

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 665 of 2025

**Pratap Karmakar
Vs.
The State of West Bengal & anr.**

For the petitioner : Mr. Somopriya Chowdhury
Mr. Avishek Bhandari
Mr. Dipayan Dan

For the State : Mr. Debasish Roy
Mr. Anand Keshari
Ms. Pallavi Priyadarshee

Heard on : 09.07.2025

Judgment on : 15.07.2025

Dr. Ajoy Kumar Mukherjee, J.

1. A complaint case being Excise Case no. 110 of 2022 and a Police Case being Malipanchghora P.S. case no. 136 of 2022 were initiated against the present petitioner and others, in connection with a hooch tragedy that took place on 20th July 2022, claiming nine to twelve lives for consumption of spurious liquor and thereby prosecution report being PR No. 14/22-23 was

submitted against the petitioner herein and two others in connection with complaint case and on 02.08.2022 a charge sheet in connection with the police case being charge sheet no. 178/2022 was also submitted against the petitioner and four other different persons. The court below who are in seisin of both the cases framed charge in connection with the Complain Case and the Police Case separately on self same day i.e. on 16th August, 2023.

2. While dealt with the provisions under section 210(2) of the Cr.P.C. the court below by the impugned order directed that the complaint case being ST case No. 188 of 2022 be merged with ST Case no. 193 of 2022 arising out of police challan, as if both the cases have been instituted on a police report and he further held that after the merger, the complaint case will loose its identity and separate existence and he further held that the document in the complaint case for the prosecution will become part and parcel of the case instituted on police report and will be considered in evidence in the sessions trial, arising out of police report to prove or disprove the same.

3. Before going to further details it is required to reproduce the allegation levelled against the present petitioner Pratap Karmakar and the other accused persons in the complaint case as well in the police case. The FIR maker in the abovementioned sessions case arising out of police challan made the following allegation:-

Sub:- complaint against the Pratap Karmakar and other involved persons.

Sir,

With due respect I Raj Kumar Mahato (52) S/O Lt. Shyama Pada Mahato of 84 Dharmatala Road. PS Malipanchgora, Howrah would like to draw your kind attention that today(20/07/22) at around 08:20 hours it came to my knowledge that my cousin Sukumar Chowdhury(51) S/O lt. Dinanath Chowdhury of 84, Dharmatala Road PS-Malipanchghora, Howrah got suddenly ill after intake or consuming Alcohol which he bought form the

rented house of one Pratap Karmakar situated at 112/113/ Dharmatala Road, Gajanan Basti, PS-Malipanchghora, Howrah. Immediately he was shifted to Howrah District Hospital for medical treatment where the attending doctor declared him death. It has shocked me when I came to hear that not only my cousin, also some other inhabitant of the locality were also found sick and expired consumption of such an alcohol. It has come to be known that Pratap Karmakar manufactured, adulterated and sold the country spirit that caused the death of my cousin Sukumar Choudhury and others in his rented house which was put on rent by Mantosh Rai S/O Ram Balak Rai of 112/113/7 Dharmatala Road, Gajanan Basti Malipanchghora Howrah.

Under the fact and circumstances, I request your good self to treat my complaint as FIR against Pratap Karmakar and other associates and take strong against culprits.

4. Side by side in the complaint case the prosecution report is as follows:-

SI SL No.-107/22-23 dt-20.07.22

Places searched in order of search 1:-

Searched & recovered from the illicit den for selling of liquor situated at Gajanan Slum area, PS-Malipanchghora, Dist-howrah, where from death of 09(nine) people occurred on 20.07.22 for consuming suspected spurious liquor & reported in the premise is owned by pratap Karmakar, S/O -Lt Bholanath Karmakar, resident of 20/5, Kaibarta para Lane, PS-Malipanchghara and as the primary investigation the aforesaid premise was subleased to the following person for conducting the alleged business of liquor.

Laxman Shaw, S/O Lt. Phulchand Shaw of 7/2 Gopal Ghosh Lane, PS-Malipanchghora, admitted in Howrah District Hospital on serious condition due to consumption of said spurious liquor.

&

Prakash Mitra of 7/2, Gopal Ghosh Lane, PS-Malipanchghora, Dist-Howrah, deceased due to consumption of the said spurious liquor.

5. Being aggrieved by the impugned order dated 18th January, 2025 passed by the Court below Mr. Somopriyo Chowdhury learned counsel for the petitioner submits that the facts, circumstances, grounds averments, allegations and materials in the two cases are mutually exclusive, different, diametrically divergent and contradictory in connection with the complaint case and the police case, despite both the said cases being pending separately before the same Session Judge. In such view of the fact, the court below has erred in law and in fact in passing the order impugned thereby merging the complaint case with the case arising out of police report. He

further submits as a matter of record, charge sheet filed by the investigating agency is against six accused persons including the present petitioner and the case was duly committed and subsequently transferred before the present Sessions Judge. His further contention is accused Laxman Shaw who was the other accused in the complaint case, has been shown as one of the victim /deceased in the case arising out of police report being ST 193 of 122. He further submits, when investigation was in progress and thereafter till date, no prayer was made by the investigating authority for merger of both the cases before the court below, though they had specific knowledge about both the cases.

6. His further contention is that in the sessions case arising out of police report, all the witnesses have been examined and thereafter the accused was also examined under section 313 Cr.P.C. but in the complaint case though prosecution proposes to examine 6 witnesses but no witnesses could be examined so far. He further contended that in both the cases separate cognizance of offence were taken and both the cases were separately committed before the sessions judge and separate charge has also been framed in both the cases. In fact lists of witnesses are also different in both the cases and as such pre conditions required to exist for invoking the provisions of section 210 (2) of Cr.P.C. are completely absent. This is also because in two cases, the alleged prosecution version are diametrically divergent, materially different contradictory and mutually exclusive without anything in common except the fact that present petitioner/accused is only involved in both the cases. In such circumstances, the trial of two cases cannot be clubbed and/or merged together, but ought to be tried separately

and prosecution should be conducted by two separate public prosecutors in the said two cases and the judgment ought to be delivered in both the cases simultaneously on the same date.

7. His further contention is that the evidence of sessions case being ST case no. 193 of 2022 arising out of police report has already been concluded and in this situation if both the cases are merged, then the petitioners defence will suffer irreparable loss and injury, as the petitioner will not get any opportunity to contradict the witnesses in respect of two contradictory versions as set out in respective prosecution in both the cases. Accordingly he prayed for setting aside the order impugned.

8. Mr. Debasish Roy, learned Public prosecutor and Mr. Keshri learned Advocate on behalf of the State submits that the State does not contradict with the petitioners submission that both the cases should be heard separately by the same court and the judgments are also required to be delivered separately in both the cases, but since the sessions case arising out of police report is in the verge of completion after examination of accused under section 313 Cr.P.C. and conversely when in the complaint case the evidence of prosecution has not yet started and for obvious reason it will take time to conclude trial in the aforesaid complaint case, the hearing of argument and delivery of judgement in the sessions trial case arising out of police report cannot be stayed till the conclusion of trial in the complaint case and that judgment in both the cases is not required to be delivered on the self same day.

9. However Mr. Roy admits that Prakash Mitra, since deceased, who was made an accused in the complaint case, his family members have received

victim's compensation of Rs. 4 lakhs. Mr. Roy accordingly submits that the trial court may be allowed to come to a logical conclusion in the sessions case arising out of police report, without waiting for the conclusion of trial of complaint case.

10. Having heard the submissions made on behalf of the parties it is apparent that on 16th August, 2023 learned Court below was pleased to frame charge in connection with the complaint case and the police case separately on the self same day. In the complaint case charge was framed against the petitioner herein under section 46 AA of the Bengal Excise Act, 1909. In the police case charge was framed under section 272 /273/302/307/120B of the Indian Penal Code read with 46AA of the Bengal Excise Act of 1909 against the petitioner and five other different charge-sheeted accused persons. It further appears that the crux of the allegations in connection with two cases are not exactly same. The complaint case was initiated at the behest of opposite party no.2 on behalf of Liluah Circle Howrah Industrial Excise District and in the report it is alleged that the petitioner herein namely Pratap Karmakar is the owner of the premises at Gajanan Slum area, Malipanchghora and that deceased persons namely Laxman Shaw and Prakash Mitra were leasee at the said premises and were conducting business of spurious liquor therein. However in the police case it is alleged that the petitioner herein namely Pratap Karmakar was responsible for manufacture, adulteration and selling of purported country spirit that caused death of the victims and that the said premises was taken on rent by the petitioner herein from one Mantosh Rai and not only that the principle accused person in the complaint case namely

Laxman Shaw and Prakash Mitra were projected as victims in the police case. It further appears that the nature of seizure made in connection with the complaint case and the police case are also not exactly same as both the investigating agencies have seized spurious liquor from the place of occurrence, though it is not understandable why two different nature of seizures were made from the same premises in connection with same tragic incident. It further appears that the witnesses in both the cases are different only two witnesses out of 6 witnesses in connection with the complaint case are common with the police case. In the police case, out of total 75 charge sheet mentioned witnesses, after examining 29 witness prosecution closed their evidence.

11. Accordingly the two cases might appear to be similar in background but to some extent are materially different. In such circumstances, if the merger of two cases are allowed the petitioner herein may have a cause to prejudice being deprived of the opportunity to contradict the witnesses, their respective version and the version of the prosecution in connection with the said two cases.

12. In the case of *Harjinder Singh Vs. State of Punjab and others*, reported in **AIR 1985 SC 404**, the issue of article 20(2) of the constitution of India concerning double jeopardy was considered. Under article 20(2) no person shall be prosecuted and punished for the same time, more than once. The same principle governs section 300 of the Cr.P.C. It provides that when a person who has been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall while such conviction or acquittal remain in force, not be liable to be tried again for the

same offence nor on the same facts for any other offence for which different charge from the one made against him might have been made under section 221(1) or for which he might have been convicted under sub-section(2) thereof. Accordingly the question may arise if there were to be separate trial, the first trial would in the normal circumstances tend to end up in either the conviction or acquittal of the particular accused/ petitioner herein and in that eventuality the second trial of the same accused in the complain case should not proceed in view of the said provisions. This is because the court takes cognizance of the offence and not the offender.

13. In the case of **Harjinder Singh** (supra) Supreme Court instead of consolidating both the cases directed that the evidence should be recorded separately in both the cases one after the other except to the extent that the witnesses for the prosecution who are common to both the cases be examined in one case and their evidence be read as evidence in the other case and the trial court should after recording the evidence in one case will withhold its judgment and then proceed to record the evidence of the prosecution in the other case, thereafter he shall proceed to simultaneously dispose of the cases by two separate judgments, taking care that the judgment in one case is not based on the evidence recorded in the other case.

14. In the case of **Balbir Vs. State of Haryana and another** reported in **AIR 2000 SC 11**, where two commitments are made before the court of sessions pertaining to the same offence and pertaining to the same victim, one giving one version against one accused and the other giving another against a different accused, in such cases the most appropriate procedure

to be followed by a Session Judge should be that the two trials are to be conducted separately one after the other by the same court before the same Judge and judgments in both cases would separately pronounced on the same day taking care of the fact that the court would confine its judgement in one case only to the evidence adduced in that particular case and it is advisable that public prosecutor who prosecuted one case should avoid prosecuting the other case.

15. In the instant case as it appears from the crux of the allegations in the two cases that in the complaint case the report alleged that the petitioner herein/accused is the owner of the premises but deceased Laxman Shaw and Prakash Mitra were leasee of the said premises and they were conducting business of spurious liquor therein but in the police case the specific allegation has been made against the present petitioner/accused for manufacturing, causing, adulteration and selling of purported country spirit, that caused the death of the victims in the self same premises which the petitioner/accused herein had allegedly taken on rent from land lord Mantosh Rai. Infact consolidation of police case and a complaint case is to be avoided when the prosecution version on the police challan case and the complaint case are materially different and to some extent contradictory to each other.

16. In view of the aforesaid facts and circumstances of the case and after considering the authorities as stated above, the present application being CRR 665 of 2025 is disposed of with a direction upon the court below to withheld its judgment to be passed in the Sessions Trial case no. 193 of 2022 arising out of police report for the time being and to proceed to record

the evidence of complain case being sessions trial no. 188 of 2022, at the earliest. Thereafter he shall proceed to simultaneously dispose of the two cases by two separate judgments on the same day taking care of the fact that the judgment in one case shall not be based on the evidence recorded in the other case (except evidence of common witnesses), within a period of three months from date, since the accused persons are in custody and have already suffered long incarceration. It is also to be made clear that if any of the witnesses of the complaint case who is found to be common to both the cases, is not required to be examined further in the complaint case, if he has already been examined in the police case and in that case his evidence if any, in the police case shall be read as evidence in the complaint case also. It is to be mentioned further that the public prosecutor who is conducting the Sessions Case should not conduct the prosecution involved in the complaint case.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)