

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35754-2023

Date of decision: 08.04.2024

VIPUL GUPTA

... PETITIONER

V/s

STATE OF HARYANA & OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Manish Soni, Advocate for petitioner.

Ms. Mahima Yashpal, DAG, Haryana.

Mr. Vaibhav Narang, Advocate for respondent No.3.

SUMEET GOEL, J.

1. Present petition under section 482 of the Code of Criminal Procedure is filed by the Petitioner – accused, seeking setting aside of the order dated 20.05.2023 passed by the Learned Additional Sessions Judge, Fast Track Special Court for the offences under P.O.C.S.O. Act, 2012. The Petitioner has further sought a direction to the Learned Trial Court to expeditiously decide the trial in the case.

2. Facts germane to the decision of the present case, shorn of unnecessary details, are encapsulated as under:

- i. The petitioner alleging long standing matrimonial dispute with his wife, resulting in multifarious litigations between them,

lodged an FIR bearing No.218 (hereinafter First FIR) dated 20.07.2020, at 9.00 PM, under sections 323 and 506 of the IPC, registered at Police Station Badshahpur, District Gurugram, Haryana, against his wife and her daughter from previous marriage. The essence of the said FIR is the allegation that the petitioner was beaten by his wife and her daughter.

- ii. Sometime thereafter, at about 10.45 PM, a cross-case bearing FIR No.220 (hereinafter Second FIR) dated 20.07.2020, under sections 323, 509 of IPC and section 8 of POCSO Act, was got lodged by the wife of the petitioner, at Police Station Badshahpur, District Gurugram against the Petitioner. In the said FIR it was alleged by the complainant that, while she was not at home, the petitioner, was shouting on her son. When her minor daughter aged 17 years, intervened and asked the petitioner to not shout on her brother, he pushed her on her shoulder and private part.
- iii. The trial proceedings in the second FIR i.e. FIR No.220 proceeded in the Special POCSO Court. The final report by the police under section 173(2) of the Cr.P.C. was filed on 15.01.2021. Thereafter, the charges against the petitioner were framed under section 10 of POCSO Act, 2012 (in the alternative under section 354 of IPC) and under sections 323, 509 of the IPC. After leading the entire prosecution evidence, the evidence on behalf of the State was closed by the Learned Special Public Prosecutor on 12.04.2023. Thereafter the statement of petitioner,

under section 313 of the Cr.P.C., was recorded. After closing the defense evidence the case was adjourned for final arguments by the Learned Special POCSO Court. Part arguments were heard on 16.05.2023 whereinafter hearing in trial was deferred to 20.05.2023 for further arguments.

- iv. At this stage of further arguments on 20.05.2023; it was brought to the knowledge of the Learned Trial Court in POCSO Case that the trial in the cross-case i.e. first FIR No.218 is pending in the Court of Learned Judicial Magistrate, 1st Class, Gurugram. The Learned Special POCSO Court / Trial Court in the second FIR case (which was pending at the stage of further arguments), vide impugned order dated 20.05.2023, held that in view of the pendency of the cross-case the POCSO case cannot be disposed of.

While holding so, the Learned Special POCSO Court observed that the case File in the First FIR bearing No.218 is since pending in the Court of Learned JMJC and is not committed to the Special Court. The learned Special Court adjourned the case in Second FIR for awaiting the File of First FIR.

- v. It is pleaded on behalf of the petitioner that the trial in the First FIR No.218 is stand still, as the complainant in the Second FIR who happens to be accused in the First FIR has approached this Court seeking quashing of that FIR by filing **CRM-M-24476 of 2020**, which is pending adjudication before this Court, and the

proceedings in the that FIR before the learned trial court are stayed.

3. In this factual backdrop; the petitioner has impugned the order dated 20.05.2023 passed by the learned Fast Track Special Court, Gurugram, while seeking a direction for early decision of the trial which is pending at the stage of final arguments for last about 10 months.
4. Despite having given ample opportunity(s), the Respondent-Complainant in the FIR, which is subject-matter of present case, has not filed reply to the petition, accordingly, her right to file reply was foreclosed vide order dated 01.04.2024.
5. The moot question, which has arisen before this Court in the present proceedings is, whether the approach of learned Fast Track Special Court of staying the proceedings in the Second FIR case at the final stage of the trial, is justified in law, just because of the reason of the pendency of cross-case (in the shape of First FIR in the Court of learned Judicial Magistrate), the proceedings wherein are stayed by this Court?
6. The Learned Fast Track Special Court while passing the impugned order has placed reliance on the following judgments passed by the Hon'ble Supreme Court:

1. **Nathi Lal and Others versus State of UP & Another, 1990 (Supp) SCC 145**
2. **State of MP Vs. Mishri Lal, SCC 426 2003(9);**
3. **Sudhir Vs. State of MP, decided on 02.02.2001 (2001(2) ALT Criminal 79).**

7. In the case of *Nathi Lal* (Supra) Hon'ble Supreme Court directed that if a situation arises wherein, there is a police case and a cross-case instituted by the respondent by way of a private complaint, the court must record the evidence in both the case separately, hear the arguments in both the cases separately and then decide the cases by passing separate judgments. But while doing so the Court cannot look into the evidence recorded in the cross-case and each case shall be decided only on the evidence led in that particular case. However, the perusal of the Judgment passed by the Hon'ble Supreme Court, shows that the proceedings before the Learned Trial Court in that case must have been at very initial stage as the trial court was directed to take evidence in both the cases i.e. the police case as well as complaint case.
8. In the case of *State of MP vs. Mishri Lal* (Supra) the Hon'ble Supreme Court, while relying upon the Judgment in case of *Nathi Lal* (supra) , reiterated that in the case where two FIRs have been lodged with respect to the same incident, and challans have been filed in both the cases, both the cases shall be tried by the same Court, irrespective of the nature of offences involved. However, the said judgment was passed by the Hon'ble Supreme Court in a Special Leave Petition arising out the Judgment of acquittal passed by the High Court in an appeal against the judgment of conviction passed by the learned trial court. In the peculiar facts of that case the Hon'ble Supreme Court held that in cross-cases 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 separate the grain from chaff. It was in this factual background, Hon'ble Supreme Court observed that the failure on part of the investigating officer to discharge this obligation, results in grave miscarriage of justice.

9. In the case of *Sudhir vs State of MP* (Supra) the question posed for adjudication before the Hon'ble Supreme Court was, whether in cross-cases, where one case is exclusively triable by the Court of Sessions, but another not exclusively triable by Court of Sessions, both the cases could be tried by the Court of Sessions. While answering the said question the Hon'ble Supreme Court, relying upon the case of *Nathi* (supra), held that the Court of Sessions Judge has all the power to try any offence under the IPC. As such it was held that cross-cases shall be tried and disposed of by the same court by pronouncing judgments on the same day.
10. It is worthwhile to mention that the proposition of law laid down in all the three judgments passed by the Hon'ble Supreme Court, as relied upon by the learned trial court has also been reiterated by the Hon'ble Supreme Court in case of *Amrik Singh versus State of Punjab*, 2001(2) RCR (Criminal) 420.
11. The factual situation in all the above mentioned judgments passed by the Hon'ble Supreme Court is altogether different from the factual status of the present case. In none of the cases decided by the Hon'ble Supreme Court, the status of trial in one case being at the final stage of hearing the final arguments was pitted against the status of another cross-case being at initial stage of trial, without even start of

recording of evidence, with the proceedings having been stayed by the High Court.

12. It is trite law that a slightest of difference in factual scenario of any two cases can make a sea of difference while adjudicating the same. The Hon'ble Supreme Court while dealing with this aspect of the law in case of **Government of Karnataka v. Smt. Gowramma, 2008 AIR (Supreme Court) 863** has held as under:

“9. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates - (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of

the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See : State of Orissa v. Sudhansu Sekhar Misra and Ors., (AIR 1968 Supreme Court 647) and Union of India and Ors. v. Dhanwanti Devi and Ors., (1996(6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem, (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

10. *Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to*

explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton, (1951 AC 737 at p.761), Lord Mac Dermot observed :

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

11. *In Home Office v. Dorset Yacht Co., (1970(2) All England Reporter 294) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in (1971)1 WLR 1062 observed : "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board, (1972(2) WLR 537) Lord Morris said :*

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

12. *Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

13. *The following words of Lord Denning in the matter of applying precedents have become locus classicus :*

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

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"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

13. In view of the above mentioned stark factual difference in the stage of proceedings in the present case and the Judgments passed by the Hon'ble Supreme Court, and applying the ratio of law laid down by the Hon'ble Supreme Court in the case of Government of Karnataka (supra), it would be highly imprudent in the present case, to keep the proceedings in the case FIR

No. No.220 dated 20.07.2020 i.e. the second FIR pending just to await the decision in First FIR.

14. A co-ordinate bench of this Court in case titled Tejpal and Others versus State of Haryana and Another, in CRM-M 3847 of 2019, in dispute involving circumstances similar to the present case, has held as under:

“Although it goes without saying that cases arising out of the cross-versions should be tried together as has been held by Hon’ble the Supreme Court in Nathi Lal’s case (supra) but the present case is distinct in as much as the trial in respect of the cross-version has not commenced yet as no charges have been framed so far and the matter is pending in the High Court, wherein summoning order itself has been challenged. In these circumstances, when the case arising out of FIR is at its fag end, while in the cross-version, on the basis of private complaint, the summoning order itself is under challenge and the trial has not commenced in the cross-version at all, staying the proceedings in the FIR case would not advance the cause of justice in any manner.”

15. There is yet another aspect of the matter. The accused in the present case i.e. Second FIR No.220 dated 20.07.2020, after going through the vagaries of the entire criminal trial, at the stage of hearing of the final arguments in the case, after partial hearing of arguments is already over, cannot be made to sit and await the decision of his case indefinitely. The trial in the First FIR i.e. the cross-version is not likely to be over in near future in view of the fact that the proceedings in that case before trial court are yet to begin. Moreover, since the proceedings in that case are already stayed by this Court, on the instance of the

complainant (herein), in a petition seeking quashing of that FIR, the progress of trial in that case, predominantly depends upon the decision of this Court in quashing petition. The outcome of said quashing petition at this stage cannot be predicted, in case the cross-FIR is quashed by this Court, there would be no purpose served by keeping the proceedings before trial court in the present case pending.

16. Right to speedy trial being a cherished right of the accused cannot be frustrated in a cursory manner without a definite legal and valid cause. A full bench of the Hon'ble Supreme Court of India in case of ***Abdul Rehman Antulay v. R.S.Nayak, AIR 1992 Supreme Court 1701*** has held as under:

“54. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are :

1. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

2. Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how this Court has understood this right and there is no reason to take a restricted view.

3. The concerns underlying the Right to speedy trial from the point of view of the accused are :

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.”

17. In view of the above findings it is neither feasible nor desirable to keep the trial in Second Case bearing FIR No.220 dated 20.07.2020, registered at Police Station Badshahpur, Gurugram pending, for the purpose of its decision with the cross-case i.e. FIR No.218 dated 20.07.2020 registered at Police Station Badshahpur, Gurugram. The

petitioner being accused in the case has right to seek the culmination of his trial at an early date. With the uncertainty of pending trial looming large, the petitioner cannot be held hostage to pendency of trial, by keeping the Damocles Sword hanging over his head. Accordingly, the present petition deserves to be allowed.

Decision:

18. The impugned order dated 20.05.2023 passed by Learned Fast Track Special Court, Gurugram is quashed. The trial court is directed to proceed further with the trial and make an earnest endeavour for expeditious disposal thereof, preferably within six weeks from the date of receipt of certified copy of the order.

19. Needless to state herein that the observations made hereinabove shall not be construed as opinion on merits of the case.

(SUMEET GOEL)
JUDGE

April 08, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No