

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

CRM-M-37468-2018 (O&M)

Date of decision : 29.04.2019

Vikas

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.S. Lamba, Advocate for the petitioner.

Mr. Karan Sharma, AAG, Haryana.

ANIL KSHETARPAL, J. (ORAL)

Prayer in the present petition is to jointly hear Criminal Appeal No.126 of 2016 pending before the learned Sessions Judge, Hisar with Criminal Revision No.2213 of 2017 filed against the acquittal of the co-accused on the ground that both are arising from same inquiry concluded vide judgment dated 28.01.2016 followed by order of sentence dated 01.02.2016.

Learned counsel for the petitioner relies upon judgment passed by Rajasthan High Court in case of **Salman Khan Vs. State of Rajasthan, 2011(13) RCR (Criminal) 228**, in which it has been held as under:-

“22. Thus, there is every possibility and even likelihood of a situation of great anomaly arising in the matter because while the learned Sessions Judge while hearing the appeal filed by the petitioner against the conviction might uphold his conviction and at the same time, this Court while hearing the appeals being Criminal Appeals Nos.685/2006 and

267/2007 pending before this Court may acquit the petitioner in the same case. A question of great difficulty would arise as to what would be the effect of the upholding of the sentence of the petitioner by the learned Sessions Judge, Jodhpur. Likewise, the situation can also arise, wherein, the learned Sessions Judge while hearing the petitioner's appeal may reduce the sentence awarded to him and this Court while hearing the appeal for enhancement of the sentence may decide that the sentence awarded to the petitioner should be enhanced. Thus, these are the situations which in all likelihood can arise in the matter if the appeals are heard and decided separately. The provision of Section 402, Criminal Procedure Code is such a provision, which has been enacted in the statute book for the purpose of avoiding such a situation. The provision of Section 402, Criminal Procedure Code reads as under:-

402. Power of High Court to withdraw or transfer revision cases.- (1) Whenever one or more persons convicted at the same trial makes or make application to a High Court for revision and any other person convicted at the same trial makes an application to the Sessions Judge for revision, the High Court shall decide, having regard to the general convenience of the parties and the importance of the question involved. which of the two Courts should finally dispose of the applications for revision and when the High Court decides that all the applications for revision should be disposed of by itself, the High Court shall direct that the applications for revision pending before the Sessions Judge be transferred to itself and where the High Court decides that it is not necessary for it to dispose of the applications for revision, it shall

direct that the applications for revision made to it be transferred to the Sessions Judge.

(2) Whenever any application for revision is transferred to the High Court, that Court shall deal with the same as if it were an application duly made before itself.

(3) Whenever any application for revision is transferred to the Sessions Judge, that Judge shall deal with the same as if it were an application duly made before himself.

(4) Where an application for revision is transferred by the High Court to the Sessions Judge, no further application for revision shall lie to the High Court or to any other Court at the instance of the person or persons whose applications for revision have been disposed of by the Sessions Judge.

23. This Court has no hesitation in arising at a conclusion that though the provision of Section 402, Criminal Procedure Code only refers to the revisional jurisdiction but the same analogy has to be applied to the appeals as well. When the situation of different appeals against the same judgment or in the same matter arises for consideration and then by virtue of section 402, Cr.P.C., it has to be directed that all the different appeals arising out of the same judgment should be heard and decided together.

24. Rule 113 of the Rajasthan High Court Rules is also a relevant provision in this regard, which reads as under:-

“Rule 113. Connecting cases - No application shall be required for connecting cases arising out of the same decree, judgment or order and such cases shall be connected whether there be any application or not.

When any other cases are sought to be connected a properly stamped application shall be

presented to the Registrar after giving notice to the advocates for all the other parties to such cases. The signature of an Advocate on such application shall be sufficient indication that notice has been given to him. Any party desiring to contest the application may file an objection within ten days. Where no objection has been filed, the Registrar may pass orders on the application. Where an objection has been filed, the application shall be listed before the Court for orders.”

25. By the application of this Rule, no application is required for directing the connecting of cases arising out of different decree, judgment order and such cases shall be connected whether there be any application or not. Such a direction for connection can be made even simply by giving notice to the party contesting the issue.”

Keeping in view the facts of the case and the judgment referred to above, this Court is of the opinion that the ends of justice would be met if the Criminal Appeal No.126 of 2016 pending before the learned Court of Sessions Judge, Hisar is transferred to this Court and ordered to be heard with Criminal Revision No.2213 of 2017 which is listed for 01.08.2019.

Both the cases are directed to be listed in the urgent.

In the meantime, learned Sessions Judge is requested to send the record.

In view of the above, the present petition is disposed of.

29.04.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**