

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2784 OF 2018

Pramod Bhaichand Raisonni and ors .. Petitioners
Versus
The State of Maharashtra & Anr .. Respondents

...

Mr. A.H. Ponda i/b Milan Hebballi for the petitioners.
Mrs.A.S. Pai, APP for the State.

**CORAM: SHRI RANJIT MORE &
SMT. BHARATI H.DANGRE, JJ.**

RESERVED ON : 10th APRIL 2019

PRONOUNCED ON : 2nd MAY 2019

JUDGMENT (Per Smt.BHARATI H. DANGRE, J)

1 Rule. Rule made returnable forthwith. Heard by
consent of the parties.

The petitioners who are the office bearers/
employees of a Credit Society titled as “Bhaichand Hirachand
Raisonni Multi State Credit Society” have invoked the writ
jurisdiction of this Court praying for issuance of appropriate
direction to transfer the entire proceedings pertaining to 77 CRs

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registered under the provisions of the Indian Penal Code and The Maharashtra Protection of Interests of Depositors Act (for short 'MPID') in which they are arraigned as accused to a Single MPID Court at Jalgaon.

2 All the petitioners are arraigned as accused in various FIRs which are registered in different police stations alleging therein that the Multi State Credit Society has accepted deposits from individuals but has failed to return the said deposits with the promised returns. The FIRs lodged in various police stations allege that the office bearers of the Multi-State Credit Society known as Bhaichand Hirachand Raisonni has accepted the amount from various investors and 77 such FIRs came to be registered in various police stations in the State, including Pune, Jalgaon, Kolhapur, Vardha, Amravati, etc. On such FIR being instituted, Sections 420, 468, 471, 120B read with Section 34 of the IPC and Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments; Act, 1999 came to be invoked and applied against the present petitioners who were holding the post of

Director/office bearers of the said Credit Co-operative Society. The case of the petitioners is that the FIRs came to be registered due to sudden panic and provocation, frivolously raised by one of the complainants and the petitioners submit that the Multi-State Credit Society was founded as a Credit Society in the year 1996 and there are 263 branches of the Credit Society in the State of Maharashtra and also in the State of Gujarat, Madhya Pradesh and Rajasthan with deposits of Rs.1100 Crores. On the multiple FIRs being lodged in various districts of Maharashtra and on completion of investigation, charge-sheets came to be filed in those CRs. On such offences being registered, the petitioners were arrested and the claim of the petitioners is that they are senior citizens and have stepped in the decrepitude of old age. The petitioners had earlier approached this Hon'ble Court by filing a Writ Petition for transfer of investigation of all complaints and FIRs to a single Investigating Agency. This Writ Petition was allowed on 27th October 2015 and the investigation was transferred to a Special Investigating Team (CID) and pursuant to the investigation, charge-sheets were filed.

The limited relief which the petitioners seek through the present writ petition is to allow a Single Special Court of MPID either in Jalgaon or Pune where they can be tried. The emphasis on Jalgaon as the place of trial is made on account of the fact that the main branch of Bhaichand Hirachand Rasoni Multi State Credit Society is situated in Jalgaon district. It is also alleged by the petitioner that even if any FIRs are filed at future point of time, they can also be tried by the Special Single Court of MPID who is entrusted with the trial of 77 CRs.

3 Mr.Ponda, learned counsel appearing for the petitioners submits that the petitioners are incarcerated since 2015 and the trial in the CRs in which they have been charge-sheeted has not commenced. He is apprehensive that if the trial continues in different Courts of MPID, it would consume considerable time and it would be difficult to ascertain as to when all these trials would be concluded. The petitioners, according to Shri Ponda, being in their advance age, are

suffering from various ailments and producing them on different dates for trial before different Courts would be a cumbersome process apart from the other disadvantage that on occasions, on account of their absence, the trial in different Courts would get postponed. On the contrary, if it is transferred to a Single Court, it would be convenient for the prosecution, the Investigating Agency and also it could bring certainty as one Special Court constituted under the MPID Act would conduct the trial of all the matters which are grouped together and it would be convenient for the Court to appreciate the evidence in one go, which otherwise would be a cumbersome, repetitive and a lengthy procedure. He would submit that no prejudice would be caused to the witnesses/complainants if a Single Court is assigned the task of trying all the CRs. The evidence can be recorded conjointly and this would bring certainty to the entire process and this is the most effective way of dealing with the grievances of the complainants. Learned counsel would also submit that if necessary, the facility of video conferencing can also be availed so that long delays can be curbed and the trial can proceed on

day to day basis. In this backdrop, he reiterates the prayer set out in the petition.

4 In the backdrop of the aforesaid facts, the Division Bench of this Court on 29th November 2018 recorded that there are 77 cases of similar nature revolving around similar transaction alleging that the petitioners as officers of the Multi-State Credit Society have failed to return the deposits and therefore, the provisions of Maharashtra Protection of Interest of Depositors (in Financial Establishments; Act, 1999 are attracted. The Court noted that the 77 cases would involve 42,470 witnesses who are spread all over the State. In spite of serious objection of the learned Public Prosecutor, this Court passed the following order :

“Having regard to the extent or the magnitude of the cases involved, we are of the view that it would be appropriate if a decision is taken at the highest level i.e. either at the level of the Director General of Police Maharashtra / Home Department in that regard. We, therefore, defer the hearing of the above Writ Petition for a period of two weeks i.e. 13-12-2018, on which day a response is expected from the office of the Director General of Police/Home Department”.

5 On 22nd January 2019, learned APP sought time to obtain instructions from the Office of the Director General of Police/Home Department in further of the earlier order. In terms of the said direction, an affidavit came to be filed on 1st April 2019 by one Shri Vinayak Badrinarayan Deshmukh serving as Assistant Inspector General of Police (Law and Order) (in the office of the Director General of Police, Maharashtra State, Mumbai. In the said affidavit, the following averments are made:

“3 I say that there are 73 FIRs registered against the petitioners throughout the State of Maharashtra. Investigation was conducted by the State CID. Charge sheets have been filed in 70 cases, and in 06 cases charges have also been framed by the concerned Courts. In these 73 cases there are approx. 42,417 witnesses and depositors. Their evidence will have to be recorded by the concerned Courts.

4 As per section 177 Cr.P.C, every offence shall ordinarily be inquired into and tried by the Courts within whose local jurisdiction it was committed.

5 I say that considering the number of witnesses and depositors, it would not only be inconvenient for the concerned Court to record the evidence of various witnesses and it would further delay the trial of all such cases if conducted at one place”

6 In support of the stand of the respondents, we have also heard Ms.Aruna Pai, Addl. P.P appearing for the respondents. She assiduously asserted that the clubbing of the trials cannot be sought by way of a right and the provisions contained in the Code of Criminal Procedure do not confer any such right on the accused persons. She would submit that in the peculiar circumstances where there are multiple CRs and extensively large number of witnesses are to be examined, it would not be possible to club the trials. She also place heavy reliance on Section 177 of the Code of Criminal Procedure which set out the cardinal principle of trials i.e. “Every offence shall ordinarily inquire into and tried by a Court within whose local jurisdiction it was committed”. In the backdrop of the factual and legal position, Ms. Pai would submit that it is not for the authority to confer jurisdiction on any Court in contrast to the provisions contained in the Code of Criminal Procedure and since it is not for the accused to determine the place and the manner in which they are to be tried, the present relief sought in the petition is wholly misconceived and deserves to be rejected.

7 With the aforesaid rival submissions being advanced, we have carefully perused the facts involved and also considered the existing legal framework.

The Code of Criminal Procedure set out the detail mechanism for conduct of trials and inquiries. Chapter XIII of the Code prescribes for the jurisdiction of the Criminal Court in inquiries and trials. Section 177 states that every offence shall ordinarily be inquired into and tried by a Court within whose jurisdiction it was committed. Chapter XVI provides for the form of charges and joinder of parties. The relevant provision which needs a mention are Sections 218 to 223. Section 218 sets that for every distinct offence, for which any person is accused, there will be a separate charge and every such charge shall be tried separately. Sub-section (2) of the said section stipulates that nothing in sub-section (1) shall affect the operation and provisions of Sections 219, 220, 221 and 223.

Section 219 of the Code is an exception and provides for a contingency when a person is accused of more offences than one of the same kind committed within the space

of twelve months from the first to the last of such offence. Whether it is in respect of the same person or not and in such case, it may be tried at one trial, for any number of them not exceeding three. Section 220 set out for one more exception to Section 218 when one trial is permitted, if in one series of acts so connected together as to form the same transaction, more offence than one are committed by the same person, then, he may be charged with and tried at one trial, for every such offence. Section 223 contemplates a situation when two or more persons may be charged and tried together i.e. they may be charged jointly. Section 223 permits joint charge and joint trial in case of persons accused of the same offence committed in the course of same transaction or persons accused of different offences committed in the course of the same transaction.

Another significant provision contained in the Code is Section 184 which contains a provision determining the place of trial for offences triable together and this section finds place in Chapter XIII itself. Section 184 reads thus :

Place of trial for offences triable together

Where-

1. the offences committed by any person are such that he may be charged with, and tried at one trial for, each such offence by virtue of the provisions of section 219, section 220 or section 221, or
2. the offence or offences committed by several persons are such that they may be charged with, and tried together by virtue of the provisions of section 223, the offences may be inquired into or tried by any Court competent to inquire into or try any of the offences.

8 Perusal of the aforesaid provisions contained in the Code of Criminal Procedure would reveal that separate trial is a rule, however, the contingencies contained in Section 219, 220, 221 and 223 are exceptions to this Rule. One of the exceptions is when the series of acts are so connected together as to form the same transaction and more offences than one are committed by the same person, he may be tried at one trial in terms of Section 220. Another contingency is as the one contemplated in Section 223 when the persons accused of the same offence in the course of the same transaction are charged and tried together or the persons accused of different offences committed in the course of the same transaction are charged and tried together.

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The issue as to whether the offences are committed in the course of same transaction is the crucial and relevant. In ***State of A P Vs. Cheemalapti Ganeswara Rao & Anr.***¹ the Hon'ble Apex Court dealt with the term “same transaction” and observed thus :

"27....Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any Court which the Legislature has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same."

Further, it was held that:

"30.....Where, however, several offences are alleged to have been committed by several accused persons it may be more reasonable to follow the normal rule of separate trials. But here, again, if those offences are alleged not be wholly unconnected but as forming part of the same transaction the only consideration that will justify separate trials would be the embarrassment or difficulty caused to the accused persons in defending themselves."

1(1964) 3 SCR 297,

9 The term “in the course of same transaction” is not defined in the Code. However, once again, it came to be interpreted by the Hon'ble Apex Court in case of **Mohan Baitha & Ors Vs. State of Bihar and Ors**,² where the Hon'ble Apex Court observed thus :

It may be noticed that under [Section 220](#) of the Code of Criminal Procedure, offences more than one committed by the same persons could be tried at one trial, if they can be held to be in one series of acts, so as to form the same transaction. The expression “same transaction” from its very nature is incapable of an exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be in one transaction. It is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. But the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not. Therefore a series of acts whether are so connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria.

Thus, in the light of the said observation by Their Lordships, it may be gainfully concluded that if there is any proximity of time or place or unity or purpose and design or continuity of

² AIR 2001 SC 1490

action in respect of series of acts, it can be said that the acts form part parts of the same transaction. Thus, the connection between series of acts is an essential ingredient for those acts to constitute the same transaction.

10 The term applied is “in the course of same transaction”. Thus, where there is a commonality of parties or design, where there is continuity of action, then all those persons involved can be accused of the same or the different offences committed in the course of same transactions and when such continuity of action and commonalism of performance and design exists, the Code itself envisages a joint trial. Reliance is placed by the learned APP on Section 177 of the Code but this provision cannot be an impediment for a joint trial by one Court. In case of *Purshottam Dalmia Vs. State of West Bengal*,³ the Hon'ble Apex Court dealt with a similar apprehension and dispelled the same in the following words :

11. The desirability of the trial, together, of an offence of criminal conspiracy and of all the overt acts committed in pursuance of it, is obvious. To establish the offence of criminal conspiracy,

3 AIR 1961 SC 1589

evidence of the overt acts must be given by the prosecution. Such evidence will be necessarily tested by cross-examination on behalf of the accused. The Court will have to come to a decision about the credibility of such evidence and, on the basis of such evidence, would determine, whether the offence of criminal conspiracy has been established or not. Having done all this, the Court could also very conveniently record a finding of 'guilty' or 'not guilty' with respect to the accused said to have actually committed the various overt acts. If some of the overt acts were committed outside the jurisdiction of the Court trying the offence of criminal conspiracy and if the law be that such overt acts could not be tried by that Court, it would mean that either the prosecution is forced to give up its right of prosecuting those accused for the commission of those overt acts or that both the prosecution and the accused are put to unnecessary trouble inasmuch as the prosecution will have to produce the same evidence a second time and the accused will have to test the credibility of that evidence a second time. The time of another Court will be again spent a second time in determining the same question. There would be the risk of the second Court coming to a different conclusion from that of the first Court.

13. It is true that the Legislature treats with importance the jurisdiction of Courts for the trial of offences. Jurisdiction of Courts is of two kinds. One type of jurisdiction deals with respect to the power of the Courts to try particular kinds of offences. That is a jurisdiction which goes to the root of the matter and if a Court not empowered to try a particular offence does try it, the entire trial is void. The other

jurisdiction is what may be called territorial jurisdiction. Similar importance is not attached to it. This is clear from the provisions of [ss. 178, 188, 197\(2\)](#) and [531, Criminal Procedure Code. Section 531](#) provides that:

"No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice."

The reason for such a difference in the result of a case being tried by a Court not competent to try the offence and by a Court competent to try the offence but having no territorial jurisdiction over the area where the offence was committed is understandable. The power to try offences is conferred on all Courts according to the view the Legislature holds with respect to the capability and responsibility of those Courts. The higher the capability and the sense of responsibility, the larger is the jurisdiction of those Courts over the various offences. Territorial jurisdiction is provided just as a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular Court, the convenience of the accused who will have to meet the charge levelled against him and the convenience of the witnesses who have to appear before the Court. It is therefore that it is provided in [s. 177](#) that an offence would ordinarily be tried by a Court within the local limits of whose jurisdiction it is committed.

The Apex Court thus concluded the issue by observing that Section 177 simply provide that every ordinary offence would be tried by a Court within local limits of whose jurisdiction it was committed. It does not say that it would be tried by such Court except the cases mentioned in Section 179 to 185 and 188 or in cases specially provided, by any other provision of law and rather it leads to place of trial upon. It thus concluded that there is no reason why the provisions of Section 233 to 238 may also not provide exception to Section 177 if they do not permit trial to a particular offence along with others in one Court. Reference was also made to Section 233 which provides for a separate charge for every distinct offence of which any person is accused and every such charge to be tried separately.

11 We may gainfully refer to the observations of the Hon'ble Apex Court in case of **Bhagwan Dass Jagdish Chander Vs. Delhi Administration** ⁴

We do not propose to attempt, in this case, the task of defining exhaustively what constitutes the same

⁴ 1975 (1) SCC 866

transaction within the meaning of [Section 239](#) of Criminal Procedure Code of 1898 corresponding to [Section 223](#) of the Criminal Procedure Code of 1973. It is practically impossible as well as undesirable to attempt such a definition of a concept which has to be necessarily elastic.

“The connection between a series of acts seems to us to be an essential ingredient for those acts to constitute the same transaction and, therefore, the mere absence of the words 'so connected together as to form in cl. (a), (c) and (d) of [S. 239](#) would make little difference. Now, a transaction may consist of an isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently, they would not form part of the same transaction but would constitute a different transaction or transactions.

Therefore, even if the expression 'same transaction' alone had been used in [s. 235\(1\)](#) it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression 'same transaction' occurring in cls. (a), (c) and (d) of [s. 239](#) as well as that occurring in s. 235(1) ought to be given the meaning according to the normal rule of construction of statutes”.

12 Applying the said principle, the Division Bench of this Court in case of *Adnan Bilal Mulla Vs. State of Maharashtra*,⁵ has permitted a joint trial in respect of the bomb blast which occurred in the city of Mumbai though they

⁵ 2006(1) Mh.L.J. 572

occurred at different point of time and were registered under different C.Rs. The applicants who were tried in POTA Special case in the Special Court constituted under the Prevention of Terrorism Act, 2002 sought the relief of restraining the prosecution from proceeding with a joint trial in respect of Mulund Bomb Blast offence, the Vile Parle Bomb Blast and the Bombay Central Bomb Blast. When confronted with the said prayer and dealing with the argument that Section 219 cannot be resorted to for clubbing the trials since there are different accused, who are accused of different offences and, therefore, the order passed by the Special Court clubbing the three trials together, suffer from patent illegality, the Division Bench relied on catena of decisions relied upon and after referring to the scheme of the Code observed thus :

26. If these principles are applied to the present case, we feel that the appellant can be jointly tried with other accused. The three bomb blasts took place between 6//12/02 and 13/3/2003. They occurred within a span of about three months. They occurred in thickly populated areas. In all the three cases common people were targeted. The three blasts prima facie have similar pattern and mode. In our opinion, a common thread runs through all these incidents. Though initially these cases were registered at different police

stations, by office order dated 12th July, 2003 they were clubbed together and the investigation was directed to be conducted under a chief investigating officer. In our opinion, these incidents are so connected together as to form part of the same transaction.

27. Besides the accused have been charged with conspiracy. The criminal conspiracy alleged is to inter alia commit terrorist acts or to commit preparatory acts towards terrorist acts to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or section of the people by aiding and abetting each other to commit terrorist acts or acts preparatory to terrorist acts in or around Mumbai by use of bombs, dynamites, other explosive substances or inflammable substances, fire arms or other lethal weapons of hazardous nature in such a manner to cause death or injuries of persons and to cause damage or destruction of property and disruption of services essential to the life of the community.

13 We would also gainfully make a reference to the scam relating to the 2G Spectrum transaction which was directed to be tried by the same Special Court in light of the directions issued by the Hon'ble Apex Court in case of ***Public Interest Litigation Vs. Union of India***⁶. The case was registered by the CBI alleging offences under the Prevention of Corruption Act and criminal conspiracy in respect of grant of Unified Access Service Licenses in the year 2008 against various

⁶ 2011 (1) SCC 560

Government officials, persons and companies. They were charged with abusing the official to a few selected companies at a nominal rate by rejecting the applications of others without any valid reason thereby causing wrongful loss to the Government of India and a corresponding wrongful loss to private persons/companies estimated to be more than Rs.22,000 Crores. The Hon'ble Apex Court had passed an order in a Public Interest Litigation directing the CBI to investigate the FIR and it monitored the investigation and restrain any other Court from interfering in the investigation. The charge-sheet was filed by the CBI and in the first supplementary charge-sheet, 12 accused persons were charged with offences punishable under the penal code as well as Prevention of Corruption Act. On the second supplementary charge-sheet being filed, the Special Judge took cognizance on finding enough incriminating material on record to proceed against the accused persons. A Special Judge was appointed, pursuant to the directions of the Hon'ble Apex Court to undertake trial of cases in relation to all matters pertaining to the 2G scam. A relief was sought by the present petitioners for clubbing of their

trial with the original trial on a second round of litigation.

While dealing with the said contention, Hon'ble Apex Court observed in case of ***Essar Teleholdings Ltd Vs. CBI***.

20. Read in the backdrop of [Sections 220](#) and [223](#), it is clear that a discretion is vested with the Court to order a joint trial. In fact, in [Chandra Bhal v. State of U.P.](#), (1971) 3 SCC 983, this Court stated: “Turning to the provisions [of the Code](#), [Section 233](#) embodies the general mandatory rule providing for a separate charge for every distinct offence and for separate trial for every such charge. The broad object underlying the general rule seems to be to give to the accused a notice of the precise accusation and to save him from being embarrassed in his defence by the confusion which is likely to result from lumping together in a single charge distinct offences and from combining several charges at one trial. There are, however, exceptions to this general rule and they are found in [Sections 234](#), [235](#), [236](#) and [239](#). These exceptions embrace cases in which one trial for more than one offence is not considered likely to embarrass or prejudice the accused in his defence. The matter of joinder of charges is, however, in the general discretion of the court and the principle consideration controlling the judicial exercise of this discretion should be to avoid embarrassment to the defence by joinder of charges. On the appellant’s argument the only provision requiring consideration is [Section 235\(1\)](#) which lays down that if in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person then he may be charged with and tried at one trial for every such offence. This exception like the other exceptions merely permits a joint trial of more offences than one.

It neither renders a joint trial imperative nor does it bar or prohibit separate trials. Sub-section (2) of [Section 403](#) of the Code also provides that a person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under [Section 235\(1\)](#). No legal objection to the appellant's separate trial is sustainable and his counsel has advisedly not seriously pressed any before us." [at para 5]

21. The other contention of learned senior counsel for the petitioners before us has already been answered by this Court by upholding both the administrative order dated 15.3.2011 and the NCT notification dated 28.3.2011. This Court having held that the administrative order dated 15.3.2011 of the High court was valid, it is clear that even a [Penal Code](#) offence by itself – that is, such offence which is not to be tried with a [Prevention of Corruption Act](#) offence - would be within the Special Judge's jurisdiction inasmuch as the administrative order of the High Court gives power to the Special Court to decide all offences pertaining to the 2G Scam. In fact, once this order is upheld, the learned senior advocate's argument based on [Section 4\(3\)](#) of the Prevention of Corruption Act pales into insignificance. This is for the reason that independent of [Section 4\(3\)](#) of the Prevention of Corruption Act and of the notification dated 28.3.2011, the Special Judge has been vested with the jurisdiction to undertake the trial of all cases in relation to all matters pertaining to the 2G Scam exclusively, which would include [Penal Code](#) offences by themselves, so long as they pertain to the 2G Scam. Shri Salve cited State (through [CBI, New Delhi](#)) v. [Jitender Kumar Singh](#), (2014) 11 SCC 724, and paragraph 38 in particular to submit that a

Special Judge appointed to try Prevention of Corruption Act cases, cannot try non Prevention of Corruption Act cases unless there is a causal link between such cases and the Prevention of Corruption Act cases, in which case they must be tried together. As has been held by us, once the challenge to the administrative order dated 15.3.2011, is specifically rejected, the offences arising out of the second supplementary chargesheet, being offences under the Penal Code relatable to the 2G scam, can be tried separately only by the Special Judge.

14 The Hon'ble Apex Court also dealt and interpreted the power conferred under Section 220 and 223 for conduct of a joint trial, recently, in case of Fodder scam in the case of ***State of Jharkhand through SP, CBI Vs. Lalu Prasad @ Lalu Prasad Yadav***,⁷ and it reiterated the principles by making the following observations :

29. It is apparent from section 212 read with section 219 that there have to be separate trials for different years covering the period of more than one year. Same kind of offence is a different thing than the "same offence" for the purpose of sections 219, 220 or 300. The scheme of law is clear that separate charges for distinct offences must be framed separately and they cannot be clubbed together for more than one year.

30. This Court in Natwar Lal Sakar Lal Mody v. The State of Bombay 26 (1984) DLT 64 considered the

⁷ 2017(8) SCC page 1

question of joint trial of persons and offences for conspiracy as per provisions contained in section 239(d) of the old Cr.PC. This Court has laid down that separate trial is the rule and joint trial is an exception. Joint trial would be an irregular exercise of discretion if a court allows innumerable offences spread over a long period of time and committed by a large number of persons to be under the protecting wings of an all-embracing conspiracy, and if each or some of the offences can be separately tried, it would be appropriate and lawful. Joint trial prolongs the trial and causes waste of judicial time and complicates the matter which might otherwise be simple, and it would confuse the accused and cause prejudice to them. Court should not be overzealous to provide a cover of conspiracy for a number of offences unless it is satisfied that the persons who committed separate offences were parties to the conspiracy and committed the separate acts pursuant to conspiracy. This Court has laid down thus :

"11. This discussion leads us to the following legal position. Separate trial is the rule and joint trial is an exception. While Section 239 of the Code of Criminal Procedure allows a joint trial of person and offences within defined limits, it is within the discretion of the Court to permit such a joint trial or not, having regard to the circumstances of each case. It would certainly be an irregular exercise of discretion if a Court allows an innumerable number of offences spread over a long period of time and committed by a large number of persons under the protecting wing of all-embracing conspiracy, if each or some of the offences can legitimately and properly form the subject-matter of a separate trial; such a joint trial would undoubtedly prolong the trial and would be a cause of unnecessary waste of judicial time. It would complicate matters which might otherwise be simple; it would confuse accused and cause prejudice to them, for more often

than not accused who have taken part in one of the minor offences might have not only to undergo the long strain of protracted trial, but there might also be the likelihood of the impact of the evidence adduced in respect of other accused on the evidence adduced against him working to his detriment. Nor can it be said that such an omnibus charge or charges would always be in favour of the prosecution for the confusion introduced in the charges and consequently in the evidence may ultimately benefit some of the accused, as a clear case against one or other of the accused may be complicated or confused by the attempt to put it in a proper place in a larger setting. A Court should not be overzealous to provide a cover of conspiracy for a number of offences unless it is clearly satisfied on the material placed before it that there is evidence to prove prima facie that the persons who committed separate offences were parties to the conspiracy and they committed the separate acts attributed to them pursuant to the object of the said conspiracy."

(Emphasis Supplied)

15 From perusal of the First Information Report which arraigned the petitioners as accused, we have taken note of the fact that the allegations levelled relate to a similar transaction of the investors depositing their amount in the Multi-State Co-operative Credit Society on a promised return and failure to return the same amounts with the incentives as promised. All the office bearers of the Multi-State Co-operative Credit Society have been arraigned as accused and barring the amount

involved in each FIR, the nature of transaction is identical. The provisions of MPID have been invoked against all the accused persons and the charge-sheets are filed in different Courts. Apart from this, the offences under Indian Penal Code have also been invoked and applied. Since there appears to be a commonality of action with which the accused are charged with, it would be in the interest of justice to assign all the matters to one Court of MPID which would also be in the interest of the prosecution, prosecuting agency and would also ensure fair and speedy trial to the present petitioners who are arraigned as accused. Except raising a technical objection based on the territorial jurisdiction of the Court, we do not find that the State is opposed to the clubbing of trials on any other ground. Trial of 77 cases pending before different MPID Courts is a time consuming process and if the trials are clubbed together, the number of witnesses cited can also be reduced to the bare minimum as it is not the volume of the evidence that is brought on record is of relevance but it is the relevant evidence which should form the basis of any trial in determining the guilt of the accused. It is no doubt true that while issuing a direction

for clubbing all the offences and the trials, the Court is duty bound to evaluate whether such clubbing would cause prejudice to the accused persons or it would facilitate the trial by taking into consideration the facts involved in the matter. We are of the clear view that trial of 77 CRs by one Court of MPID would rather facilitate the trial and since the interest of several depositors are involved, we are of the clear view that trying all the offences at one place by the same Court would provide a solace to the complainants and speedy disposal of all the offences would assist in achieving the purpose underlying the MPID Act. Further, it would also avert a situation resulting into different final outcomes of distinct trials tried by separate MPID Courts.

16 The Maharashtra Protection of Interest of Depositors Act is a special enactment to ameliorate the interest of the depositors and the said Act is enacted to deal with such financial establishments in the State who are grabbing money received as deposits from public mostly middle class and poor strata of the society, on the promise of unprecedented high

attractive interest on maturity and such financial establishments have defaulted and it has cost great public resentment and uproar creating law and order problem in the State. The said legislation intends to cure the malady of thousands and thousands of depositors ramped into a public disorder and the fraudulent default of the accused in such type of offences form a unique class of white collared and organized crime. The transactions of the accused persons who are the petitioners before us have exploited several depositors and the promise on which the deposits were accepted was never fulfilled. The procedure contemplated under the Special enactment intends to prevent and protect the precarious loss of the depositors and enable them to recover the amount as early as possible. No solution is available to the innocent unsecured depositors in absence of the procedure prescribed in the enactment. In our considered opinion, it is also the duty of the State to assist the innocent depositors and to protect their interest and effectively take steps to recover the amount and return the same to the persons who have lost their savings. The State being the custodian of the welfare of the subjects cannot be a silent

spectator and once a legislation has been brought in, to deal with this malady and protect the interest of the vulnerable sector, it is the duty of the State to render justice to such depositors and this would be in real sense amounting to securing of socio economic justice to its citizens, which is a solemn duty of every State.

We, therefore, deem it expedient to exercise our powers conferred on us by virtue of Section 407 of the Code of Criminal Procedure to transfer the 77 criminal cases against the Bhaichand Hirachand Rasoni Multi-State Credit Co-operative Society and its office bearers/employees pending in the different Special MPID Courts in the State to be transferred to the Special MPID Court at Jalgaon. On such transfer, the Special Court (MPID Jalgaon District) would preferably conduct the trial on day to day basis.

Rule is made absolute in terms of prayer clause (a).

(SMT. BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)