

CRM-M-32137-2019

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-32137-2019  
Reserved on: 04.09.2024  
Pronounced on: 26.09.2024

Vicky and others ...Petitioners

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vipin Mahajan, Advocate  
for the petitioners.  
  
Mr. Jasjit Singh, D.A.G., Punjab.  
  
Mr. Ashok Saini, Advocate  
for respondent No.2.

\*\*\*\*\*

ANOOP CHITKARA, J.

|                              |                                                                       |
|------------------------------|-----------------------------------------------------------------------|
| Criminal<br>Complaint<br>No. | 02/10.02.2016 titled “Rohit Suri vs Surinder Kumar @ Toni and others” |
|------------------------------|-----------------------------------------------------------------------|

1. Complaining of a violation of Section 210 CrPC, 1973, in the orders passed by the trial Court and the Additional Sessions Judge, the complainant has come up before this court under Section 482 of the Code of Criminal Procedure, 1973 [CrPC].
2. I have heard counsel for the parties and gone through the record, and its analysis would lead to the following outcome.
3. S. 210 of CrPC, 1973, reads as follows:

**210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.—(1)** When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.  
(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.  
(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or

CRM-M-32137-2019

trial, which was stayed by him, in accordance with the provisions of this Code.

4. Section 210(2) CrPC 1973 states that when a police report has been filed under Section 173 CrPC and on such police report, the Magistrate has taken cognizance against an accused, who is also an accused in the complaint case, then both the complaint case as well as the police report should be tried together.

5. Section 210(3) CrPC 1973 states that, however, if the police report does not relate to any accused in the complaint case or if the Magistrate has not taken cognizance of the offense in the police report, then he shall proceed with the trial in the complaint case, which he earlier stayed.

6. The spirit of Section 210 of CrPC is that when a complaint case has been instituted based on the statement of the victim/ complainant, on whose statement an FIR has also been registered, and the Magistrate is made aware of an investigation by the police relating to the offense, which is the subject matter of the inquiry or trial in the complaint case, the Magistrate shall stay such inquiry or trial and call for the police report regarding such investigation.

7. A cumulative reading of Section 210 CrPC 1973 clarifies that if any person has filed a complaint case regarding the same incident and offense, a police investigation is also going on against the same accused. The Magistrate proceeding in the complaint case must call for the police report about their investigation. If such a report points out towards the same accused for the same offense in FIR, then the Magistrate must club the complaint as well as the police report, and if not, then must resume the proceedings in the complaint case.

8. The facts of the case are to be tested in the light of the above legal position.

9. The petitioner had levelled allegations against Krishan, Baldev Suri, his two sons, and a driver, who had abused and threatened them and also had brought weapons from their shops. Rahul hit the complainant with the Datar, and he brought his hand forward in defence; as such, the datar hit the little finger, and after that, Rahul again attacked him, which hit the middle finger. Subsequently, Krishan and Baldev Suri attacked him with a baseball bat, which hit the knee of the left leg. Subsequently, Vicky attacked them with his kirpan, and he brought forward his right arm and the kirpan hit on the wrist of the right arm. Based on such allegations, an investigation was conducted, and the prosecution was launched against Vicky, Suresh Kumar, Gagandeep, and Surender. Vide order dated 02.03.2016, the charges were framed against all four accused for the commission of an offense punishable under Section 325, 324, 323, and 506 IPC, all read with 34 IPC.

10. Before the passing of the order of charges on 02.03.2016, respondent No.2 filed a complaint against Vicky, the informant/victim in the FIR, and six other persons under Section 307, 452, 420, 425, 354, 323 IPC.

11. In the said complaint, the complainant's statement (PW2) was recorded on 22.05.2017. On 29.01.2018, when the said complaint was fixed for an order on

CRM-M-32137-2019

summoning the accused, the Court observed that a cross-case pertaining to the same occurrence was pending in the Court and fixed on the same date. The Court observed that the facts in the complaint and the State's case are related to the same occurrence. After considering the provision of Section 210 CrPC and referring to judicial precedent, the concerned Judicial Magistrate, although de-clubbed the complaint case with the police case, but dismissed the complaint against ASI Saminder Singh for lack of sufficient evidence.

12. A perusal of the order mentions that it was the same occurrence, which had resulted in the registration of FIR and the filing of the complaint, and the offense in question was the subject matter of the same inquiry, which was before the Judicial Magistrate. Subsequently, an application was filed for committal of the case under Section 307 IPC before the appropriate Court. However, vide order dated 15.02.2018, the concerned Judicial Magistrate Ist Class did not find any evidence for the commission of an offense under Section 307 IPC and, as such, dismissed the application for committal the complaint case not being triable by the Sessions Court of Sessions.

13. Feeling aggrieved, the complainant filed a criminal revision petition before the Sessions Court. Vide the impugned order dated 24.04.2019, the concerned Sessions Judge, in a detailed and well-reasoned judgment, partly allowed the application and observed that the cross-version of the case could not have been clubbed and that both cases had to be tried separately.

14. Feeling aggrieved for non-clubbing, the accused filed the present petition before this Court.

15. The short question involved in the present petition is whether the complaint case and the police case could have been clubbed together or not. As per the Judicial Magistrate, both the cases relate to the same occurrence. The complaint filed by respondent No.2 was against Vicky-petitioner No.1, Suresh Kumar-petitioner No.2, Gagandeep-petitioner No.3, and Surinder Kumar-petitioner No.4 whereas in the cross FIR registered at the instance of Vicky, the accused were Krishan, Baldev Suri, Rohit Suri- respondent No.2, Rahul Suri and their driver whose name was not known. As stated in the beginning, Section 210 CrPC mandates the clubbing of FIR and criminal cases relating to offense provided the allegations have been made by the same party, i.e., on the allegations made by one party, a complaint is also filed, and FIR is registered. In the present case, the petitioners registered the FIR against the respondent-complainant; thus, the law would be that both cases should be tried together but not clubbed together.

16. In *Nathi Lal v. State of Uttar Pradesh*, 1990(sup) SCC 145, Hon'ble Supreme Court holds,

[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

CRM-M-32137-2019

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.

17. In *Sudhir v. State of M.P.*, 2001(2) SCC 688, Hon'ble Supreme Court holds,

[2]. A grey area is sought to be replenished with a judicial pronouncement. A case and counter case, both were committed to the Court of Sessions as both cases involve offences triable exclusively by Sessions Court. But after hearing the preliminary arguments the Sessions Judge felt that in one case no offence triable exclusively by a Court of Session is involved, whereas in the other case a charge for offences including one triable exclusively by the Sessions Court could be framed. Is it necessary, in such a situation, that the Sessions Court should transfer the former case to the Chief Judicial Magistrate for trial as envisaged in section 228(1) of the Code of Criminal Procedure, 1973 (for short 'the Code'). This is the core issue which has come up to the fore in these appeals.

[3]. For understanding the question better it is necessary to have a short resume of the facts.

[4]. An encounter took place on the night of 18.2.1996, at a particular place near Bhitari Bazar, Sagar, Madhya Pradesh, in which firearms and other weapons were used and persons were injured. The details of the incident are not relevant and hence skipped. Two rival versions reached the police station regarding the above incident and two First Information Reports were registered upon those rival versions by the officer-in-charge of the police station. FIR No. 92 of 1996 was registered against 24 persons arrayed in it as accused (for convenience this can be referred to as 'the first case') and FIR No. 93 of 1996 was registered against six persons (this can be referred to as 'the second case' for convenience). Both cases were investigated together by the police and ultimately challans were laid in both cases alleging offences under Section 307 read with Section 149 besides some other offences of the Indian Penal Code in both the cases. The Magistrate before whom the challans were filed completed the inquiry proceedings and committed both cases to the Sessions Court for trial. Thus far the two cases flocked together side by side.

[5]. In the Sessions Court the first case was taken up under Section 227 of the Code and the Court framed charge against the accused for offences under Section 307 read with Sections 149, 147 and 427 Indian Penal Code. When the preliminary arguments in the second case were heard under Section 227 of the Code the Sessions Judge found that no offence triable exclusively by a Court of Sessions need be included in the charge and hence he framed a charge as envisaged in Section 228(1)(a) of the Code for the offence under Section 324 read with Section 149 and certain other counts of the Indian Penal Code. Thereafter he transferred the second case for trial to the Chief Judicial Magistrate as provided in Section 228(1) of the Code.

CRM-M-32137-2019

[6]. The accused in the first case moved the High Court in revision contending that no offence under Section 307 Indian Penal Code is made out against them and further contended that the Court should have included the offence under Section 307 Indian Penal Code also in the charge framed in the second case. A Single Judge of the High Court dismissed the revision petition by order dated 30.6.2000, in which the learned Judge observed, inter alia, thus :  
 "The charge in each criminal case is framed on the basis of materials available in the records of that particular case. Merely because the charge for offence under Section 307 Indian Penal Code has not been framed in the counter case, the petitioners do not become entitled to be discharged for the offence under Section 307 Indian Penal Code, if they are otherwise liable to be charged for the offence under that section in view of the materials placed before the learned Judge."

[7]. In the meanwhile, the State of Madhya Pradesh moved the High Court in revision challenging the order by which the Sessions Court declined to frame charge under Section 307 Indian Penal Code as against the accused in the second case. The said revision petition was separately dealt with by the High Court and the same learned Single Judge dismissed the said revision on the same day by a separate order. He made the following reasoning :  
 "The facts in the counter case warranted the framing of charge under Section 307 Indian Penal Code against the complainant and his companions and simply because a charge under Section 307 Indian Penal Code has been framed against the complainant and his companions, they cannot claim, on ground of parity, that such charge should also be framed against the respondents, especially when the materials placed in the present case do not warrant framing of charge under Section 307 Indian Penal Code against the respondents. It is the settled law that charge is to be framed on the basis of material available in that particular case and the Judge or Magistrate should not be influenced by any other consideration. Under the circumstances, the impugned order needs no interference by this Court on the ground of parity as contended by the learned counsel for the petitioner and the complainant."

[8]. The above two orders passed by the High Court are being challenged now in separate appeals by special leave, and both these appeals were heard together and they can be disposed of together by a common judgment now.

[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."

[10]. Close to its heels Jackson, J., made an exhortation to the then legislature to provide a mechanism as a statutory provision for trial

CRM-M-32137-2019

of both cases by the same Court (vide Krishna Pannadi v. Emperor, AIR 1930 Madras 190). 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 recognised 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."

[11]. 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; and (3) In reality the case and the counter case are, to all intents and purposes, different or conflicting versions of one incident.

[12]. 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 and others v. State of U.P. and another, 1990 Supp SCC 145. The procedure to be followed in such a situation has been succinctly delineated in the said decision and it can be extracted here:

"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 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."

[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 offence or offences 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 :

CRM-M-32137-2019

"If, in any inquiry into an offence or 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 Sections 209 and 323 might be through two different channels, but once they are committed their subsequent flow could only be though the stream channelised by the provisions contained in Chapter XVIII.

[15]. Now we have to deal with the powers of the Sessions Court in the light of Section 228 of the Code which says that when the Sessions Court, after hearing under Section 227, is of opinion that none of the offences presumed to have been committed by an accused is triable by a Court Sessions he is to transfer the case for trial to the Chief Judicial Magistrate.

[16]. In this context, we may point out that a Sessions Judge has the power to try any offence under the Indian Penal Code. It is not necessary for the Sessions Court that the offence should be one exclusively triable by a Court of Sessions. This power of the Sessions Court can be discerned from a reading of Section 26 of the Code. When it is realised that the Sessions Judge has the power to try any offence under the Indian Penal Code and when a case involving offence not exclusively triable by such Court is committed to the Court of Sessions, the Sessions Judge has to exercise a discretion regarding the case which he has to continue for trial in his Court and the case which he has to transfer to the Chief Judicial Magistrate. For this purpose we have to read and understand the scope of Section 228(1) in the light of the above legal position. The sub-section is extracted below:

"If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which :

(a) is not exclusively triable by the Court of session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused."

[17]. The employment of the word "may" at one place and the word "shall" at another place in the same sub-section unmistakably indicates that when the offence is not triable, exclusively by the Sessions Court it is not mandatory that he should transfer of the case to the Chief Judicial Magistrate after framing a charge. In

CRM-M-32137-2019

situations where it is advisable for him to try such offence in his Court there is no legal obligation to transfer the case to the Chief Judicial Magistrate. One of the instances for not making the transfer is when a case and counter case have been committed to the Sessions Court and one of those case involves an offence exclusively triable by the Sessions Court and the other does not involve any such offence.

[18]. In the present case, the Sessions Judge ought not have transferred the second case to the Chief Judicial Magistrate as he did, but he himself should have tried it in the manner indicated in Nathi Lal (supra). To facilitate such a procedure to be adopted we have to set aside the order passed by the Sessions Judge in the second case. We do so.

- 18. Given the above, there is no illegality in the impugned order.
- 19. Petition dismissed. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)  
JUDGE

26.09.2024  
anju rani

Whether speaking/reasoned: Yes  
Whether reportable: No.