

Date of Decision : 18.11.2019

.....Petitioner

versus

....Respondents

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CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Jaideep Verma, Advocate
for the petitioner (in CRM-M-1176-2016) and
for respondent No.2 (in CRM-M-36758-2014).

Mr. Pawan Sharda, Senior DAG, Punjab
for respondent No.1-State.

Mr. Gurcharan Dass, Advocate
for the petitioner (in CRM-M-36758-2014) and
for respondents No..2 to 7 (in CRM-M-1176-2016).

FATEH DEEP SINGH, J.

Since, both these matters are, one arising out of the private criminal complaint (CRM-M-36758-2014) and the other arising out of a State case by way of FIR No.92 dated 05.10.2010 (CRM-M-1176-2016) and being co-jointly intertwined both these petitions are taken up together for disposal.

The petitioner-Rani had got registered, against the present private respondents, a criminal case by way of FIR No.92 dated 05.10.2010 under Sections 323, 324, 341 and 34 of the Indian Penal Code with Police Station City Kharar, SAS Nagar.

It is by another recourse, husband of the petitioner, namely, Kashmir Singh filed a criminal complaint against two specifically named accused while there are three unknown persons. It is conceded at the bar that the State case is at final stage of adjudication and whereas, in the complaint case summoning orders have been issued which have been sought to be quashed as well as the complaint in CRM-M-36758-2014 by the petitioners, who have been summoned as accused.

During the course of hearing arguments, it is not displaced by the two sides that both, in the proceedings arising out of the FIR and the criminal complaint, the allegations pertain to an occurrence, which has taken place on 03.10.2010 and wherein, same set of persons have been arraigned as accused which

are so there in the complaint. During the course of trial of the FIR case, before the Court of the learned Judicial Magistrate 1st Class, Kharar, the complainant moved an application for commitment of the FIR case to the Court of Sessions. The Court vide impugned orders dated 06.10.2015, dismissed the said application, which is being challenged by resort to Section 482 Cr.P.C. before this Court (CRM-M-1176-2016).

Appreciating the submissions, Section 210 Cr.P.C, which is reproduced below, to lay emphasis provides for a procedure to be followed when there is a complaint case and the police investigations in respect of the same very offences:-

210. 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.

Admittedly, the complaint was filed on 17.01.2011 and the application has come about at the fag end of the trial, in the criminal case, way back in the year 2015. As has been observed by the Court below in the impugned findings, it was at the almost final conclusion of the FIR case application was filed. The same is quite reflective from the observations of the Court below in the impugned orders in para 4 internal page 3 of the order that the instant application has been filed by the prosecution when the case is fixed for final arguments. When the statutory provisions enshrined in Section 210 Cr.P.C. lays down that during the inquiry or trial by a Magistrate, it is brought to his notice that an investigation by the police is in progress in relation to an offence which is subject matter of inquiry or trial by the Magistrate, the Magistrate is supposed to stay the proceedings of such inquiry or trial and call for the report of the police officer conducting the investigations and which process have never been followed throughout for reasons best known to the parties and the Court below.

More so, by virtue of Section 300 Cr.P.C. provides that a person who has been tried by the Court of competent jurisdiction in

an offence and convicted or acquitted of such offence, while such conviction/acquittal remains in force, shall not be liable to be tried against all the same offences nor of the same facts, for any other offence, for which, a different charge from the one made against him might have been made. Furthermore, with similar ends, in view the framers of the Constitution, have incorporated Article 20, that no person shall be prosecuted for the same offence more than once. Reverting back to the instant case, as is fairly conceded by the two sides, though the trial in the FIR case stands concluded but no pronouncement of judgment has come about, whereas, in the private criminal complaint, the matter is still pending and which is subject matter of challenge for quashment of the complaint and the summoning order in CRM-M-36758-2014. Thus, in totality of what has come about, it would be in the fitness of things, if both these matters though are at varying stages of trial are put up before one and the same Court, so as to prevent any miscarriage of justice as well as to safeguard against double jeopardy provided by virtue of Section 300 Cr.P.C. and Article 20 of the Constitution. Since one of the offences for which the accused are being tried is under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which is triable by a Special Court which is seized of the matter, thus, in light of the same, the learned Court of Magistrate which is trying the FIR case, be directed to call for the report of the concerned quarter and commit the case to the Court of the learned

Special Judge, where the proceedings, in which, private complaint is pending to prevent any contradictory judgments. Both the Courts dealing with these matters be intimated to this effect and both cases will run side by side in the same Court. Keeping in view the matters have already been inordinately delayed the concerned Court to dispose off the same in accordance with law expeditiously.

18.11.2019
Neha

(FATEH DEEP SINGH)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No