



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.1009 OF 2024

PETITIONER : **Sanjay Hariram Agrawal,**
(Ori. Applicant) Aged about 58 years, Occ. Business. R/o. 7,
Hari Seva Street, Kidderpore, Kolkata.

..VERSUS..

RESPONDENT : **State of Maharashtra,**
(Ori. Non Applicant) Through P.S.O., Ganeshpeth Police Station,
Nagpur.

Mr P. Agrawal, Advocate a/b Mr S. Lambat, Advocate for Petitioner.
Mr M. J. Khan, APP for Respondent/State.

CORAM : **M. W. CHANDWANI, J.**

DATED : **21st APRIL, 2025.**

ORAL JUDGMENT

1. Heard.

2. The order dated 16.04.2024 passed by the learned Additional Chief Judicial Magistrate, Nagpur, rejecting the petitioner's request to file a split-up chargesheet against him, assign a fresh case number to the split-up case and thereafter, comply with the provisions of Section 207 of the Code of Criminal Procedure, 1973, is challenged. The order dated 18.11.2024 whereby the order of the learned A.C.J.M. confirmed by the learned Additional

Sessions Judge, Nagpur in Criminal Revision No.118 of 2024 is also challenged by way of this petition.

3. A brief background of the case is necessary to dispose of the present case.

The petitioner was one of the accused in Regular Criminal Case No.147 of 2002 registered for the offences punishable under Sections 406, 409, 468, 471 and 120(B) of the Indian Penal Code, 1860, which was pending before the learned A.C.J.M., Nagpur for trial. Pending the trial, petitioner filed Criminal Application No.628 of 2014 before the Principal Seat of the High Court of Bombay for clubbing of all the FIRs registered against him and other co-accused and for a joint trial, wherein the Principal Seat of the High Court of Bombay stayed the trial against petitioner. Pending the said criminal application, Public Interest Litigation No.25 of 2014 came to be filed before this Court for directing the learned A.C.J.M., Nagpur to expedite the trial of Regular Criminal Case No.147 of 2002. Since there was a stay to the trial against petitioner in Criminal Application No.628 of 2014, in Civil Application No.1701 of 2019 in Public Interest Litigation No.25 of 2014, the Division Bench of this Court directed that the

trial shall proceed against the remaining accused except the petitioner. Pursuant to this, the trial against other co-accused was started and concluded by the learned A.C.J.M., Nagpur. Meanwhile, Criminal Application No.628 of 2014 filed by the petitioner was dismissed by this Court vide order dated 09.07.2021 directing the learned A.C.J.M., Nagpur to complete the trial expeditiously. After completion of trial against other co-accused and even four months after conducting hearings on a day-to-day basis, the trial against the present petitioner could not be commenced. The petitioner filed an application in Regular Criminal Case No.147 of 2002 pending before the learned A.C.J.M, Nagpur for seeking direction to the police to file a split-up chargesheet; give a separate case number to his case; and comply with Section 207 of the Cr.P.C. The application came to be dismissed by the learned A.C.J.M. by its impugned order. An unsuccessful attempt was subsequently made before the learned Additional Sessions Judge, Nagpur in revision. Hence, this petition.

4. Mr. Agrawal, learned counsel appearing on behalf the petitioner submitted that the trial against the present petitioner was stayed. Consequently, the trial against other co-accused persons was

concluded. This means that the trial against the present petitioner was split-up and separated from the trial against the other co-accused. In that scenario, the prosecution is supposed to file a split-up chargesheet against the present petitioner and a case shall be registered upon filing of the split-up chargesheet by the prosecution. It is also submitted that after giving a new case number, the provisions of Sections 207 and 208 of the Cr.P.C. are required to be complied with. According to him, if the trial in earlier Regular Criminal Case No.147 of 2002 commences, then there will be difficulties in conducting the same. All the documents relied upon by the prosecution are already exhibited and therefore, serious prejudice will be caused to the petitioner.

5. The sum and substance of the argument of the learned counsel for petitioner is that a split-up fresh chargesheet ought to have been filed by the prosecution to avoid all these difficulties and technicalities with regard to the documents exhibited and the evidence recorded. According to him, this aspect has not been considered by the learned A.C.J.M. as well as the learned Additional Session Judge and erroneously rejected the application of the petitioner.

6. Conversely, Mr. M. J. Khan, learned Additional Public Prosecutor appearing for the respondent/State vehemently submitted that this is nothing but a technique to delay the trial. According to him, till date the trial against petitioner has not commenced. According to him, way back in the year 2021, a direction was given by this Court to commence the trial after conclusion of the trial against other accused persons and to conclude the same within four months. The trial against other co-accused persons came to be concluded on 20.12.2023. Thereafter, four months have lapsed but there is no prosecution in the trial. He submitted that no doubt, the trial against the present petitioner is separated just because of the order by this Court. According to him, even in other cases of separated trial, the same procedure is being adopted by the learned Trial Courts and the prosecution. According to him, the present petition is nothing but an attempt to kill time since the earlier trial has resulted into conviction. Therefore, according to him, there is no merit in the petition and hence, he sought rejection of the same.

7. Having heard the learned counsels for the respective parties and having gone through the record and orders passed by

this Court, it transpires that the petitioner approached this Court for clubbing of all the FIRs and joint trial by filing Criminal Application No.628 of 2014, wherein the trial was stayed. It is also a matter of record that in Civil Application No.1701 of 2019 pending in PIL, the Division Bench of this Court directed the learned A.C.J.M., Nagpur to proceed against the remaining accused except the petitioner, since the order dated 19.12.2014 was passed by the Principal Seat of the High Court of Bombay staying the trial against the present petitioner. Pursuant to this, the learned A.C.J.M., Nagpur proceeded against the other co-accused and concluded the trial by the judgment of conviction dated 22.12.2023 and the trial against the present petitioner remained to be tried. In wake of the direction given in the final order of Criminal Application No.628 of 2014, wherein the learned A.C.J.M., directed to conclude the trial within four months, the trial against the present petitioner has commenced.

8. No doubt, due to the situation that arose and the order passed in Criminal Application No.628 of 2014, the trial of the petitioner came to be separated.

9. It is to be noted here that the petitioner is an accused in Regular Criminal Case No.147 of 2002. The police have already collected the evidence against the present petitioner in Regular Criminal Case No.147 of 2002. Giving a separate case number is ministerial act and is in no way going to affect the petitioner. Whether the accused is tried in Regular Criminal Case No.147 of 2002 or by given a new number to the case, it will not make any difference to the merits of the case, particularly, when petitioner has been supplied with a copy of the chargesheet in the case.

10. In the decision of the Madras High Court in the case of *H. Aarun Basha vs. State represented by the Inspector of Police., 2018 SCC OnLine Mad 12845*, relied upon by the learned counsel for petitioner, the Court has issued ten guidelines to be followed in cases where the accused persons are absconding. The Madras High Court in the said decision has relied on the Criminal Rules of practice and Circular Orders, 1958 prevailing in the State of Tamilnadu. Out of the ten guidelines, one guideline is to assign a number to the split-up case. On this point, the learned counsel for petitioner vehemently submitted that a new case number has to be given to the split-up case.

11. Let me state that every High Court has framed guidelines for the Criminal Courts as a Rules of practice. So far as the State of Maharashtra is concerned, the Rules of practice of Criminal Court is enumerated in the Criminal Manual. Since in the Criminal Rules of practice in the State of Madras, there were provisions for giving a new number to split-up cases; in that scenario, this has been observed by the Madras High Court while referring to the guidelines that a new case number should be given to the split-up case. So far as the Criminal Manual applicable to the State of Maharashtra is concerned, there is no such practice of giving a new case number to the split-up case. Rather, the learned A.C.J.M., Nagpur, while concluding the trial against other co-accused did not dispose of entire Regular Criminal Case No.147 of 2002 and kept the same pending for trial of the petitioner. This itself is evident of practice of trying the case with earlier case number.

12. So far as the anxiety of the learned counsel for the petitioner is concerned, the evidence that has already been recorded during the trial of other co-accused and the documents are already exhibited in the trial against other co-accused is concerned, in my view, the learned A.C.J.M. is competent to understand the meaning

of a separate trial and will not treat all the exhibited documents as proved documents in the case against the present petitioner. Needless to mention that the learned A.C.J.M. and the prosecution may adopt a modality to avoid any confusion with regard to the exhibit numbers of the documents and recorded evidence in the trial against other co-accused persons. In view of the above said observations, I do not think that any prejudice will be caused to the petitioner if he is tried in Regular Criminal Case No.147 of 2002.

13. With the above said observations, I do not find merit in the writ petition. Hence, it is **dismissed**.

(M. W. CHANDWANI, J.)