

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

CRM-M-47250-2022

Date of decision : 22.12.2022

Balwant Singh and others

....Petitioners

Versus

State of Punjab and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Arjun Veer Sharma, Advocate
for the petitioners.

Mr. Jaiteshwar S. Bhandari, Asstt. Advocate General, Punjab
for respondent No.1-State.

Mr. Suneet Pal, Advocate
for respondent No.2.

PANKAJ JAIN, J.

Present petition has been filed under Section 482 Cr.P.C. against the order dated 21st of September, 2019 passed by Chief Judicial Magistrate, Jagraon whereby the complaint case preferred by the respondent/complainant stands committed to the Court of District & Sessions Judge, Ludhiana where State Case arise out of FIR No.196 dated 16th of November, 2016 arising out of the same incident is pending.

2. Shorn of the details the brief facts of the case are that an FIR No.196 dated 16th of November, 2016 was registered at the behest of petitioner No.1 against respondent No.2 w.r.t. the incident wherein petitioner-Balwant Singh is alleged to have suffered gun-short injury at the hands of respondent No.2. Trial w.r.t. the same after presentation of Report

under Section 173(2) Cr.P.C. is stated to be pending before the Court of Additional Sessions Judge, Ludhiana. Regarding the same incident respondent No.2 also preferred complaint which was registered with the concerned police station vide DDR No.16 dated 17th November, 2016. After the police authorities failed to take action, respondent No.2 filed complaint under Section 156(3) Cr.P.C. before the concerned Magistrate. The same was treated as a private complaint in which the petitioners have been summoned to face trial for offences punishable under Sections 323, 447, 511, 148, 149 IPC vide order dated 3rd of April, 2018. An application was preferred by the complainant/respondent praying for commitment of the complaint case to the Court of Session Judge, Ludhiana wherein FIR case exclusively trial by the Sessions Court arising out of the same occurrence is pending consideration. On the application filed by the complainant, Counsel for the petitioners submitted no objection leading to passing of the impugned order and consequential commitment of complaint case to the Court where FIR case is pending.

3. Ld. Counsel for the petitioners has emphatically argued that since present case is a complaint case wherein cognizance has been taken by the Magistrate under Section 156(3) Cr.P.C., the same cannot be committed even on concession recorded on behalf of Counsel for the petitioners.

4. Per contra, counsels for the respondents submit that since it is an admitted fact that both the cases arise out of the same occurrence there would be no bar in commitment of the present case. Rather it is in the

interest of justice that both the cases be tried by the same Court and the scheme of the Code specifically provides for the same in the provision contained in Section 323 of the Code. Counsels further submit that the objection w.r.t. the present case being a complaint case and, thus, could not have been committed is also misplaced in view of Section 209 of the Code which specifically provides for commitment of a case instituted on a police report or **otherwise**.

5. I have heard counsel for the parties and have gone through records of the case.

6. Facts are not much in dispute. Counsels for the parties are *ad idem* that both the cases arise out of the same occurrence. The issue w.r.t. commitment of a cross-case to the Court of Session even when not exclusively trial by it on the ground that the cross-case is pending before Sessions Court has been termed as a salutary practice. Apex Court in the case of **Sudhir vs. State of M.P. (2001) 2 SCC 688** observed as under :-

“9. 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 nineteen hundred and twenties a Division Bench of the Madras High Court (Waller, and Cornish, JJ) made a suggestion (In Re Goriparthi Krishtamma - 1929 Madras Weekly Notes 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."

7. The argument raised by Ld. Counsel for the petitioners was also dealt with by the Apex Court in the case of **Sudhir vs. State of M.P.** (supra) holding as under :-

"13. 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 Sessions, 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 Sessions, 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:

"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."

14. 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 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 Sessions. 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 Sessions. Commitment under Section 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.”

8. In view of the afore-settled proposition of law, this Court finds that once the parties are *ad idem* that both the matters relate to the same incident, the Trial Court has rightly exercised its jurisdiction to commit the cross-version pending in a complaint case before it to the Court of Session.
9. Thus, the present petition warrants no interference and the same is dismissed being without merit.

December 22, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No