

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

(242-A)

CRM-M-4570-2021 (O&M)
Date of Decision:-06.12.2022

Gurcharan Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ravi Malhotra, Advocate for the petitioner.

Ms. Ramta Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition is for issuance of an appropriate direction to the Magistrate, Rajpura, Sh. Gurdev Singh, CJJD-cum-JMIC-cum-RC to pronounce together the judgments in case bearing FIR No.0085, Dated 09/11/2016, under Sections 323, 325, 506, 148, 149, 120-B IPC registered at Police Station Kheri Gandian, pending for 04.02.2021 (Annexure P-1) alongwith the judgment of Criminal Complaint bearing No.105 dated 16.07.2018 under Sections 323, 324, 325, 506, 341, 148, 149, 120-B IPC pending for 04.02.2021.

2. The learned counsel for the petitioner contends that it is a case of version and cross-version and therefore, in terms of Section 210 Cr.P.C. and the judgments rendered in the cases of *'Nathi Lal and others versus State of U.P. and another, 1990 SCC (Cri) 638'* and *'State of M.P. versus*

Mishrilal (Dead) and others, 2003(3) RCR (Criminal) 287', the Trial Court

be directed to record the evidence of the witnesses in each case separately and thereafter try both the cases one after the other and dispose of the cases by way of two separate judgments.

3. When this case had come up for hearing first on 16.02.2021, the following order was passed:-

“Case heard via video conferencing.

This petition has been filed by the petitioner under the provisions of Section 482 of the Cr.P.C. for issuance of a direction to the learned Magistrate concerned, Rajpura, to pronounce the judgment in case bearing FIR No. 0085, dated 09.11.2016, registered at Police Station Kheri Gandian, District Patiala, alleging therein the commission of offences punishable under Sections 323/325/506/148/149/120-B of the IPC, along with the judgment in Criminal Complaint no. 105, dated 16.07.2018, alleging therein the commission of offences punishable under Sections 323/324/8325/506/341/148/149/120-B of the IPC.

Learned counsel for the petitioner submits that even though the complaint filed by the petitioner before the competent court would be a cross-version to the occurrence as shown in the FIR, however, even so, in terms of Section 210 of the Cr.P.C, once it has been brought to the notice of the trial court that a trial is ongoing after a report under Section 173 (2) of the Cr.P.C. was submitted in the FIR registered arraigning the petitioner and his sister as accused, both the cases must be heard and tried together as stipulated in sub-section (2) of Section 210 of the Cr.P.C.

Notice of motion.

On the asking of the court, Mr. Sandeep Singh Deol, D.A.G., Punjab, accepts notice on the asking of the court on behalf of the respondent-State.

A copy of the petition be emailed to him by learned counsel for the petitioner today itself.

Mr. Sumit Dua, Advocate, appears for Mr. Prashant Bansal, Advocate for the complainant, and seeks time to address arguments, with him further submitting that as regards the complaint filed by the petitioner herein, CRM-M-39927-2020 has been filed by the complainant in the FIR (accused in the complaint case), seeking quashing of the complaint, with notice having been issued in that petition, returnable now on 12.03.2021.

Adjourned to 12.03.2021.

To be heard along with CRM-M-39927 of 2020.

*In the meanwhile, in view of the judgment cited by learned counsel for the petitioner in **State of M.P. vs. Mishrilal (deceased) and others 2003 (3) RCR (Criminal) 287**, a direction is issued to the trial court that it may continue taking evidence and hearing arguments in the case arising out of the FIR registered, but will not pronounce judgment therein till further orders, in view of the fact that evidence in the cross-case would need to be taken immediately thereafter, after which of course the two cases would be decided by separate judgments by the same learned Judge.*

It needs to be noticed that learned counsel for the petitioner has submitted that in fact the 'complaint case' is also pending before the same learned judge as is seized of the trial in the case arising out of the FIR.

*It is to be further noticed here that in the aforesaid judgment, a previous order of the Supreme Court **in Nathilal and others vs. State U.P. and another** (1990) SCC (Criminal) 638, has been referred to, wherein it was observed that where there is a cross case, it would be a fair procedure to direct the same learned judge to try both the cases, one after the other,*

and after the recording of the evidence in one case is complete, he must hear the arguments but must reserve judgment and thereafter proceed to hear the cross case, after which the same learned judge must dispose of the matters in two separate judgments.

Though of course the order passed in Nathilals' case (supra), may possibly be observed to be a direction given by the Supreme Court in the circumstances of a particular case, however, in Mishrilals' case (supra), thereafter, the same direction has been reproduced, with their Lordships holding that the rationale behind the aforesaid direction would be to avoid conflicting judgments over the same incident (because if two cross-cases are decided separately, it can lead to conflicting judgments)."

4. The learned counsel for the petitioner and the learned counsel for the State are *ad idem* that the Trial Court should proceed to try both the afore-mentioned case and cross-case in accordance with the directions issued in the cases of 'Nathi Lal' and Mishrilal (Dead) and others (supra)..

5. I have heard the learned counsel for the parties.

6. In 'Nathi Lal and others versus State of U.P. and another, 1990 SCC (Cri) 638', the Hon'ble Supreme Court held as under:-

"2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate

judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.

3. We allow this appeal partly to the aforesaid extent and direct the learned Judge to proceed with the police case and the cross case instituted by the respondent-complainant by way of a private complaint and hold the trial in both the matters in the light of the directions given hereinabove. Learned Judge will accord priority to these cross cases and dispose of both the cases expeditiously”.

7. The Hon’ble Supreme Court in the case of State of M.P. vs. Mishrilal (deceased) and others 2003 (3) RCR (Criminal) 287, has held as under:-

*“7. Undisputedly, accused Mishrilal lodged the report to the police vide Ex. D-8 over the same incident happened on 5.3.1987, in which he had clearly stated the injuries were sustained by him and his son Madhusudan at the hands of prosecution party. It is also not disputed that on the strength of the complaint lodged by Mishrilal, investigation was also carried out and challan was filed namely crime case no. 52/87 under sections 147, 148, 149 and 324 Indian Penal Code against the prosecution party which is pending for disposal before the learned Judicial Magistrate First Class. In the said challan, the prosecution party is stated to be an aggressor. This Court in **Nathilal v. State of U.P., 1990 (Supp.) SCC 145**, pointed out the procedure to be followed by the Trial Court in the event of cross cases. It was observed thus :-*

"We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross cases cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other."

8. In the instant case, it is undisputed, that the investigating officer submitted the challan on the basis of the complaint lodged by the accused Mishrilal in respect of the same incident. It would have been just fair and proper to decide both the cases together by the same court in view of the guidelines devised by this Court in Nathilal's case (supra). The cross-cases should be tried together by the same court irrespective of the nature of the offence involved. The rationale behind this is to avoid the conflicting judgments over the same incident because if cross cases are allowed to be tried by two courts separately there is likelihood of conflicting judgments. In the instant case, the investigating officer submitted the challan against both the parties. Both the complaints cannot be said to be right. Either of them must be false. In such a situation, legal

obligation is cast upon the investigating officer to make an endeavour to find out the truth and to cull out the truth from the falsehood. Unfortunately, the investigating officer has failed to discharge the obligation, resulting in grave miscarriage of justice”.

8. In view of the dictum of the Hon’ble Supreme Court laid down in the cases of Nathilal and Mishrilal (dead) and others’ (supra), the learned Judge is directed to try both the case and cross-case one after the other. After recording the evidence in one case, he must hear the arguments but reserve the judgment. Thereafter, he must proceed to hear the cross-case and after recording of the evidence, he must hear the arguments and reserve the judgment in that case as well. The same learned Judge must, thereafter, dispose of the matters by two separate judgments. For deciding each of the cases, he shall rely only on the evidence recorded in that particular case without looking at the evidence recorded in the cross-case. The judgments must be pronounced by the same Judge one after the other.

9. The present petition is disposed of with the directions as aforesaid.

06.12.2022

sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No