

In the High Court of Punjab and Haryana at Chandigarh

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CRM-M-25465 of 2017 (O&M)

Date of Decision: 09.03.2023

Hakam Singh

---Petitioner

versus

Sandeep Kumar and others

---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Ms. Vaishali Kamboj, Advocate
for the petitioner

Mr. Rohit Dheer, Advocate
for respondents No. 2 to 19

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Section 482 Cr.P.C., is seeking clubbing of trial arising out of Complaint No. 590 dated 21.12.2016 and trial arising out of FIR No. 55 dated 28.03.2016.

2. The brief facts emerging from record and arguments of both sides are that the petitioner and private respondents belong to same village. A scuffle took place between petitioner and private respondents. The petitioner and private respondents approached the police authorities. On the complaint of petitioner, GD No. 31-A dated 29.03.2016 came to be registered whereas on the complaint of private respondents FIR No. 55 dated 28.03.2016 came to be registered. The

FIR was registered under Sections 148, 149, 323, 324, 341 and 506 of IPC against eight persons. The police after completing investigation presented its report under Section 173 Cr.P.C. before Illaqa Magistrate on 15.09.2016. During investigation, police added Sections 325 and 307 IPC in the FIR and accordingly police report was presented for commission of alleged offence under Sections 325 and 307 IPC apart from other Sections of IPC. The matter came up for consideration before Additional Sessions Judge, Yamuna Nagar who framed charges and thereafter prosecution led its evidence.

3. The petitioner presented a private complaint before Illaqa Magistrate against 37 persons. Trial Court after recording preliminary evidence, summoned 19 persons as accused vide order dated 20.03.2017. The private respondents were summoned for alleged commission of offence punishable under different Sections of IPC.

4. The petitioner preferred an application before Sessions Court seeking clubbing of both the trials as both are arising out of same incident. The application of the petitioner came up for consideration before Sessions Judge who vide order dated 03.04.2017 declined prayer of the petitioner holding that accused in the complaint have not yet caused appearance, thus, it would not be appropriate to transfer complaint from the Court of Magistrate to Court of Additional Sessions Judge.

5. Learned counsel for the petitioner inter alia contends that on account of stay granted by this Court, trials arising out of aforesaid FIR and complaint are lying standstill since 2017. The police did not register FIR on the complaint of petitioner, thus, he was forced to file

complaint before the trial Court. As per procedure prescribed for complaint case, the petitioner had to lead preliminary evidence which took a lot of time and thereafter private respondents did not put in appearance, resultantly, trial of the complaint case is pending at the stage of appearance of accused whereas substantial number of witnesses stand examined in FIR case. Both the trials are arising out of same incident, thus, it would be in the interest of justice if both the matters are heard and adjudicated upon by same judicial authority.

6. Per contra, Learned counsel for the private respondents contends that substantial witnesses out of total witnesses stand examined, thus, prayer of the petitioner to club trial of both the cases is unjustified and it would delay the trial whereas the petitioner is claiming that it would save the time.

7. I have heard learned counsel for both sides and perused the records.

8. The conceded position emerging from the record is that petitioner has filed complaint against the private respondents and trial court has summoned the private respondents herein to face trial for the commission of offence punishable under Sections 147, 148, 149, 323, 324, 325, 354, 341 and 506 IPC. For the same incident, private respondents have lodged complaint against the petitioner and others which has culminated into aforesaid FIR and thereafter filing of challan. The police presented challan different Sections of IPC including Sections 325 and 307 IPC, thus, trial out of FIR is pending before Learned Additional Sessions Judge whereas complaint case is pending before learned JMIC. Both the matters are lying standstill

since 2017 because of interim orders passed by this Court.

9. 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 crosscases, 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.

10. From the above quoted judgment of Hon'ble Supreme Court in **Sudhir (supra)**, it is evident that when there is a case and

counter case qua same incident, joint trial should be preferred.

11. In the case in hand, from the above referred conceded position, it is quite evident that FIR as well as complaint are outcome of same incident. There is a case and cross case. There are all possibilities of contrary judgments by two judicial officers on the basis of evidence led by both sides. There are further possibilities that one trial is concluded at the earliest and another takes couple of years. Trial arising out of FIR is pending before Additional Sessions Court whereas trial arising out of complaint is pending before Magistrate. There would be different set of appellate authorities if one trial is adjudicated by Sessions Court and another by Magistrate. Both the trials are lying standstill since 2017, thus, no delay is going to take place if both the matters are heard and adjudicated by one judicial authority. Adjudication of same incident by different judicial officers would not only prolong the ultimate conclusion but also consume valuable judicial time of two judicial officers whereas if matter is adjudicated by one judicial officer, there would be no possibility of contrary judgments and it would save time atleast of one judicial officer. It is well known to everyone that courts are already over burdened and adjudication of same incident by two different judicial officers would waste valuable judicial time. Thus, this Court is of the considered opinion that both the trials must be heard and adjudicated by one judicial officer. Accordingly, the present petition is allowed and learned Sessions Judge, Yamuna Nagar is requested to place both the trials i.e. trial in FIR No. 55 dated 28.03.2026 and Complaint No. 590 dated 21.12.2016 before learned Additional

Sessions Judge, Yamuna Nagar.

Disposed of in the above terms.

All pending miscellaneous applications, if any, shall also stand disposed of .

(JAGMOHAN BANSAL)
JUDGE

09.03.2023

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Whether speaking/reasoned : Yes

Whether reportable : Yes