

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on : 29.11.2022.

Date of Decision: 21.12.2022.

(1) CWP-8935-2022 (O&M)

PAWAN KUMAR VERMA AND ANOTHER

... Petitioners

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

(2) CWP-8949-2022 (O&M)

PAWAN KUMAR VERMA AND ANOTHER

... Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

Argued By: Mr. Chetan Mittal, Sr. Advocate, with
Mr. Varun Issar, Advocate,
Mr. Mayank Aggarwal, Advocate and
Mr. Ankit Sharma, Advocate,
for the petitioners in both the petitions.

Mr. Vivek Chauhan, Addl. A.G. Haryana,
in CWP-8935-2022.

Mr. Inderpreet Singh Kang, AAG, Punjab,
in CWP-8949-2022.

VINOD S. BHARDWAJ. J.

Learned counsel appearing on behalf of the parties are *ad idem* that as a common question of law arises for determination in the instant petitions, hence, both the cases can be decided by a common order.

The facts are being extracted from **CWP-8935-2022** titled as **“Pawan Kumar Verma and another Vs. State of Haryana and others.”**

Briefly summarized, the facts of the present case are that the petitioners are the directors of the Company namely Indus Fuels Private Limited (hereinafter referred as ‘Indus’) and Prachi Gas Bottling Private Limited (hereinafter referred as ‘Prachi’). The said Companies had issued advertisement in the newspaper in the year 2011 inviting applications and tenders for allotment of Gas Cylinder Dealership and for establishing Gas Agencies in the States of Punjab and Haryana.

Pursuant to the said invitation for allotment of dealership/distributorship of the companies, several applications were received by the Companies. After scrutiny of the applications and upon receipt of requisite license fee as well as security deposit, the companies issued certificate of dealership to various applicants. It is averred that the companies have invested huge amount for setting up and for installing bottling plants across the country and to obtain licenses/permissions from various statutory authorities for its plant at Muraina, Madhya Pradesh and at Ludhiana in Punjab. The Companies are stated to have worked satisfactory with their dealers/distributors as well as the customers, however, due to fall in the crude prices in the international market, it became commercially unviable for the companies to offer same price provided earlier by the Government subsidized companies. On account of change in the Government

policy, the companies could not provide the gas cylinders at the subsidized rates giving rise to disputes between the companies and the distributors against price increase in the LPG Gas/re-filling charges etc. The dealers/distributors refused to pay the increased amount on the cylinders and to carry on with the Companies. Various FIRs with almost identical allegations were lodged in various Districts in the States of Punjab and Haryana for commission of offences under Sections 406, 420 and 120-B of the Indian Penal Code. As per the petitioners, around 50 FIRs are pending before various lower Courts of Punjab and Haryana. CWP No.8935-2022 has been filed by the petitioners pertaining to the FIRs registered in the State of Haryana while CWP No.8949-2022 has been filed with respect to the various FIRs that had been registered in the State of Punjab.

The petitioners have prayed that the trials pending before various trial Courts arising out of the said FIRs in the respective States may be clubbed together at one Court as fundamental rights i.e. the right to life and personal liberty of the petitioners is being violated due to multitude of trials forcing the petitioners to spend more than 25 days in a month appearing in one Court or another. It is averred that the sufferance is taking its toll on the petitioners not only physically and mentally but also financially. As the petitioners are required to appear in different Courts on the same dates, it leads to the petitioners submitting applications for seeking exemptions. It further exposes the petitioners to harsh conditions and coercive steps taken against them to secure their presence in pending trials. It is further averred in the petition that the allegations levelled in the FIRs are identical i.e. there are allegations regarding payment of money ranging from Rs.250/- to Rs.1000/- having been paid as application fee and for having deposited the amount

ranging between Rs.2 lacs to Rs.5 lacs towards licence fee, Rs.1 lac as processing fee, Rs.7 lacs as security fee and regarding an amount ranging from Rs.5 lacs to Rs.25 lacs as advance for allotment of the Gas Cylinders which had undisputedly been allotted subsequently.

The details of the various cases registered in the States of Punjab and Haryana as well as their status is tabulated as under:-

STATE OF HARYANA

S. No.	Distt. & PS.	FIR No.	U/s	Bail	Charge Sheeted Date	Stage of Case	Recent Status till 01.03.2022	NDOH
1	REWARI P.S. MODEL TOWN REWARI	331/14	420/406	ALLOWED DATE- 22.12.17	30.09.2015	Prosecution evidence	Appearance required	04-08-2022
2	REWARI P.S. SADAR REWARI	176/16	420/406/34	ALLOWED DATE- 2/4/18	1.12.2017	Prosecution evidence	Appearance required	04-08-2022
3	KURUKSHETRA P.S. CITY THANESAR	108/15	420/406/506	ALLOWED DATE- 6/9/17	12.01.2014	Appearance for record 313 CrPC statement	Appearance required	03-03-2022
4	KURUKSHETRA P.S. CITY THANESAR	107/15	420/406/506	ALLOWED DATE- 5/8/17	12.01.2014	Prosecution evidence	Appearance required	03-03-2022
5	KURUKSHETRA P.S. SHAHABAD	635/16	420/406/506/ 120B/ 201	ALLOWED DATE- 22/9/17	16.10.2018	Appearance for charge frame	NBW issued	25.04.2022
6	HISSAR P.S. CITY HANSI	308/15	420/406/120B	ALLOWED DATE-21/7/17	15.06.2016	Prosecution evidence	Appearance required	28.03.2022
7	JHAJJAR P.S. JHAJJAR	148/15	420/406/34/120B	ALLOWED DATE- 12/2/18	29.11.2017	Prosecution evidence	NBW issued	28.03.2022
8	JHAJJAR P.S. SAHLAWAS	293/15	420/406	ALLOWED DATE- 15/5/18	25.04.2018	Prosecution evidence	PO (82-1) CrPC stated	26.04.2022
9	SONIPAT P./S. KHARKHODA	160/14	420/406/120B	ALLOWED DATE- 9/3/18	27.07.2017	Appearance for charge frame	Appearance required	20.05.2022
10	SONIPAT P.S. SONIPAT CITY	17-Aug	406/420/120B	ALLOWED DATE- 2/4/18	12.04.2017	Prosecution evidence	NBW issued	05.09.2022
11	SONIPAT P.S. KUNDLI	288/14	420/406/120B	ALLOWED DATE- 22/12/18	15.09.2017	Prosecution evidence	Appearance required	05.10.2022
12	JIND		420/406	ALLOWED DATE- 8/8/18		Prosecution evidence	Appearance required	28.03.2022

	P.S. NARVANA							
13	PANIPAT P.S. ISRANA	271/16	406/420/467/ 468/471	ALLOWED DATE- 5/12/17	26.07.2017	Prosecution evidence	NBW issued	31.05.2022
14	PANIPAT P.S. PANIPAT CITY	1328/14	420/406/120B/ 201	ALLOWED DATE- 17/3/18	14.09.2017	Prosecution evidence	Appearance required	22.04.2022
15	PANIPAT P.S. CITY PANIPAT	829/15	420/406/120B/ 201	ALLOWED DATE- 17/3/18	14.09.2017	Prosecution evidence	NBW issued	25.04.2022
16	ROHTAK P.S. CITY ROHTAK	57/16	406/420/149	ALLOWED DATE- 23/5/18	27.04.2018	Appearance for charge frame	Appearance required	05.12.2022
17	ROHTAK P.S. SAMPLA	22/17	420/406	ALLOWED DATE- 8/12/17	08.01.2017	Final argument	Appearance required	17.09.2022
18	PANCHKULA P.S. PINJOR	17-Mar	420/406/120B	ALLOWED DATE- 28/3/18	08.01.2017	Prosecution evidence	Appearance required	29.04.2022
19	KARNAL P.S. MADHUBAN	17-Jul	420/406/120B	ALLOWED DATE- 13/7/18	01.04.2018	Appearance for charge frame	Appearance required	28.03.2022
20	JHAJJAR P.S. CITY BAHADURGARH	345/15	420/406/120B	ALLOWED DATE- 6/7/18	06.05.2018	Appearance for charge frame	Appearance required	24.05.2022
21	PALWAL P.S. CITY PALWAL	378/17	420/406	ALLOWED DATE- 11/10/18	07.11.2018	Appearance for charge frame	Appearance required	08.04.2022
22	FARIDABAD P.S. SADAR BALLABGARH	214/17	420/406	ALLOWED DATE- 7/1/19	23.10.2018	Prosecution evidence	NBW issued	21.04.2022
23	HISAR P.S. BARWALA	106/18	420/406/120B	ALLOWED DATE- 27/2/19	24.01.2019	Appearance for charge frame	Appearance required	29.03.2019
24	NARNAUL P.S. CITY NARNAUL	320/15	420	ALLOWED DALIP DATE- 2/2/19, others 23/8/2017	31.05.2017	Appearance for statement record 313 CrPC	NBW issued	04.07.2022
25	BHIWANI P.S. BHIWANI CIVIL LINES	17-Feb	420/406	ALLOWED DATE- 15/12/2018	14.02.2018	Appearance for charge frame	NBW issued	28.03.2022
26	BHIWANI P.S. BHIWANI CIVIL LINES	17-Jun	420/406/467/ 468/471	ALLOWED DATE- 15/12/2018	14.02.2018	Appearance for charge frame	Appearance required	18.04.2022
27	KURUKSHETRA P.S. PEHWO	94/ 18.2.17	420/406/120B/ 201	ALLOWED DATE- 12/03/20	16.10.2018	Appearance for charge frame	PO declared on 28.1.2022	18.04.2022
28	JIND P.S. ALEWA	110/15	420/406/467/ 408/468/471	ALLOWED DATE- 10/04/18	01.02.2017	Prosecution evidence	Last opportunity to appear.	21.04.2022
29	NARNAUL P.S. ATELI	73/15	420/406	ALLOWED DATE- 03/04/2018	31.05.2017	Appearance for statement record 313 CrPC	NBW issued	29.04.2022
30	NARNAUL	347/2015	NI ACT	ALLOWED DATE- 01/04/20	18.11.2015	Appearance	NBW issued	
31	REWARI	195/14	420/406/34					06.05.2022

	P.S. KOSLI							
32	KAITHAL P.S. CHEEKA	10/15	420/406/120B	Anticipatory Bail Allowed	-	-	-	-
33	FARIDABAD P.S. BALLABGARH	391/14	420/406	-	-	-	-	-

STATE OF PUNJAB

S. No.	Distt. & PS.	FIR No.	Sections	Bail	Charge Sheeted Date	Stage of Case	NDOH
1	RUPNAGAR P.S. MORINDA	248/14	420/406	Allowed date-13/9/18	22/12/17	NBW issued	12.04.2022
2	RUPNAGAR P.S. CITY ROPAR PS	163/15	420	Allowed date-17/2/18	1/11/18	Final judgment awaited	05.05.2022
3	MOHALI P.S. ZIRAKPUR	251/14	420/406/120B	Allowed date-16/12/17		Prosecution evidence	28.04.2022
4	PATIALA P.S. CITY SAMANA	153/14	420/406	Allowed date-4/8/18	6/1/15	Appearance for judgment	19.04.2022
5	AMRITSAR P.S. CIVIL LINES	375/14	420 IPC	Allowed date-29/8/18	12/12/17	Notice for charge framing	04.05.2022
6	AMRITSAR P.S. KATHU NAGAL	138/14	420 IPC	Allowed but order not available	12/12/17	Notice and appearance for charge frame	28.03.2022
7	HOSHIARPUR P.S. DASUHA	136/14	420/406/409/120B	Allowed date-24/5/18		Bailable warrant issue	25.04.2022
8	AMRITSAR P.S. CIVIL LINES	483/14	420 IPC	Allowed date-10/10/18	12/12/17	Notice an appearance for charge frame	04.05.2022
9	PATIALA P.S. GHANAUR	67/14	420	Allowed date-24/1/19	5/10/18	Appearance for charge frame	25.04.2022
10	BATALA P.S. CIVIL LINE BATALA	28/15	420/406	Allowed date-16/11/18	7/11/2018	Appearance for charge frame	04.01.2022
11	PATIALA P.S. TRIPRI PATIALA	31/18	420/406	Allowed date-21/1/19	7/1/2018	Last opportunity appearance for charge frame	29.03.2022
12	MOHALI P.S. ZIRAKPUR	225/15	420/406/120B	Allowed date-14/12/2017		Appearance required	08.06.2022
13	GURDASPUR	88/15	420/406/	Allowed date-	7/12/2018	NBW issued	31.03.2022

	P.S. CITY GURDASPUR		120B	12/3/2020			
14	JALANDHAR P.S. BASTI BAWAL KHAL	81/16	420/120B	Allowed date- 12/3/2020	7/11/2018	Appearance for charge frame	26.04.2022
15	TARN TARAN P.S. TARN TARAN	365/14	420	Pending in high court	8/7/2018	Appearance required up coming date	25.04.2022
16	MANSA P.S. SARDULGRAH	43/15	420/406 IPC	Allowed date- 2/7/18	9/1/2018	Appearance	-
17	MANSA P.S. BHIKHI	88/14	420/406	Allowed date- 2/7/18	13/12/2017	Appearance	27.04.2022
18	PATHANKOT P.S. TARAGARH	07/16	406/420/ 120B	Allowed date- 1/12/18	20/3/2018	Appearance	-
19	GURDASPUR P.S. BATALA CIVIL LINE	56/16	174A	Allowed	-	Appearance	04.05.2022

It is averred that the cases be transferred to one place to avoid prejudice and hardships to the petitioners and to afford them an opportunity to appropriately defend themselves.

Pursuant to the notice issued, reply by way of affidavit of Superintendent of Police, Jhajjar on behalf of respondents No.3 to 18 had been filed wherein it was averred that the prayer made by the petitioners is misconceived and that the clubbing of the FIRs is impermissible under the Code of Criminal Procedure (for short hereinafter referred to as Cr.P.C.) since Section 219 Cr.P.C. contemplates clubbing of a maximum number of three cases committed within a period of one year while Section 220 Cr.P.C., provides for a common trial for one series of offences connected together to form part of the same transaction. The petitioners had duped large numbers of investors in the States of Punjab and Haryana and different transactions were committed at different places. Resultantly, FIRs have been rightly

registered at the said places across the States of Punjab and Haryana. It is also averred that the petitioners are not the victims but are the perpetrators of crime. The witnesses and victims at different places have to be examined and it would not be possible to conclude the trial at pace in case the FIRs are clubbed together. It was also pointed out that the status of the cases in different District Courts are separate and that it may not be expedient to direct the above said cases to be clubbed together.

Various status reports/replies were filed by the respective respondents i.e. police officials in CWP No.8649-2022 wherein they had given details of various cases registered within their jurisdiction and the status of the trials. The legal issues and the difficulties regarding clubbing of cases were similar to the objections raised by the State of Haryana in its response that have already been referred to above and are not being reiterated to avoid repetition and for the sake of brevity.

Learned counsel appearing for the petitioners has argued that the FIRs that have been registered against the petitioners and other accused persons had different status in the States of Punjab and Haryana though identical allegations regarding the nature of offences, the manner of the alleged commission of the offences and response of the respondent/States is identical. So much so, the complainants have themselves stated in various FIRs that they came to know that other FIRs have also been registered by other dealers prompting them to lodge their complaints for getting the FIRs registered. Accused persons in the FIRs are also same and apart from the complainant and formal witnesses to be examined, even all other material witnesses and evidence remains the same. He contends that right to a fair trial is an integral part of Article 21 of the Constitution of India and that the above

said right of the petitioners is being defeated by subjecting the petitioners to appear in a large number of trials at different places. So much so, the petitioners are required to appear simultaneously at different places on the same date of hearing which amounts to punishing them procedurally even though their crime is yet to be determined. It has become impossible for the petitioners to attend each and every date of hearing at different places and in the said process, the trial itself are being delayed. He has also vehemently argued that another difficulty which arises is that the trial at different places leads contradictory judgments by the Courts. He has submitted that the petitioners were convicted by the Court at Sunam vide judgment dated 04.12.2019 whereas they have been acquitted by the Court at Shri Fatehgarh Sahib vide judgment dated 25.01.2021. He further argues that the judgment of acquittal has been passed by the lower Court after noticing that the supply had been stopped due to fluctuations in the prices of crude oil in the International Market. Even the trial Court at Karnal had acquitted the petitioners in 04 cases on the above ground. He contends that the only subsisting objection raised by the respondents is regarding the inconvenience caused to the complainant and their witnesses and that he has no objection in case such inconvenience is taken care of and if the trials in question are transferred subsequent to the recordings of the evidence of the complainants and subject to the petitioners being exempted from personal appearance. He contends that the petitioners shall furnish the requisite undertaking before the concerned Court raising no objection to the evidence being recorded in their absence and in the presence of their counsel in terms of the mandate of Section 205 Cr.P.C.

Controverting the arguments advanced by the learned counsel for the petitioners, the learned State counsel have argued that the prayer made by the petitioners is likely to cause inconvenience and hardships to the complainants as well as the witnesses. They further contend that inconvenience of the accused cannot override the interests of the victims as well as the witnesses who are to appear before respective Courts to depose. The said witnesses cannot be made to travel to any other place where the cases may be transferred. They further submit that the petitioners have sought transfer of these cases, however, the concerned parties vis-à-vis the complainants in the respective cases have not been impleaded as respondents and as such, the present petitions deserve to be dismissed for non-joinder of necessary parties. It is also argued that the grievances of the petitioners is largely on account of their inability to attend on all dates before the respective Illaqua Magistrates and that they can actually move an application for seeking exemption from personal appearance under Section 205 Cr.P.C. and as such, the inconvenience claimed to be suffered by the petitioners can be duly redressed.

Learned Senior counsel for the petitioners has argued that it is not necessary for the petitioners to implead the respective complainants in these cases as a party - respondent to the present petitions as the petitioners have no objection to the cases being transferred after the complainants and the crucial witnesses are examined at the respective places where the trials are currently pending and/or with the respective Illaqua Magistrates. Besides, the prosecuting agency in the cases is the State and not the complainant who are only to assist the State in proving its case. Once the State is being

represented by a prosecuting agency, there is no further necessity to implead the said respondents.

I have heard the learned counsel appearing on behalf of the respective parties and have also gone through the documents appended with the instant petitions with their able assistance.

Before proceeding further in the matter, it would be appropriate to make a reference to the nature of the cases registered against the petitioners. Summary of one such case bearing FIR No.635 dated 20.12.2016 registered at Police Station, Shahbad, District Kurukshetra, for commission of offences under Sections 420, 506 and 34 IPC is extracted as under:-

“An application No.3318-Misc dated 3.11.2016 received by post at Police Station, contents of which are as follows, "To the Superintendent of Police, Kurukshetra. Subject: Application for registration of F.I.R. against Rakesh Verma, Vijay Verma, Pawan Verma, Ramesh Pandey, Directors, Prachi Gas Bottling Pvt. Ltd., Ajay Tiwari, M.D., Ajit Singh, General Manager & Sunil Soni son of Sh.Durga Prashad, Manager, Prachi Gas Bottling Pvt. Ltd. and getting conducted investigation from Crime Branch. Sir, It is humbly submitted as follows:

1. That applicant Babu Ram Taya son of Sh. Mai Ram, is permanent resident of House No. 924/1, Kalyan Nagar, Kurukshetra and is Partner, M/s. Sai Ram Gas Agency, Block Shahbad Markanda, District Kurukshetra.

2. That the applicant came to know from an advertisement given in the newspaper in August, 2012 that said Prachi Gas Bottling Pvt. Ltd. is allocating LPG Distributorship to the interested persons. Hence the applicant contacted on contact number, as given in said advertisement and had conversation with one Sunil Kumar, who further forwarded the line to one Ajit Kumar, General Manager, who told that I am Manager of this

company and will contact you at Kurukshetra on 1.9.2012. Then on 1.9.2012, applicant with his associate Mahinder Singh son of Bharthu Ram, resident of Village Khanoda, District Kaithal met accused Ajit Kumar & Sunil Kumar at Kurukshetra, where the accused gave detailed information about their company and agreed to allocate Dealership for Shahbad. The accused further told that you have to pay Rs. 25 lac for this purpose, out of which, License Fee is Rs. 5 lac & Security deposit for Rs.20 lac, for which, you will get bank interest on annual basis, which would be payable on 31st March every year.

3. That the applicant & his associate deposited Rs.2,500/- as Form fee & Rs.5 lac towards License fee in account of company by way of RTGS No. SYNBH 12296761585 (relevant receipt enclosed herewith).

4. That the said company entered into agreement dated 31.10.2012 with the applicant & his associate (copy enclosed herewith) and then the accused asked the applicant to construct the godown. Hence the applicant got constructed godown by spending a sum of Rs. 12 lac.

5. That the applicant & his associate deposited a sum of Rs. 10 lac on 5.11.2012 by way of RTGS No. SYNPH 1230792554 & Rs.10 lac on 16.11.2012 vide RTGS No. SYNPH 12321824207 in account of said company through Syndicate Bank, B.O. Kurukshetra. The accused promised to deliver the license and other papers to applicant within a period of 15 days. Then the applicant opened his agency at Shahbad in the name & style of M/s. Sai Ram Gas Agency. Then 300 Cylinders sent to the agency of applicant @ Rs.850/- per Cylinder, whereas the agreed rate was Rs.425/- per Cylinder. The applicant raised objection to it, on which, the company agreed to adjust the excess amount in next consignment and further received a sum of Rs.1142600/- for 300 Cylinders from applicant.

6. That neither any License issued by the Company to applicant, nor supplied the Explosive License, which is mandatory for running the Agency. Moreover, no fresh

consignment of Cylinders supplied by the company. When the applicant requested time & again, the officers of said company failed to resolve the issue. On this, the applicant approached the Director & M.D. of company, who also didn't come up with any resolution, rather started threatening the applicant & his associate, and even threatened to kill them. Neither our money is repaid, nor necessary papers are supplied for running the agency. Hence said accused, by not providing License and other papers, essential for running the agency, have committed fraud with the applicant & associate and grabbed our money.

7. That the said accused have also committed fraud with a number of other persons and grabbed their money in similar manner.

8. That some of the agencies have already got registered FIRs against said accused, on the basis of which, their case is referred by the D.G.P. Haryana to Crime Branch, on the basis of which, a number of agencies including the applicant filed a Writ Petition before Hon'ble High Court, in which, Hon'ble High court has issued direction to the Crime Branch to finish their investigation within a period of two months. A copy of order is enclosed herewith. Hence it is humbly submitted that an F.I.R. may be registered against said accused and the investigation in this case may be got conducted through Crime Branch. I would be thankful to you.”

Other FIRs are also similar in their allegations except for the variance in the amounts deposited by them. Hence, in so far as the nature of allegations is concerned, the same are identical. It has also gone uncontroverted that the petitioners have been acquitted by the Court in various cases including the criminal Case No.289 of 2017 by the Court of Amit Kumar Grover, Additional Chief Judicial Magistrate, Kurukshetra vide judgment dated 18.01.2021 as well as in various cases at Karnal and Sri

Fatehgarh Sahib. At the same time, there has been a judgment of conviction under similar set of allegations by the criminal Court at Sunam. It is also evident from the perusal of the charge that the petitioners are required to appear at various places on the same dates of hearings. At the time of arguing it was pointed out that the presence of the petitioners is required in the proceedings to be held on 29.11.2022 at Hisar in Haryana and in two cases at Ropar in Punjab and in another two cases at Amritsar. Similarly, the petitioners were required to remain present at Gurdaspur and Amritsar in Punjab as well as Rewari in Haryana on 01.12.2022. They were also required to remain present at Rohtak in Haryana and at Patiala in Punjab on 05.12.2022. Similarly, they were required to be present at Bhiwani as well as Palwal in Haryana on 17.12.2022. While referring to the above said dates, it is contended that it has become impossible for the petitioners to remain physically present in all those Courts especially when their presence is required on the same date and that bailable warrants/production warrants as well as proclamation proceedings are being contemplated against the petitioners despite their absence in the proceedings not being willful and voluntary and emanates from compulsive circumstances illustrated above that are beyond the control of the petitioners.

It would also be necessary to make reference to certain provisions of the Code of Criminal Procedure that have some bearing on the present case. The same are reproduced as under:-

“205. Magistrate may dispense with personal attendance of accused.-

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided.

219. Three offences of same kind within year may be charged together.-

(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any special or local law:

Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, (45 of 1860) and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

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)

407. Power of High Court to transfer cases and appeals.-

(1) Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order-

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided *that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.*

(3) Every application for order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no

order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

Provided *that such stay shall not affect the subordinate Court's power of remand under section 309.*

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197.”

It is evident from the perusal of the above said provisions that Section 205 Cr.P.C. empowers a Magistrate to dispense with the personal appearance of an accused and to permit him to appear through his pleader. Section 219 Cr.P.C. permits three offences of a kind to be charged with and be tried in one trial and Section 220 Cr.P.C. deals with one trial for a series of

acts so connected together as to form the same transaction. Section 407 Cr.P.C., provides for the general power of the High Court to direct transfer of cases in furtherance of a fair and impartial inquiry or trial and /or for the general convenience of the parties or witnesses or when it is expedient for the ends of justice.

The issue before this Court has also been examined by the Hon'ble Supreme Court in the matter of **Ketan Kantilal Seth vs. State of Gujarat and others, passed in Transfer Petition (Criminal) bearing Nos.333-348 of 2021 decided on 09.09.2022.** In the said case, the petitioner had sought transfer of 16 criminal cases pending against him in four different States to one Court in Mumbai. Even in the said case, the allegations revolved around one accused company namely M/s Home Trade Limited which was alleged to have been engaged in the business of Stock, Securities, Brokering and Trading and the allegations were that they had entered into several transactions dealing with the Government Securities and that it had sold the said securities without any authorization. Further, the Government securities were also not delivered within time and the money raised thereby had been misappropriated by the persons accused therein. An intervention application on behalf of one applicant being a necessary and proper party had also been submitted. The Hon'ble Supreme Court noticed that multiple FIRs have been registered against the petitioners under similar set of allegations leading to multiple trials before various courts in different states. Most of the witnesses were common and the hardships of the accused as well as the witnesses to attend hearing before various Courts was leading to undue delay and huge expenses. The Hon'ble Supreme Court allowed the transfer of

those cases from different States to Mumbai. The relevant extract of the judgment is reproduced as under:-

“From a bare perusal of the facts and FIRs, it is seen that there is commonality of facts in each FIR and that most of the transactions have taken place in Mumbai. Further, the FIRs mainly have petitioner and Sanjay Agarwal as common accused persons.

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13. In view of the forgoing discussion, considering the common nature of allegations raised against the petitioner in all FIRS and criminal proceedings emanating therefrom which are yet pending before respective Trial Courts in four States, I am of the opinion that to meet the ends of justice and fair trial, the transfer petitions deserve to be allowed. Therefore, the instant transfer petitions are disposed-off with the following directions:-

a) The criminal cases, as specified in para 1 (clause (i) to (xvi)) of this order shall be transferred from the courts. where those are pending, to the court of Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai - 400032, Maharashtra;

b) the Principal Judge is at liberty to assign the cases to any of the Court situated in his jurisdiction to try all those cases. He is also at liberty to assign some of the cases to any other courts also, if necessary;

c) it is further directed that the transferor courts shall immediately transmit the record of concerned cases to the Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai - 400032, which should reach on or before 31.10.2022;

d) all the accused in the concerned cases shall appear before the Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai on 14.11.2022;

e) on assignment of those cases to the concerned Court(s). as directed hereinabove, the said Court(s) shall frame the charges within a period of two months from the date of appearance, or on securing presence of the accused persons, if absent; and thereafter the trial be concluded as expeditiously as possible, not later than two years. It is needless to observe that the examination of the witnesses in all cases will be recorded by the Court(s) separately, thereby it should not cause any prejudice to any accused.”

Similarly, in the matter of **Satinder Singh Bhasin Vs. State of U.P. and another bearing Writ petition (Criminal) No.197 of 2021 decided on 12.05.2012** directing the consolidation of all FIRs, the Hon’ble Supreme Court considered the matter of clubbing of the said FIRs and transferred the trials at one place. As many as 118 FIRs had been registered against the petitioners therein. The accused confined their relief to clubbing of the multiple FIRs at one place and placed reliance on the judgment in the matter of **Amish Devgan Vs. Union of India and others, reported as (2021) 1 SCC 1**. The FIRs were ordered to be consolidated. It was also held that multiplicity of proceedings would not be in a larger public interest.

In the matter of **Swami Ramdev Vs. Shyam Rajak etc. reported as 2015 (4) RCR (Crl.) 173**, the Hon’ble Supreme Court directed transfer of complaint/cases/trials pending at different places to the Court of Chief Judicial Magistrate, Patna.

Since the counsel for the petitioners had given up challenge to the clubbing/merger of all FIRs and confined his prayer only to transfer of

the trials at one place instead of all the trials being scattered across the States of Haryana and Punjab necessitating the petitioners to travel to all such places, the grievance is largely covered by the above judgments.

Similarly, in the matter of **Maulana Ala Hadrami and others Vs. Union of India and another, reported as 2020 (8) SCC 118**, the Hon'ble Supreme Court directed the transfer of criminal cases pending against the petitioners therein in different trial Courts to one Court. Also in the matter of **Radhey Shyam Vs. State of Haryana and others, passed in Writ petition (Crl.) No.75 of 2020, decided on 12.05.2022**, the Hon'ble Supreme Court directed clubbing of the FIRs registered against the petitioners in different police Stations. The relevant extract of the judgment reads thus:-

*“Following the exposition of this Court in **Amish Devgan vs. Union of India & Ors., (2021) 1 SCC 1**, we deem it appropriate in exercise of power under Article 142 of the Constitution of India, to direct clubbing of all the FIRs, which can proceed together for one trial as far as possible, as we are of the opinion that multiplicity of the proceedings will not be in the larger public interest. We may hasten to add that all the States have no objection for abiding with such dispensation.*

The FIRs, referred to above, filed in different States under the Indian Penal Code, can proceed as one set of complaint treating FIR No. 710/2018 dated 30.08.2018 as the principal FIR. The FIRs registered subsequently in the State of Telangana and other States (except States of Haryana, Madhya Pradesh and Maharashtra), shall stand clubbed with the stated FIR No.710/2018 and treated as statement under Section 161 of the Code of Criminal Procedure. The investigating officer in criminal case arising from FIR No. 710/2018 will be free to file supplementary charge sheet after collation of all the records concerning other FIRs, which are clubbed in terms of this order. In the event, the Investigating Officer in other FIRs had already

filed the Police report under Section 173 of the Code of Criminal Procedure before the concerned Court and the concerned Court had taken cognizance thereof, the said FIRs and criminal cases would also stand transferred and merged/clubbed along with case arising from FIR No. 710/2018, to be proceeded with in accordance with law. The investigating officer in the stated case (Principal case) will be free to file supplementary charge sheet on the basis of material collated during investigation of other FIRs.

As regards the FIRs registered in the States having special enactments, the first FIR registered in the concerned State be treated as principal criminal case; and the remaining FIRs and criminal case in that State shall stand clubbed/merged with the principal FIR/criminal case and proceeded as one case, including with liberty to the Investigating Officer in connection with the principal FIR to file supplementary charge sheet after collation of all records.

Needless to observe that the other offences not part of special enactment can also be tried by the Special Court under the concerned State Legislation.

In other words, all cases in the State of Haryana will stand clubbed with FIR No. 358/2018 dated 08.09.2018, registered with Police Station Sadar, District Fatehabad, and be tried by Special Court at Fatehabad (Haryana). Similarly, all criminal cases arising from the FIRs filed at the different point of time in the State of Madhya Pradesh will stand clubbed with FIR No. 198/2019 dated 25.03.2019, registered with Police Station Neemuch Cantt., District Neemuch – to be tried by Special Court, Neemuch (Madhya Pradesh) and in the State of Maharashtra on the same lines will stand clubbed with FIR No. 146/2018 dated 26.11.2018 registered with Police Station Chalisgaon Road, District Dhule – to be tried by Special Court at Dhule (Maharashtra).”

A similar situation was also under consideration before the Hon'ble Supreme Court in the matter of **Mohammed Zubair Vs. State of NCT of Delhi and others W.P. (Criminal) No.279 of 2022 decided on 20.07.2022** wherein multiple FIRs had been registered against the accused for posting various tweets. The relevant extract of the said judgment is reproduced as under:-

“25. As evident from the facts narrated above, the machinery of criminal justice has been relentlessly employed against the petitioner. Despite the fact that the same tweets allegedly gave rise to similar offences in the diverse FIRs mentioned above, the petitioner was subjected to multiple investigations across the country. Consequently, he would be required to hire multiple advocates across districts, file multiple applications for bail, travel to multiple districts spanning two states for the purposes of investigation, and defend himself before multiple courts, all with respect to substantially the same alleged cause of action. Resultantly, he is trapped in a vicious cycle of the criminal process where the process has itself become the punishment. It also appears that certain dormant FIRs from 2021 were activated as certain new FIRs were registered, thereby compounding the difficulties faced by the petitioner.”

The writ petition was thereafter allowed in part after directing the transfer of the criminal case to the Court at Patiala House.

It is evident from a perusal of the above said judicial pronouncements of the Hon'ble Supreme Court that power under Section 406 Cr.P.C. has been exercised by the Hon'ble Supreme Court along with the power under Article 142 of the Constitution of India to direct transfer of

cases at one place instead of forcing the accused to exhaust himself mentally, physically as well as financially in attending proceedings at different places.

The administration of criminal justice system applicable in the country raises a presumption of innocence for an accused unless he is proved guilty. The process of criminal administration of justice cannot be deployed as a means of inflicting sentence on a person even before the offence is proved, by subjecting him to an arduous procedural requirement. In the matters regarding the commercial transactions and/or dealership/distributorship network, similarity of allegations and evidence against common accused would be largely prevalent given a large number of consumer base/distributorship network and/or the transactions that may have been undertaken by the parties during the course of business. Registration of multiple FIRs at different places by different persons may by itself be a punishment by the process of law. It has all the callings of draining an accused of his resources and health. Furthermore, by subjecting him to multiple litigation at different places, it compels him to engage lawyers, face difficulties in arranging for sureties, make adequate travel arrangements for different dates and also abandon his actual trade/occupation only to remain present to pursue the tirade of litigation launched against him. Such drain is itself a deprivation and denial of pursuit of a fair trial apart from encroaching on rights protected under Article 21 of the Constitution of India. The source of livelihood may be forced to be abandoned to defend and the vicious trap leaves no resources to defend. Additionally, the problems also arise on account of discrepancies in the judgments that are passed by various courts on the same set of allegations and similar evidence. This results in conflicting judgments, diverse opinions and discrepant interpretations. Consistency of

the view and in interpretation of law, is the primary foundation for transparency in administration of criminal justice and upholding sovereignty of rule of law. Divergent opinions and interpretations give rise to confusion not only in the minds of the people involved in the trial but also to the accused and witnesses and in the mind of the general public. The same thus erodes the supremacy of law and leads to inferences that question the administration of criminal justice. It was only to establish consistency that principles of parity have been equated as conferring superior rights on the person and entitle him to the same treatment.

The object behind maintaining consistency is to clear away the circumstances which engender suspicion and distrust of a Court trying a criminal case and to promote feeling of confidence in the administration of justice. The same, however, should not be reflected as an instrument by any party to confer any territorial jurisdiction in any particular Court to compromise transparency, faith, confidence or belief in the administration of justice or the supremacy of the rule of law.

Section 407 Cr.P.C. empowers the High Court to transfer cases as well as appeals not only for the general convenience of the parties or witnesses but also if it is expedient for the ends of justice. No strait-jacket formula or general principles can be laid down as to what can be construed or conceived as convenience of the parties or is expedient for the ends of justice. Said aspect has to be discerned by the High Court from facts of each case brought before it.

It is undisputed in the present case that the conflicting judgments have been passed under similar set of allegations where the witnesses are largely the same and the material documents of parties and prosecution

would be identical including the defence of the accused. The only material witness who may vary in each case is the complainant. Existence of such a situation would be undesirable not only from the perspective of the parties but also from the view point of administration of justice. At the same time, it is also to be kept in mind that mere convenience of an accused may not be the sole consideration and that the convenience of the witnesses is also required to be weighed in mind. No special preference can be given to the mere convenience of the accused persons to stampede the convenience of the complainant as well.

This court has also taken into consideration the prayer made by the learned Senior Counsel that the cases may be transferred to any one court in the respective States and that he has no objection in the event the transfer of the cases takes place after the material witnesses are examined by the concerned Illaqua Magistrate and the cases be transferred thereafter so as to obviate the hardship/inconvenience of the complainant as well as the other material witnesses. He also submitted that he has no objection if in the alternative, the evidence of the witnesses be recorded through the video conferencing mode and/or any other way as is expedient to the Courts. In case the said procedure is not to be followed, the petitioners have expressed their no objection to the evidence of the material witnesses as well as the complainant being recorded in their absence and in the presence of their pleader/counsel at the places of their territorial jurisdiction. The same thus takes care of the inconvenience/hardship of the complainant and makes it equitable while balancing the protection of the rights of the petitioners for securing a fair trial as also ensuring consistency in the judgments.

The Hon'ble Supreme Court in the matter of **Ramrameshwari Devi and others Vs Nirmala Devi and others, reported as (2011) 8 SCC 249,** has held that every case emanates from a human or a commercial problem and Courts must make a serious endeavour to resolve the problem within the framework of law and in accordance with the well settled principles of law and justice. The Statutory framework visualizes multiplicity of litigation and the necessity of clubbing of the cases and the trials. However, the present case is at a slight variance. The petitioners do not claim for or insist that their cases be clubbed together and be tried as one, rather the prayer predominantly is that the trials be transferred to one place for their final adjudication so that there is consistency in the view and conflicting judgments can be avoided while minimizing the hardships of the respective parties and advancing the interests of justice at the same time.

Taking into consideration, the circumstances noticed above, the similarity of allegations, the nature of evidence, the number of cases, the status of the trial and also the guiding principles enshrined in Section 407 Cr.P.C., the present petitions deserve to be allowed with the following directions:-

- (i) The criminal cases pending at various places in the State of Haryana are ordered to be transferred to the Court of Chief Judicial Magistrate, Panchkula while the cases pending in the State of Punjab are ordered to be transferred to the Court of Chief Judicial Magistrate, S.A.S. Nagar, Mohali.
- (ii) The process of transfer of the cases/trials/complaints shall be undertaken after the complainants/material witnesses are

examined before the respective Illaqua Magistrates/trial Courts exercising the territorial jurisdiction.

- (iii) The respective trial Courts may record the evidence of the said material witnesses/complainants without insisting upon the presence of the petitioners and on the petitioners filing an application for seeking exemptions and also furnishing an undertaking to the respective Courts conveying their no objection to the evidence being recorded in their absence and in the presence of their pleader/advocate. The petitioners shall also not raise any dispute qua the contents of the evidence merely on account of the same being recorded without their presence.
- (iv) The Chief Judicial Magistrates of the respective Courts in the States where the cases have been ordered to be transferred shall be at liberty to assign the said cases to any of the competent Courts situated in his jurisdiction and is at liberty to assign the cases to different Courts within the same territorial jurisdiction.
- (v) The transferor Courts shall transfer the complete record of the concerned cases along with the evidence recorded, in terms as aforesaid, to the transferee Court.
- (vi) The petitioners shall continue to appear before the transferee Court i.e. the Court of Chief Judicial Magistrate Panchkula and/or S.A.S. Nagar, Mohali, as the case may be and/or different Courts to which their cases are assigned after transfer.
- (vii) Examination of the witnesses in all the cases be recorded separately by the concerned Courts so that it does not cause any prejudice to any of the parties.

Both the petitioners are accordingly allowed.

December 21, 2022

raj arora

(VINOD S. BHARDWAJ)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No