

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

**CRM-M No. 52353 of 2021 (O&M)
Date of Decision: 15.12.2021**

Ankush Goyal and another

..... Petitioners

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. V.P. Sangwan, Advocate for the petitioners.

Mr. Pradeep Prakash Chahar, Deputy Advocate General, Haryana

SURESHWAR THAKUR, J. (ORAL)

1. An FIR No. 204 of 23.10.2017 (Annexure P-7) was lodged at Police Station Chhapar, District Yamuna Nagar, against Mohit Sarpanch, Nabbu, Gurpreet, Kamlu, Saravjeet and Kamaljeet, constituting therein offences under Sections 148, 149, 323, 324, 325, 326, 307, 379-B, 506 and 120-B of the Indian Penal Code.

2. In the afore drawn offences, it is stated at the Bar, by the learned State Counsel that no weapon of offences, became used by the accused.

3. Moreover, an FIR No. 250 of 23.12.2017 (Annexure P-3), relating to an incident, which occurred at Railway Station Mustafabad, Yamuna Nagar, was registered against Kamaldeep @ Kamlu, at Police Station Chhapar, District Yamuna Nagar, constituting therein an offence under Section 25 of Arms Act.

4. In addition, an FIR No. 251 of 23.12.2017 (Annexure P-5), relating to an incident, which occurred at T-Point Village Maheshwari, was registered against one Manish Kumar, at Police Station Chhapar, District

Yamuna Nagar, constituting therein an offence under Section 25 of Arms Act. The accused - Manish Kumar in committing the offence (supra), is alleged to wield unlawful possession of one iron rod at the crime site.

5. After the completion of investigation relating to the afore FIRs by the IO concerned, a report under Section 173 Cr.P.C. was filed before the learned Magistrate concerned.

6. In respect of FIR No. 204 of 23.10.2017, charges for commission of offences constituted under Sections 148, 149, 323, 324, 325, 326, 307, 379-B, 506, and, under Section 120-B of the Indian Penal Code, and, under Section 25 of the Arms Act, became drawn, on 11.10.2018, by the Court of learned Additional Sessions Judge, Yamuna Nagar at Jagadhri.

7. In respect of FIR No. 250 of 23.12.2017, charges for commission of offences, constituted under Sections 25 & 29 became drawn, on 30.03.2018, by the learned JMIC, Yamuna Nagar at Jagadhri.

8. Moreover, in respect of FIR No. 251 of 23.12.2017, charges for commission of offences, constituted under Section(s) 25 & 29 of the Arms Act, became drawn, on 30.03.2018, by the Court of learned JMIC, Yamuna Nagar at Jagadhri.

9. One Manish Kumar became aggrieved from his being charged for commission of offences punishable under Sections 25 & 29, of the Arms Act, as arose from FIR No. 251 (supra), as, became lodged at the Police Station concerned. Moreover, since the afore Manish Kumar, as, disclosed in the order made by this Court on 09.07.2019 (Annexure P-12), became arrested in FIR No. 204 of 23.10.2017, registered at Police Station Chhapar, District Yamuna Nagar, and, thereafter charges (supra) became drawn

against him. Consequently, he moved this Court through casting Criminal Revision Petition No. 3746 of 2018, with a prayer therein, that in respect of one recovery (supra), from him, upon the registration of FIR No. 251 (supra), a charge for commission of an offence, against him, in respect whereof FIR No. 204 (supra), became registered, cannot be framed. Therefore, the charge framed against him, i.e. Manish Kumar, be set aside.

10. In the afore Criminal Revision Petition, on a statement made by the learned State Counsel, this Court had accepted the version of the prosecution, that the afore Manish Kumar had not used in the commission of offence embodied in FIR No. 204 (supra), hence any country made pistol, and, that rather the recovery of an iron rod was effected at his instance by the Investigating Officer (IO) concerned. In the afore made order, it is also clearly recorded that only in FIR 251 of 23.10.2017, the recovery of a country-made pistol, the weapon of offence, as, used by the accused concerned, in the commission of the offence constituted in FIR No.251, became effected by the IO concerned. After making the afore conclusion(s), this Court had through an order made on 09.07.2019, hence directed, that the framing of charge against Manish Kumar in FIR No. 204 of 23.10.2017, in respect of the alleged recovery from him of a country made pistol alongwith live cartridges, be set aside, imperatively when rather an iron rod became recovered at the instance of the accused concerned, by the IO concerned, upon registration of FIR No. 251 (supra). Moreover, this Court, in the operative part, made directions, upon, the learned trial Court concerned, that in case there is any inter se connection, inter se FIR No. 251 of 23.12.2017, and, FIR No. 204 of 23.10.2017, thereupon it being open to

the learned Magistrate concerned, to make an order of clubbing and consolidating both the afore FIRs. Necessarily, hence the afore made verdict, does not peremptorily cast any injunction, for the afore clubbings, for, trials of both FIR (supra). Obviously, hence unless the mandate of Section 220 of the Cr.P.C., was evidently made out, thereupon, FIRs (supra) were not amenable for holdings of joint trials thereon.

11. At the outset, it is necessary to state that in respect of FIR No. 204 of 23.10.2017, registered at Police Station Chhapar, District Yamuna Nagar, the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, through an order made on 11.10.2018 (P-11), has framed charges against Manish Kumar, for commission of an offence punishable under Section 25 of the Arms Act. However, since the order made on 09.07.2019, wherethrough the apposite charge become framed by the learned Additional Sessions Judge, Yamuna Nagar, against Manish Kumar, under Section 25 of the Arms Act rather became set aside, by this Court through verdict (supra). Therefore, the charge made against Manish Kumar under Section 25 of the Arms Act, does not survive, nor the accused can be tried qua the afore charge.

12. After the making of the afore order by this Court, on 09.07.2019, in Criminal Revision No. 3746 of 2018, rather subsequent thereto an order was made on 16.07.2019 (P-2) by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, and, in the afore made order, he had pronounced, that a joint trial be opened against the accused concerned, hence in respect of both FIR Nos. 250 & 251 (supra), and also directed that the evidence already led in both FIRs, shall be read, as adduced, and the

remaining unexamined witnesses shall be examined before the Court (supra). The learned Additional Sessions Judge concerned, also in the order (supra) had pronounced, that the witnesses of FIR concerned, pertaining to alleged recovery of arms, from Kamaldeep @ Kamlu and Manish Kumar, need not be examined in this case.

13. Subsequent to the making of the afore order, an application, as, carried in Annexure P-13, was preferred by the petitioner(s) herein, before the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, wherein they contended that since FIR Nos. 204 & 251 (supra), related to different transactions, thereupon, the joint trial of both FIRs is unwarranted, nor the adduction of evidence in one of the trials, can be permissibly read as evidence, adduced in the other trial, as emerged from a separate FIR, as, both FIRs (supra) carry contradistinct penal incidents, and also relate to completely different accused concerned. The afore application was dismissed by the learned Additional Sessions Judge, through, an order made on 10.11.2021 (P-1).

14. The reason which prevailed, upon, the learned Additional Sessions Judge concerned, to decline the afore rather became grounded, upon the factum, that since the previous order made by him, on 16.07.2019 (P-2), became not challenged through a revision petition being preferred by the aggrieved accused. Therefore, the legal efficacy of the order (supra) could not be eroded. Though the afore made reason(s) is legally sound, and, also is valid. However, for the reasons narrated hereinafter, in the larger interests of justice, de hors the petitioner not availing the remedy of casting a revision petition, hence against the afore order of 16.07.2019, this Court

deems it fit to make an interference with the afore made order.

15. The reason being that though this Court had through an order made on 09.07.2019 (P-12) had passed a direction to the learned trial Judge, to consider the desirability of a joint trial of case arising from FIR Nos. 251, and 204, yet with a rider that there being an imperative inter se inter-connectivity amongst both the FIRs (supra). It appears that the afore order, has been misconstrued rather to peremptorily cast a mandate, upon the learned trial Judge concerned, to order for a joint trial of charges arising from FIR Nos. 204 & 251 (supra). It is emphasized that though, this Court had ordered that, unless there was evident inter se connectivity, inter se the penal transactions, which are respectively embodied in both the FIRs (supra), thereupon alone there could be a validly made order, for joint trial of charge(s), as became framed against the accused concerned, and, as arose from FIRs Nos. 204 & 251 (supra).

16. Be that as it may, since the provisions of Section 220, and, of Section 223 of the Cr.P.C., provisions whereof are extracted hereinafter, relate to a joint trial of offences concerned, and, of offenders concerned, though they may be embodied in different FIRs, yet the joint trial of FIRs, though lodged at different times, is permissible also against all persons concerned, only if there is evident inter se connectivity, amongst all the penally inculpable incidents, rather narrated in each of the FIRs, or all the penally inculpable incidents disclosed in the FIRs concerned, are evidently forming part of the same transaction, and, or all accused concerned, being common offenders in each FIR, provided offences concerned, also become committed within a span of twelve months.

“ 220. Trial for more than one offence.

(1) 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, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub- section (2) of section 212 or in sub- section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860).

223. What persons may be charged jointly. The following persons may be charged and tried together, namely:-

(a) persons accused of the same offence committed in the course same transaction;

(b) person accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) person accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last- named offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860). or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together. ”

17. It is in the light of the afore statutory provisions, appertaining to permissible joint trial(s) of common offenders / offences, named in separate FIRs, though lodged at different times, that this Court, had made a direction to the learned Court concerned, to consider the desirability of a joint trial of FIRs Nos. 251, and 204 (supra).

18. As afore stated, the afore passing observation has been misconstrued, by the learned trial Judge.

19. It is fairly stated at the Bar by the learned State Counsel, that

FIR No. 204 (supra), names one Kamadeep alias Kamlu, to be the offender,

and, he is alleged to be, at the relevant site of occurrence, wielding an country-made pistol to cause injuries upon the victim concerned. However, in FIR No. 251 (supra), not Kamaldeep alias Kamlu is named as an accused, rather the accused named therein is one Manish Kumar, and the latter is alleged to wield an iron rod, which also became recovered from his person. From the afore factual matrix, it does not at all emerge that there is any statutorily ordained (supra), hence any inter se connectivity, in the penally inculpable incidents, which are respectively embodied in FIR No. 204, and, in No. 251 (supra), nor are with respect to common offender(s), who all share the requisite common intention, rather there is the completest lack of inter se connectivity in respect of the respectively penally inculpable transactions, carried in both FIRs, as they emerge from different transactions. Moreover, the weapons of offence, alleged to be used by each of the offenders in each of the FIRs (supra), are also completely contradistinct. To sum up, there was no imperative statutory inter se connectivity, hence within the ambit of Section 220, and, of Section 223 of the Cr.P.C. inter se the penally inculpable incidents, narrated respectively in either FIR No. 204, and, in FIR No. 251 (supra). Therefore, there was no occasion for the learned trial Judge merely, to, upon misconstruing, the direction (supra) made by this Court, to order for joint trials of both the FIRs.

20. The afore gross perversity has also caused the deepest breaches (supra), hence, vis-a-vis the statutory provision(s) carried in Section 220, and in Section 223 of the Cr.P.C., appertaining to joint trial of charges, and, of common offenders, as, emanate from different FIRs. Therefore, this

Court for undoing the afore, is constrained, to, de hors the petitioner not challenging the order, made by the Court on 16.07.2019 (P-2), and, also when hence his subsequent application, for amendment of the apposite order, was not maintainable, rather deems it fit in the larger interests of justice, to undo the happenings of statutory breaches. Therefore, it is not legally fit to order for the joint trial of different offenders, in both FIRs (supra), as, they do not relate to common penally inculpable transactions. The impugned orders are, accordingly, quashed.

21. The petition stands allowed.

22. This Court places on record the valuable assistance rendered by the learned counsel for the petitioner, as well as by the learned State Counsel(s), Mr. Pradeep Prakash Chahar, Deputy Advocate General, Haryana. Also, this Court, places on record the valuable assistance, rendered by Mr. Tanuj Sharma, Assistant Advocate General, Haryana, and, Mr. Bhupender Beniwal, Assistant Advocate General, Punjab.

December 15, 2021

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**(SURESHWAR THAKUR)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>