

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

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**CRM-M-41668-2022
Decided on : 21.09.2022**

Shinder Singh @ Shinda

. . . Petitioner(s)

Versus

State of Punjab and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Ghulam Nabi Malik, Advocate
for the petitioner(s).

SANJAY VASHISTH, J. (Oral)

By way of present petition filed under Section 482 Cr.P.C., petitioner has challenged the order dated 20.08.2022, passed by Ld. Judicial Magistrate Ist Class, SAS Nagar Mohali (in short, 'JMIC'), whereby, application moved by the petitioner for committing the trial of cross-case registered vide DDR No. 38, dated 15.05.2015, under Sections 451, 452, 323, 34 of IPC, arising from FIR No. 188, dated 08.12.2014, under Sections 323, 325, 506, 307 of IPC and Section 25 of the Arms Act, registered at Police Station Mataur; to the Court of Ld. Sessions Judge, Mohali, was dismissed.

2. Learned counsel for the petitioner submits that after investigation of the case FIR No. 188, dated 08.12.2014, investigating agency submitted its final report under Section 173 Cr.PC to the Court of Illaqa Magistrate, and since the case was triable by the Court of Sessions, it was committed to the Court of Session Judge, SAS Nagar, Mohali, for conducting of its trial. Learned counsel for the petitioner further submits that when trial was pending before the Court of Ld. ASJ, final report under

Section 173 Cr.PC/challan was also prepared on 11.12.2015 in the cross-version case i.e. in DDR No. 38, dated 15.05.2015, under Sections 451, 452, 323, 34 of IPC, P.S. Mataur, arising from FIR No. 188, dated 08.12.2014 (supra).

3. Learned counsel for the petitioner further submits that vide judgment dated 20.05.2016, proceedings in FIR No. 188, dated 08.12.2014 (hereinafter referred to as 'version') were finalized and petitioner was convicted by the Court of Ld. ASJ, SAS Nagar, Mohali. However, proceedings in DDR No. 38 of 2015 (hereinafter referred to as 'cross-version') remained pending before the Court of Ld. JMIC and case was never committed to the Court of Sessions, SAS Nagar, Mohali, despite the fact that version and cross-version were outcome of the same incident, and both were required to be tried together by the Court of Sessions.

With the aforementioned background, petitioner being complainant in cross-version case moved an application dated 22.07.2022 before the Court of Ld. JMIC, with a request to commit the trial of the cross-version case i.e. in DDR No. 38 of 2015 to the Court of Sessions, as the version and the cross-version are outcome of the same incident.

4. After issuance of notice to the concerned respondents, objection/reply was submitted. Here, it would be relevant to make reference of the stand taken by the respondents in their reply and para Nos. 2, 6 and 8 of the said reply, says as under:-

"2. That Para No.2 is totally wrong and denied, when this case was registered against the applicant, there was no cross version by the police and even when the Challan was presented in the court on

17.12.2015, then no cross case was filed at that time. Even DDR of the applicant/complainant was registered on 15.05.2015 in connivance with the police to get the benefit in the main case registered against the applicant. During the trial of that case the applicant/complainant did not move any application before the Ld. Addl. Sessions Judge that there was a cross version and the police be directed to file that challan. This case was decided on 20.05.2016 and in between no application was moved because it was a concocted story in connivance with the police to help the applicant/complainant (accused in that case) in the main case. At present there is no case pending before the Addl. Sessions Judge, SAS Nagar, so the sending of this case which is totally triable by the Ld. JMIC does not arise at all. Even during the pendency of the present case no such application was moved before this Hon'ble Court. The entire evidence is recorded by this Hon'ble Court and the arguments were addressed by both the parties and even in, written arguments submitted by the applicant/complainant, this fact has not been mentioned. This application is only filed to harass the accused who are already suffering from last 5 years in spite of the gun shot injuries received by them.

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6. That Para no.6 of the application is wrong and denied. No Case is pending before the Ld. Addl. Sessions Judge nor these facts were brought to the notice of Ld. Addl. Sessions Judge either by the police or by the applicant regarding this version. In Fact there was no cross version, due to that reason the police did not file the challan of this case along with the main case in which the applicant/accused has been convicted by the Ld. Addl. Sessions Judge, Mohali.

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8. That Para No.8 of the application is wrong and denied. The Prosecution never made any request at initial stage before this Hon'ble Court, Moreover Charge in this case was framed on 25.01.2019 when the main case was already decided on 20.05.2016 and the appeal is pending before the Hon'ble High Court."

In view of the aforesaid stand in the reply, application was sought to be dismissed.

5. Based upon the facts mentioned in the application and the reply submitted by the respondents, Court of Ld. JMIC, dismissed the application vide order dated 20.08.2022 (P-3), which is assailed by the petitioner in the present case.

6. While making submissions, learned counsel for the petitioner refers to Sections 209 & 323 Cr.PC and for its ready reference, same are reproduced hereinbelow:-

“209. Commitment of case to Court of Session when offence is triable exclusively by it. When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-

- (a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;*
- (b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;*
- (c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;*
- (d) notify the Public Prosecutor of the commitment of the case to the Court of Session.*

323. Procedure when, after Commencement of inquiry or trial, Magistrate finds case should be committed. 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.”*

7. In support of his contentions, learned counsel for the petitioner cites judgment by Hon’ble Apex Court rendered in **Sudhir Vs. State of M.P., 2001(1) RCR (CrI.) 743**. He submits that as per provision of Section 209 Cr.PC, Magistrate has power to commit the case to the Court of Sessions. Moreover, when in a particular case, Magistrate has no power to commit the case to the Court of Sessions under Section 209 Cr.PC, learned counsel submits that by virtue of power conferred under Section 323 Cr.PC, the Magisterial Court can commit the Court of Sessions, even if the offences are not exclusively triable by the Court of Sessions.

8. This Court has heard the learned counsel for the petitioner at length and perused the complete available record and has also gone through the judgment in the case of **Sudhir Vs. State of M.P.** (supra) as cited by learned counsel for the petitioner. It would be worth noticing that solution in such like situation has not been specifically provided in the Criminal Procedure Code (Cr.PC). However, by way of judicial pronouncements practice of joint trial has been evolved to avoid conflicting judgments in case of multiple versions of the parties *qua* the same incident. Realizing this problem in the case of **State of M.P. Vs. Mishrilal (Dead) and Ors.** (Criminal Appeal No. 489 of 1996, D/d. 02.04.2003) (Law Finder Doc Id # 35580), the Hon’ble Apex Court observed as under:-

“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.”

It would also not be out of context to mention that while dealing with **Mishrilal's case** (supra), Hon'ble Apex Court has followed the observation made in its earlier judgment in case of **Nathi Lal Vs. State of U.P., 1990 (Supp.) SCC 145**, wherein, procedure to be followed by the trial Court in the event of cross-cases was pointed out. Relevant part of which is reproduced as under:-

“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 complete, 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.”

9. Now coming back to the judgment in **Sudhir’s case** (supra), cited by learned counsel for the petitioner. This Court is of the view that legal proposition settled in all these judgments as noticed by this Court is not in dispute, but the case of **Sudhir Vs. State of M.P.** (supra), deals with distinguishable circumstances, as the stages of the version and cross-version matters are totally different in the present case before this Court, as admitted and noticed hereinabove, and also noticed in the impugned order.

10. In the present case, trial in FIR No. 188, dated 08.12.2014 (FIR version) has already been concluded and decision has already been pronounced vide judgment dated 20.05.2016 by the Court of Ld. ASJ, SAS Nagar, Mohali, in case titled as, “State Vs. Shinder Singh”, bearing No.CS.SC-53/2015, wherein, Shinder Singh, had been convicted for the offences under Sections 307, 323, & 325 of IPC. Whereas, final report under Section 173 Cr.PC in cross-version case built up by the petitioner was presented before the Court on 18.12.2015. Meaning thereby, at the time of filing of the final report in cross-version case, the case was pending before the Court of Ld. ASJ, SAS Nagar, Mohali and the cross-version pertaining to DDR No. 38 of 2015, was also required to be referred to the same Court by passing an order of commitment for joint trial. But said step was neither taken by the Ld. Magistrate nor a request/application was made by the petitioner for the reasons best known to him.

11. If concluding part of **Sudhir’s case** (supra) would be read

carefully, it would be clear that intention of the Hon'ble Apex Court was also to dispose off both the cases in the manner set out in the **Nathilal's case** (supra). However, in the case in hand, said circumstances are not available because the case arising from FIR No. 188 of 2014, had already been decided by the time application dated 22.07.2022 was moved by the petitioner, as the Sessions trial had already finished on 20.05.2016. Otherwise also, if the plea of the petitioner as addressed to be covered with the judgments of the Hon'ble Apex Court, is accepted, same would tantamount to putting the clock ***back in time***.

To decide the proper stage of moving of any such application for conducting of joint trial by one Court in regard to one and same incident, this Court would like to refer the observations made by Hon'ble Apex Court in **Balbir Vs. State of Haryana (SC)** (Crl. Appeal No. 333 of 1987, D/d. 26.10.1999) (Law Finder Doc. Id# 32775). Though in **Balbir's case** (supra), question was of deciding of two versions for murder of the same person. One version was the FIR case, and the other version of the same complainant was the complaint case. In police case, accused was acquitted and no further appeal was filed against acquittal. However, in complaint case, accused was convicted and same was maintained upto High Court. When the matter reached to Hon'ble Apex Court, argument in regard to the dealing of both the cases together by the same Court was raised, and same was answered by the Hon'ble Apex Court, as reproduced hereinbelow:-

8. *The first point sought to be considered is whether the two sessions cases should have been tried separately (as in done in the present case) or whether they should have been jointly tried.*

No doubt, it is too late in the day for the appellant to raise a contention that the procedure of the trial should have been different from the one which was followed in this case. Approval of that contention, at this stage, would cause the switch board to be turned fifteen years backwards for a new trial.

12. In other words, application moved by the petitioner in cross-version case arising from DDR No. 38 of 2015, is at such a belated stage i.e. after about 7 years, and thus, the basic purpose of deciding the cases together by the same Court, would not be available to achieve. Therefore, the judgment cited by learned counsel for the petitioner of **Sudhir's case** (supra) does not fit in the circumstances of the present case.

13. Otherwise also, there is no answer on record that once challan in the cross-version matter arising from DDR No. 38 of 2015, was presented on 18.12.2015, why petitioner did not move an application to seek commitment of trial of the cross-version to the Court of Sessions, where Sessions trial in regard to the same incident was pending.

Somehow, this Court gets an idea, though uncertain, from the reasons mentioned by the respondents in their reply and paragraphs Nos.2, 6 & 8, of which have already been reproduced hereinabove. Further, it is also noticed from the impugned order itself that matter before the Court of Ld. Magistrate in the cross-version case, is fixed at the stage of final arguments.

14. Considering the submissions of the learned counsel for the petitioner and perusing the record available before this Court, and also after going through the judgments passed by the Hon'ble Apex Court, this Court

finds no merit in the present petition, and thus, holds that the order dated 20.03.2022 (P-3), passed by Ld. JMIC, SAS Nagar, Mohali, dismissing the application of the petitioner, is perfectly covered and justified in the backdrop of the circumstances of the present case.

No merits, hence dismissed.

(SANJAY VASHISTH)
JUDGE

September 21, 2022

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No