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

**CRM-M-28621-2015
Date of Decision: 12.03.2020**

Ashish Jain

..... Petitioner

Versus

ASI Shankar Lal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Sajjan Singh Malik, Advocate,
for the petitioner.

Mr. K.P.S. Virk, Advocate for
Mr. K.S. Dhaliwal, Advocate,
for the respondents.

SUDIP AHLUWALIA, J. (ORAL)

[1]. In this petition, the petitioner, who is accused in FIR No.688, dated 08.12.2011, registered at Police Station Rohtak Civil Lines, District Rohtak and is complainant in Criminal Complaint bearing No.30/2013 dated 17.04.2013/04.07.2013, pending in the Court of Ld. Judicial Magistrate First Class, Rohtak, has prayed for transferring both the cases to one single Court as, according to him, the occurrence which is the subject matter of both the cases is of the same date i.e. 07.12.2011. Of course, the version of contesting parties are in conflict with each other. It may be mentioned that respondent Nos.1 and 2 in the present case are Police personnel, who are alleged to have falsely implicated the petitioner in the aforesaid FIR motivatedly at the instance of other private respondents. It may be further mentioned that on the disputed date, death of the petitioner's

son, namely, Lakshay Jain had occurred on account of food poisoning. The petitioner insists in his complaint that his son was forcibly made to consume stale food by the respondents which ultimately caused his death by food poisoning. On the other hand, according to the FIR, on reaching the Police Station, the petitioner sent his wife and his children to his relatives home and asked them to consume something along with her children because “*it is better to die*” on account of which, the petitioner's wife administered some poisonous substance to herself and her children.

[2]. In the above circumstances, it is crystal clear that the real question to be determined is as to how and at whose instance, death of the petitioner's son was caused? The versions of the contesting sides are diametrically opposite to each other.

[3]. It has nevertheless been contended on behalf of the respondents that the petitioner's complaint is a belated afterthought, after he had already been named in the FIR way-back on 08.12.2011. In countering this submission, Ld. Counsel for the petitioner submits that the complaint could not be filed earlier prior to 17.04.2013 as the petitioner was himself arrested in the aforesaid FIR and remained in detention for more than a year. He was ultimately granted bail by this Court in CRM-M-34092-2012 on 13.12.2012 but was able to actually come out of the prison only on 09.01.2013, after which it took him a couple of months to collect the documents for preparing and filing his own complaint.

[4]. In the opinion of this Court, neither of the two contradictory versions regarding the death of the petitioner's son can be discarded outright without trial.

[5]. In the case of “*Darshan Singh Vs. Sukhdev Singh and*

others", 2010(3) R.C.R. (Criminal) 205, this Court had visited the earlier decision in "Ranjit Singh Vs. State of Haryana and another", 1996(1) RCC 266, in which, decision of Hon'ble Supreme Court "Harjinder Singh Vs. State of Punjab and others", 1985(1) R.C.R. (Criminal) 289, was quoted as follows:-

"4. ...In this regard reference was made to the judgement of this Court in the case of Ranjit Singh v. State of Haryana and another, 1996 (1) RCC 266, wherein reference was placed on the judgement of Hon'ble the Supreme Court in the case of Harjinder singh v. State of Punjab and others, AIR 1985 Supreme Court 404, which reads as under:-

"In Harjinder Singh's case (supra) the facts were somewhat similar to the present case. In that case, a case was fixed on the police report under Sections 302, 307, 342, 440, 149, 148 and 120-B of Indian Penal Code and Sections 25 and 27 of the Arms Act. Another case was instituted against the said accused along with some other persons upon a private complaint. Both the cases were committed to the Court of Sessions for trial. After discussing the law and correct interpretation of Sections 210 and 223 of the Code, the Supreme Court held as under:

"The proper course to adopt is to direct that the two cases should be tried together by the learned Additional Sessions Judge but not consolidated i.e. evidence should be recorded separately in both the cases one after the other except to the extent that the witnesses for the prosecution who are common to both the cases be examined in one case and their evidence be read as evidence in the other. The learned Additional Sessions Judge should, after recording the evidence of the prosecuting witnesses in one case, withhold his

judgement and then proceed to record the evidence of the prosecution in the other case. Thereafter he shall proceed to simultaneously dispose of the cases by two separate judgements taking care that the judgement in one case is not based on the evidence recorded in the other case.”

Learned counsel for the parties have been heard.

5. The incident is of the same date i.e. 10.01.2006. The parties are same. Just because time has not been mentioned in the complaint, it does not mean that the allegations do not arise out of the same incident or that it is a cross case. One of the arguments raised by the learned counsel for the respondent is that State case is at the evidence stage and thus both the cases cannot be tried together. The said objection can be taken care of by directing the present petitioner to complete their evidence as soon as possible preferably within three months. Moreover, it would be in the interest of justice and in all fairness that these two cases are heard by the same Court.”

[6]. Thereafter, the petition was allowed by the Court as it was of the view that the incident being of the same date and the parties being the same would not mean that the allegations did not arise out of the same incident and that it is not a cross-case. Thereafter, both the cases were ordered by the Court to be tried together but not consolidated with the following observations:-

“6. As a result of the above discussion, the present petition is allowed with direction that both the cases be tried together but not consolidated i.e. evidence be recorded separately in both the cases and dispose of the same by two separate judgements while taking care that judgement in one case is not based on the evidence recorded in the other case as observed in the case of

Ranjit Singh 's case (supra). The present petitioner shall complete their evidence as soon as possible preferably within three months so that the decision in the criminal case filed by the respondents herein is not held back on account of the pendency of the present case in dispute.”

[7]. The present case is squarely covered by the ratio of above decisions.

[8]. It has also been ascertained that in the complaint case, evidence before framing of charges is to be recorded while in FIR case, the charges have been framed and the matter is now posted for evidence. The FIR case proceedings are pending before the Court of Sessions since the offence involved therein is exclusively triable by the Sessions Court (Section 307 of the IPC). Consequently, while allowing the petition, the Criminal Complaint No.30/2013 dated 17.04.2013/04.07.2013, is ordered to be withdrawn from the Court of Judicial Magistrate First Class, Rohtak and is transferred to the Court of Additional Sessions Judge, Rohtak where the FIR case is pending. It is, however, clarified that even after such transfer, the Ld. Sessions Court shall first record the complete evidence in the FIR case already pending before it, but shall not pass any final judgment, and thereafter shall take evidence in the transferred criminal complaint case and then shall decide both the matter in an integrated manner.

[9]. Disposed off.

12.03.2020

Bhumika

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No