

113 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-50764-2022

Date of Decision:08.12.2022

RADHEY SONI

..... Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Varinder Kumar, Advocate for
Mr. Lajpat Rai Sharma, Advocate for the petitioner.

JAGMOHAN BANSAL, J. (Oral)

Through the instant petition filed under Section 482 Cr.P.C., the petitioner is seeking quashing of FIR No.253 dated 03.09.2022 (Annexure P-1) under Sections 420, 465, 467, 468, 471 and 120B of IPC, registered at Police Station City Kharar, District S.A.S. Nagar Mohali and all other subsequent proceedings arising therefrom.

Learned counsel for the petitioner, *inter alia*, contends that for the same cause, FIR No.41 dated 11.05.2022 under Sections 419, 420, 467, 468, 471 and 120-B of IPC at Police Station City Morinda, District Rupnagar, has been registered. The allegation against the petitioner is that he has forged one General Power of Attorney and with the help of said Power of Attorney, one plot has been transferred in the name of Jassi-respondent No.2. The registration of second FIR amounts to violation of Article 20 of the Constitution of India because it amounts to registration of two FIRs for the same cause of action.

Learned counsel for the petitioner confines his prayer to conducting of trial of both the cases by same Court and at the same time.

Notice of motion.

On the asking of Court, Mr. Amish Sharma, AAG, Punjab

accepts notice on behalf of respondent-State.

Learned State counsel does not dispute the prayer of the petitioner, however, prays that FIR may not be quashed because petitioner has committed two independent offences. He further submits that challan qua FIR No.41 dated 11.05.2022 stands filed.

Be that as it may, FIR No.253 dated 03.09.2022 (Annexure P-1) under Sections 420, 465, 467, 468, 471 and 120B of IPC whereas FIR No.41 dated 11.05.2022 under Sections 419, 420, 467, 468, 471 and 120-B of IPC. In the facts obtained, it was immaterial whether all the Sections were mentioned in the same FIR or two different FIRs because police is competent to investigate the matter to find out whether offence has been committed and file report under Section 173 Cr.P.C. As per different provisions of Cr.P.C., more than one offence can be tried together and charges may be framed by a common charge-sheet. Section 218 of Cr.P.C. provides for separate charges as well permits to try together all or any number of the charges. Section 218 Cr.P.C. reads as :

“218. Separate charges for distinct offences.—(1)

For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately: Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.

(2) Nothing in sub-section (1) shall affect the operation of the provisions of Sections 219, 220, 221 and 223.

There is no specific provision providing for joint trial, however, the answer lies in principles of natural justice, principles of criminal jurisprudence and judicial precedent.

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

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:

“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.

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)

“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”

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 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.

In view of consent of the parties, learned trial Court is directed to keep the trial of FIR No. 41 dated 11.05.2022 in abeyance till cancellation or final report under Section 173 Cr.P.C. is filed in FIR No.253 dated 03.09.2022. As soon as report is received qua FIR No.253 dated 03.09.2022, both the cases shall be heard and tried together. The jurisdictional Court in FIR No.253 dated 03.09.2022 shall transfer the matter to Court having jurisdiction over FIR No.41 dated 11.05.2022.

Disposed of in the above terms.

(JAGMOHAN BANSAL)
JUDGE

08.12.2022

Ali

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