IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

219 CRM-M-19471-2016 (O&M)
Date of Decision: 18.11.2022

Shish Ram ..... Petitioner

Versus

State of Haryana and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Deepender Singh, Advocate
for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana.

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JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Section 482 Cr.P.C. is seeking quashing of order dated 11.08.2015 (Annexure P-18) passed by SDJM, Hatin and order dated 17.05.2016 (Annexure P-20) passed by ASJ, Palwal whereby application of the petitioner under Section 323 Cr.P.C. has been dismissed.

2. The brief facts emerging from record are that scuffle took place between petitioner and private respondents. Both the parties approached the police. An FIR No.185 dated 02.06.2013 was registered under different Sections of IPC and thereafter challan was presented invoking different Sections of IPC which included Section 307 IPC. The offence under Section 307 IPC is triable by Sessions Court. At the behest of the petitioner, FIR No.188 dated 03.06.2013 was registered against respondents under different Sections of IPC and thereafter challan was presented. The Sections invoked in the case of petitioner in FIR No.188 were triable by Magistrate.

In FIR No.185, the trial was committed to Sessions Court which

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commence trial as sessions trial. The prosecution led its evidence and defence also led its evidence.

The petitioner moved an application before Magistrate under Section 323 Cr.P.C. seeking commitment of their case arising out of FIR No.188 dated 03.06.2013 to Sessions Court which came to be dismissed. The petitioner preferred a revision petition before Sessions Court which was withdrawn.

The petitioner after recording of evidence of complainant, moved another application seeking same relief. The application filed by petitioner again came to be dismissed vide order dated 11.08.2015. The petitioner feeling aggrieved from order dated 11.08.2015 preferred a revision petition before Sessions Court which came to be dismissed vide order dated 17.05.2016 by ASJ, Palwal. The petitioner through instant petition is seeking setting of impugned orders and commitment of trial arising out of FIR No.188 to Sessions Court.

3. Learned counsel for the petitioner submits that both FIRs are arising out of same incident which took place on 31.05.2013. In FIR No. 185, there are allegations against the petitioner that he has caused injuries and attempted to commit murder. In FIR No.188, the petitioner is alleging that respondents committed offence punishable under Sections 148, 149, 323, 506 of IPC. In the absence of joint trial of both the cases, there would be miscarriage of justice and violation of mandate of Section 323 Cr.P.C. With respect to maintainability of second application under Section 323 Cr.P.C., Ld. Counsel submitted that on the first occasion trial Court dismissed the application of the petitioner on the ground that application under Section 323 Cr.P.C. would be entertained after recording of evidence of complainant, thus application after recording of evidence of complainant was maintainable.

4. Learned State counsel submits that trial is pending at fag end before

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the learned Additional Sessions Judge and clubbing of both the trials would delay the trial and no object would be achieved.

On being asked what prejudice would be caused to the prosecution, if both the matters are tried together, learned State counsel expressed her inability to show any prejudice which would be caused to the State.

5. The withdrawal of revision against first order rejecting the application under Section 323 Cr.P.C. amounted to merger of order of Magistrate in the order of Sessions Court. Learned trial Court had dismissed the application under Section 323 Cr.P.C. Additional Sessions Judge has dismissed the revision of the petitioner holding that petitioner on the earlier occasion filed revision against the order of JMIC which was dismissed as withdrawn. Thus, second revision petition is not maintainable.

From the perusal of order dated 20.05.2014 passed by learned Magistrate, it is evident that application under Section 323 Cr.P.C. was dismissed primarily on the ground that Magistrate was of the opinion that evidence of the complainant should be recorded to appreciate the merits of the case and Court has power to commit the case at any stage whenever it appears that case is exclusively triable by Court of Sessions. In view of reasons recorded by Magistrate in its order dated 20.05.2014, the petitioner was well within its jurisdiction to prefer an application seeking commitment of trial as soon as evidence of complainant was recorded. Thus, dismissal of earlier application seeking commitment of trial was no bar to file second application as soon as evidence of complainant was recorded.

6. This court is seized of the matter since 2016 and on account of stay, Sessions Court could not pass final order. The alleged accident took place on 31.05.2013. A lot of water has already flown. It is neither in the interest of State nor the contesting parties that the matter is unnecessarily kept pending. Mr. J.S.

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Hooda, Advocate on 17.10.2022 when matter was listed before this court accepted notice of application seeking preponement of date of hearing and tendered his consent to preponement of the date of hearing from 10.2.2023 to 18.11.2022. There is no representation on behalf of the private respondents, however, State is present, thus court is left with no other option except to adjudicate the matter.

7. Section 323 of Cr.P.C. authorizes a Magistrate, at any stage of the proceedings, to commit a trial to Sessions Court, if it appears to him that offence ought to be tried by Sessions Court. Section 323 reads as:

> *323. If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that court under the provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the commitment so made.*
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> *Sections 223 Cr.P.C. delineates the situations when persons may be charged jointly. Clause (d) of Section 223 Cr.P.C. provides that persons accused of different offences committed in the course of the same transaction may be tried together.*
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> *Section 323 of the Code candidly permits a Magistrate to commit trial to Sessions Court at any stage, if he finds that offence is triable by Sessions Court. Section 218-224 (Part B of Chapter XVII) of the Code prescribe for framing of joint charges.*

In the case in hand neither Section 323 nor Part B of Chapter XVII is directly applicable because none of these provisions enjoins duty upon Magistrate to transfer trial of an offence which is not triable by Sessions Court. The petitioner is seeking transfer of trial of an offence which is concededly triable by Magistrate. The answer of the question posed in the present case lies in principles of natural justice, principles of criminal jurisprudence and judicial precedent.

8. A two bench of Hon'ble Supreme Court in ***Sudhir v. State of M.P.***,

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(2001) 2 SCC 688 after noticing its judgement in Nathi Lal has elaborated the legal position with respect to joint trial when there is a case and counter case qua same incident. The findings recorded by Apex Court read as:

> *8. It is a salutary practice, when two criminal cases relate to the same incident, they are tried and disposed of by the same court by pronouncing judgments on the same day. Such two different versions of the same incident resulting in two criminal cases are compendiously called "case and counter-case" by some High Courts and "cross-cases" by some other High Courts. Way back in the nineteen hundred and twenties a Division Bench of the Madras High Court (Waller and Cornish, JJ.) made a suggestion (Goriparthi Krishtamma, In re [1929 MWN 881] that "a case and counter-case arising out of the same affair should always, if practicable, be tried by the same court; and each party would represent themselves as having been the innocent victims of the aggression of the other".*
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> ***9.** Close to its heels Jackson, J., made an exhortation to the then legislature to provide a mechanism as a statutory provision for trial of both cases by the same court (vide Krishna Pannadi v. Emperor [AIR 1930 Mad 190 : 31 Cri LJ 461]). The learned Judge said thus:*
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> > *"There is no clear law as regards the procedure in counter-cases, a defect which the legislature ought to remedy. It is a generally recognized rule that such cases should be tried in quick succession by the same Judge, who should not pronounce judgment till the hearing of both cases is finished."*
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> ***10.** We are unable to understand why the legislature is still parrying to incorporate such a salubrious practice as a statutory requirement in the Code. The practical reasons for adopting a procedure that such cross-cases shall be tried by the same court, can be summarised thus : (1) It staves off the danger of an accused being convicted before his whole case is before the court. (2) It deters conflicting judgments being delivered upon similar facts. (3) In reality the case and the counter-case are, to all intents and purposes, different or conflicting versions of one incident.*
>
> ***11.** In fact, many High Courts have reiterated the need to follow the said practice as a necessary legal requirement for preventing conflicting decisions regarding one incident. This Court has given its approval to the said practice in Nathi Lal v. State of U.P. [1990 Supp SCC 145 : 1990 SCC (Cri) 638] The procedure to be followed in such a situation has been succinctly delineated in the said decision and it can be extracted here : (SCC pp. 145-46, para 2)*
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> > *"2. We think that the fair procedure to adopt in a matter*

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> *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."*

12. *How to implement the said scheme in a situation where one of the two cases (relating to the same incident) is charge-sheeted or complained of, involves offences or offence exclusively triable by a Court of Session, but none of the offences involved in the other case is exclusively triable by the Sessions Court. The Magistrate before whom the former case reaches has no escape from committing the case to the Sessions Court as provided in Section 209 of the Code. Once the said case is committed to the Sessions Court, thereafter it is governed by the provisions subsumed in Chapter XVIII of the Code. Though, the next case cannot be committed in accordance with Section 209 of the Code, the Magistrate has, nevertheless, power to commit the case to the Court of Session, albeit none of the offences involved therein is exclusively triable by the Sessions Court. Section 323 is incorporated in the Code to meet similar cases also. That section reads thus:*

> *"323. If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that court under the provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the commitment so made."*

13. *The above section does not make an inroad into Section 209 because the former is intended to cover cases to which Section 209 does not apply. When a Magistrate has committed a case on account*

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> *of his legislative compulsion by Section 209, its cross-case, having no offence exclusively triable by the Sessions Court, must appear to the Magistrate as one which ought to be tried by the same Court of Session. We have already adverted to the sturdy reasons why it should be so. Hence the Magistrate can exercise the special power conferred on him by virtue of Section 323 of the Code when he commits the cross-case also to the Court of Session. Commitment under Sections 209 and 323 might be through two different channels, but once they are committed their subsequent flow could only be through the stream channelised by the provisions contained in Chapter XVIII.*

Similar view has been expressed by a two judge bench of the Apex Court in **State of M.P. Vs Mishrilal (Dead) and others (2003) 9 SCC 426**.

9. In the present case it is undisputed that:

(i) both FIRs are arising out of same incident;

(ii) there are allegations and counter allegations by petitioner and respondents;

(iii) the complainant of first FIR are accused in second FIR and complainant of second FIR are accused in first FIR;

(iv) police has filed challan qua both FIRs;

(v) trial before Sessions Court is at fag end, however pronouncement of judgment is still pending.

The ratio and mandate of judgments of Hon'ble Supreme Court in ***Sudhir v. State of M.P. (Supra) &*** **Mishrilal (supra)** squarely applicable to facts of the present case.

10. Keeping in view facts of the present case and law laid down by Hon'ble Supreme court, this Court is of the considered opinion that trial arising out of FIR No. 188 dated 03.06.2013 deserve to be adjudicated by same court which is seized of trial arising out of FIR 185 dated 02.06.2013. Further, no prejudice is going to be caused to respondents if both the trials are tried together

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as both are arising from same incident which occurred on 31.05.2013 and parties/accused involved in both cases are same.

Accordingly, orders dated 11.08.2015 (Annexure P-18) passed by SDJM, Hatin and order dated 17.05.2016 (Annexure P-20) passed by ASJ, Palwal are hereby set aside.

(JAGMOHAN BANSAL)
JUDGE

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Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*

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