decided and will have no bearing on the merits of the case.

[SMT.BHARATI DANGRE, J.]