IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.416 of 2024

Arising Out of PS. Case No.-11 Year-2017 Thana- C.B.I CASE District- Patna

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1. Amrendra Kumar Yadav, Son of Ayodhya Gope Resident of Mishra Tola Bari Khanjarpur, P.S. - Barari, District - Bhagalpur
2. Rakesh Kumar, Son of Jagannath Prasad Singh Resident Of Professor Colony, Ward No.25, Forbes Ganj, P.S. - Forbes Ganj, District - Araria
3. Ajay Kumar Pandey, Son of Sri Rameshwar Pandey Resident Of Mohalla - Masakchak, Sarat Chand Path, P.S. - Adampur, District - Bhagalpur. Permanent Resident Of Village - Meharpur, P.O. - Mathurapur, P.S. - Pirpainti, District - Bhagalpur

... ... Petitioner/s

Versus

Central Bureau of Investigation (New Delhi) New Delhi

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prasoon Shekhar, Advocate Mr. Rajesh Kumar, Advocate Mr. Ankit Kumar, Advocate Mr. Shwentank Singh, Advocate Mr. Uday Pratap Singh
For the Respondent/s	:	Mr. Krishna Nandan Singh, Sr. Advocate Mr. Manoj Kumar Singh, Advocate Mr. Ankit Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 23-07-2025

1. The instant revision is directed against the order, dated 1st of April, 2024, passed by the learned Special Judge, CBI-II, Patna in Special Case No. 3 of 2018, arising out of Kotwali (Tilkamanjhi) P. S. Case No.

494 of 2017, R. C. Case No. 11/A/2017, whereby and whereunder, the Trial Court rejected the application, dated 7th of December, 2023, filed by the petitioners under Section 223 of the Cr.P.C. for joint trial of Special Case Nos. 6 of 2017, 3 of 2018 and 5 of 2020 at the stage of examination of the accused persons under Section 313 of the Cr.P.C. on the ground that all three cases arose from Kotwali (Tilkamanjhi) P.S. Case No. 494 f 2017.

2. It is contended on behalf of the petitioners that the above-mentioned three special cases originated from the same F.I.R. and factual transactions rest on the same documentary evidence and statement of witnesses. Therefore, separate trial of the above-mentioned cases would lead to multiplicity, prejudice and miscarriage of justice. It may also result contradictory judgments on the same alleged incident and therefore, the accused persons / petitioners in three cases ought to be charged jointly.

3. In order to appreciate the case of the petitioners, it is necessary to state the prosecution case in a nutshell.

4. The petitioner no. 1, Amrendra Kumar

Yadav, submitted an enquiry report to the Officer Incharge, Tilkamanjhi Police Station on the basis of a three-man enquiry committee, consisting of the informant himself and two others under the direction of the District Collector, Bhagalpur, alleging, inter alia, that forgery, financial embezzlement of government money and illegal withdrawal of public money took place in respect of Account No. 6268727981, standing in Indian Bank, Patal Babu Road, Bhagalpur in the name of the District Nazarath Shakha, Bhagalpur, in respect of Chief Minister Urban Development Schemes. It is stated in the enquiry report that the District Development Branch, Bhagalpur had issued a cheque, bearing No. 929602, dated 27th of September, 2014 from Account No. 12622151002877 of Oriental Bank of Commerce, Tilkamanjhi, Bhagalpur in favour of Manager, Indian Bank, Bhagalpur, amounting to Rs. 12,20,15,075/-, which was to be deposited in the Account No. 6268727981, maintained by the Indian Bank under the Chief Minister Urban Development Schemes. However, the said amount was not deposited in the said account. On the contrary, it was deposited in Account No.

82272685, maintained in the name of one Srijan Mahila Vikash Sahyog Samity Ltd. in connivance with the bank employees and the above-named NGO. After depositing the said amount, a sum of Rs. 10,26,58,295/- was withdrawn from Account No. 82272685.

5. It is also contended that a sum of Rs. 5,50,000,00/- was transferred in the account of Srijan Mahila Vikash Sahyog Samity Ltd. from Account No. 6268727981 by issuing three cheques bearing nos. 656866, 656865 and 656672 on 1st of September, 2016, 3rd of June, 2016 and 6th of September, 2016, respectively. It was revealed that the said cheques were issued, forging the signature and requisition slip of the Collector. It is also alleged that the concerned cheque book, having cheque leaves nos. 656861-656880, was never received by the Nazarat Branch, Bhagalpur against Account No. 6268727981. It was alleged that the above-named NGO made the transactions in collusion with bank authorities and some employees of the Collectorate to misappropriate huge amount of government money by forging the signature of the Collector, Bhagalpur in various documents and cheques and using the said forged document as genuine.

6. On the basis of the said complaint, CBI registered RC 11/A/2017, dated 25th of August, 2017, under Sections 34, 120B, 409, 420, 467, 468 and 471 of the Indian Penal Code against the Branch Managers of Indian Bank, Patal Babu Road, Bhagalpur and office bearers of the Srijan Mahila Vikash Sahyog Samity Ltd., Bhagalpur. In course of investigation, it was found by the CBI that the informant and two other persons, namely, petitioner nos. 2 and 3 were also involved in criminal conspiracy, misappropriation of government money, cheating, forgery etc. and supplementary charge-sheet was filed against them.

7. It is pertinent to mention here that in all three cases, charge-sheets were submitted by the CBI. The first charge-sheet was against the bank Managers and employees of the concerned Bank; supplementary charge-sheet against the present petitioners; and third charge-sheet against 10 other accused persons. The learned Special Judge took cognizance of offence against the accused persons on the basis of the charge-sheet and the accused persons duly surrendered before the Trial Court to face trial. Charges were framed separately in respect of three charge-sheets, which were registered as three different cases. Prosecution was called upon to adduce evidence. The evidence on behalf of the prosecution is closed and the cases are now fixed for examination of the accused persons under Section 313 of the Cr.P.C.

8. At this stage, the petitioners came up with an application, stating, inter alia, that the offences alleged against the petitioners and other accused persons took place in course of same transactions and, therefore, the aforesaid cases may be tried together under Section 223 of the Code of Criminal Procedure and the accused persons may be examined under Section 313 of the Cr.P.C. jointly.

9. The Trial Judge rejected the said petition observing as hereunder: -

> *“Hon’ble Supreme Court upheld in catena of judgments that while applying principles initiated in section 218 to 223 of Cr.P.C. as conducting*

joint/separate trials, the trial court should apply two pronged test, namely:

(i) whether conducting a joint/separate trial will prejudice the defence of the accused; and

(ii) whether the conducting joint/separate trial would cause judicial delay.

The basic rule regarding charge is that for every distinct offence there shall be a separate charge and for every such charge there shall be separate trial. The only exceptions recognized are contained the sections 219, 220, 221 and 223 of the Cr.P.C. Therefore, separate trial is the rule and the joint trial exception. The sections contained the exceptions are only enabling sections. Court has got the discretion to order separate trial even the case is covered by one of the exception enabling a joint trial and accused have not vested right to claim joint trial. Moreover, Hon'ble Supreme Court in Cr. Misc. No. 5825 of 2021 has directed this court to dispose of this case (Spl. Case No. 03/2018) within 6 months. So I am of the opinion that amalgamation of Spl. Case No. 06 of

2017 and 05 of 2020 with this Spl. Case No. 03 of 2018 would cause judicial delay and violation of the direction of Hon'ble Supreme Court passed in Cr. Misc. No. 5825 of 2021."

10. Section 223 of the Code of Criminal Procedure, 1973 states as hereunder: -

*"223. **What persons may be charged jointly.***

The following persons may be charged and tried together, namely:-

***(a)** persons accused of the same offence committed in the course of the same transaction;*

***(b)** persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;*

***(c)** persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;*

***(d)** persons accused of different offences committed in the course of the same transaction;*

***(e)** persons accused of an*

offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;

(f) *persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;*

(g) *persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:*

Provided *that where a*

number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.”

11. In ***Nasib Singh v. State of Punjab,*** reported in ***(2022) 2 SCC 89***, the Hon’ble Supreme Court was pleased to observe that:

“Section 223 Cr.P.C. begins with the expression “persons accused” meaning thereby that Section 223 is applied when more than one person is involved in the commission of an offence or offences. Section 223 stipulates — in clauses (a) to (g) — situations where persons may be charged and tried together. Clause (a) envisages a situation where persons are accused of the same offence committed in the course of the same transaction. Clause (b) envisages a situation where persons accused of an offence and persons

accused of abetment or attempt to commit the offence may be charged and tried together. Clause (c) applies to a situation where persons are accused of more than one offence of the same kind within the meaning of Section 219 committed by them jointly within twelve months. Clause (d) envisages that persons accused of different offences committed in the course of the same transaction may be charged and tried together. Clauses (e), (f) and (g) deal with specific situations envisaged therein. The proviso to Section 223 stipulates that where a number of persons are charged with separate offences and such persons do not fall within the ambit of the categories specified in clauses (a) to (g), the Magistrate may, if such persons so desire, in writing, and if he is satisfied that they would not be prejudicially affected, and it is expedient to do so, try all such persons together."

12. It was, further, held by the Hon'ble Supreme Court that:

"(1) Section 218 provides

that separate trials shall be conducted for distinct offences alleged to be committed by a person. Sections 219-221 provide exceptions to this general rule. If a person falls under these exceptions, then a joint trial for the offences which a person is charged with may be conducted. Similarly, under Section 223, a joint trial may be held for persons charged with different offences if any of the clauses in the provision are separately or on a combination satisfied.

(2) While applying the principles enunciated in Sections 218-223 on conducting joint and separate trials, the trial court should apply a two-pronged test, namely,

(i) whether conducting a joint/separate trial will prejudice the defence of the accused; and/or

(ii) whether conducting a joint/separate trial would cause judicial delay.

(3) The possibility of conducting a joint trial will have to be determined at the beginning of the trial and not after the trial based on the

result of the trial. The appellate court may determine the validity of the argument that there ought to have been a separate/joint trial only based on whether the trial had prejudiced the right of accused or the prosecutrix.

(4) Since the provisions which engraft an exception use the phrase "may" with reference to conducting a joint trial, a separate trial is usually not contrary to law even if a joint trial could be conducted, unless proven to cause a miscarriage of justice.

(5) A conviction or acquittal of the accused cannot be set aside on the mere ground that there was a possibility of a joint or a separate trial. To set aside the order of conviction or acquittal, it must be proved that the rights of the parties were prejudiced because of the joint or separate trial, as the case may be."

13. Bearing the above principles, laid down by the Hon'ble Supreme Court in mind, this Court is conscious about its limitations while exercising revisional jurisdiction. Under Section 397 read with Section 401 of the Code of Criminal Procedure, this Court is not in a position to consider on examination of record of three cases instituted by the CBI as to whether separate/joint trials would not have been caused prejudice to the accused. However, this Court is inclined to hold that Section 223 is incorporated in the Code of Criminal Procedure in Chapter-XVII under the heading “Charge”.

14. It is needless to say that charge is framed after submission of charge-sheet; supply to the accused photocopy of police report and other documents under Section 207 of the Cr.P.C.; supply of copies of statements and documents to accused in their cases triable by Court of Sessions and in cases exclusively triable by the Court of Sessions or by the Special Courts after their commitment under Section 209 of the Cr.P.C.; opening of the case for the prosecution by the learned Public Prosecutor under Section 226 of the Cr.P.C. and thereafter framing of charge under Section 228 of the Cr.P.C., if after consideration of hearing, under Section 227 of the Cr.P.C., the judge is of the opinion that there is ground for presuming that the accused has committed an offence.

15. It is specifically stated in ***Nasib Singh***

(supra) that the possibility of conducting a joint trial will have to be determined at the beginning of the trial and not after the trial based on the result of the trial.

16. Indisputably, the trial of the case are on the verge of conclusion. The case against the petitioners is pending for examination under Section 313 of the Cr.P.C. At this stage, the Trial Court has no scope to deal with an application under Section 223 of the Cr.P.C., because the application was not filed at the appropriate stage of framing of charge or before commencement of trial or at the beginning of the trial. The prayer is made after the trial is concluded and the accused persons are standing for their examination under Section 313 of the Cr.P.C.

17. Moreover, the Trial Court specifically held that the Hon'ble Supreme Court has issued a direction to conclude the trial of R.C. Case No. 11/A/2017 within a period of six months from the date of order passed on 15th of September, 2021. Six months have elapsed long ago.

18. Therefore, I do not find any reason of interference against the impugned order dated 1st of April, 2024, passed by the learned Special Judge, CBI-II, Patna.

19. The impugned order is affirmed.

20. The revision application is dismissed on contest.

21. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

skm/-

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