Shubhada S Kadam

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 504 OF 2024

National Sport Exchange Limited)
Through its Authorized Representative)
Mr. Santosh V. Dhuri)
Having its Registered Office at)
Malkhani Chambers Condominium,)
Malkani Chamber, 1st Floor,)
Off : Nehru Road, Next to Orchid Hotel,)
Opp : Hotel Airlink, Vile Parle (East),)
Mumbai – 400 099)... Applicant

Versus

1 The Central Bureau of Investigation)
Bank Securities and Fraud Cell)
Having its office at 13th Floor, Plot No.C-35A,)
'G' Block, Near MTNL, Bandra Kurla Complex,)
Bandra (East), Mumbai – 400098)

2 Stand of Maharashtra)
Through Government Pleader,)
Bombay High Court Building, Mumbai – 400 032.)... Respondents

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Mr. Arvind Lakhawat along with Ms. Nimeet Sharma and Ms.Jalpa Shah i/b. MZM Legal LLP, Advocates for Applicant.

Mr. Amit Munde, SPP along with Mr. Jai Vohra, Mr. Vaibhav Bairagi and Ms. Shantanu Nakashe, Advocates for respondent No.1-CBI.

Mr. B. B. Kulkarni, APP for Respondent No.2-State.

CORAM : SHIVKUMAR DIGE, J.
DATE : 27th MARCH, 2026.

Judgment :

1. The challenge in this revision application is to the order dated

4th July 2024 passed by the learned Special Judge for CBI, Greater Bombay in Miscellaneous Application No. 1313 of 2022, whereby the application filed by the applicant seeking a direction for conducting a joint and single trial of two CBI Special Cases i.e. Special CBI Case No. 62 of 2016 and Special CBI Case No. 34 of 2017, came to be rejected.

2. It is contention of learned counsel for the applicant that the applicant is accused No.1 in above referred CBI cases, which are pending before the learned Special Judge (CBI) Sessions Court, Mumbai. Learned counsel further submitted that both the aforesaid cases arise out of transactions conducted on the NSEL platform during the period 2007 to 2013 involving alleged fraudulent paired contracts (T+2 buy and T+25 sale) without actual delivery of commodities, resulting in siphoning of funds. Learned counsel further submitted that in Special Case No. 62 of 2016, the allegations pertain to cheating of M/s. PEC Ltd., a Public Sector Undertaking, causing wrongful loss of approximately Rs.120.75 crores and allegations in Special Case No.34 of 2017 pertain to cheating another Public Sector Undertaking, causing wrongful loss of approximately Rs.222.49 Crores. Learned counsel further submitted that both the cases are closely connected, arise out of the similar transactions and some of the accused, witnesses and documents are also common. The case is based on similar *modus operandi.* Learned counsel further submitted that there are

18 common accused, 25 common witnesses and 71 common documents in both the cases. As per the provisions of Sections 219, 220 and 223 of the Code of Criminal Procedure (for short "Cr.P.C."), joint trial is permitted as separate trials would cause serious prejudice to the accused as the defence would be disclosed in one case, enabling the prosecution to fill lacunae in the other case, and the accused would be deprived of statutory benefits relating to sentencing. Hence, requested to allow the application.

3. It is contention of learned learned SPP for the CBI that both cases are distinct and independent, involving different Public Sector Undertakings, different transactions, separate conspiracies, and different sets of accused persons. Learned SPP further submitted that the evidence in both cases is substantially different, as reflected from the number of witnesses and documents relied upon in each case. Learned SPP further submitted that joint trial is an exception and separate trial is the rule, particularly when offences are distinct. He further submitted that the joint trial would lead to confusion, delay and prejudice to the parties, and requested to reject the application.

Learned counsel for the CBI, relied on S***tate of Jharkhand Through Sp.Central Bureau of Investigation versus Lalu Prasad Yadav alias Lalu Prasad (2017) 8 SCC 1.***

4. I have heard both learned counsels, perused impugned order.

5. The Trial Court, while rejecting the application, has held that although both cases involve NSEL and reflect a similar *modus operandi,* the transactions are separate, involving different victims (PEC Ltd. and MMTC Ltd.) and different accused persons. The dealings of both PSUs with NSEL were independent and not connected. I do not find infirmity in it. In my view, in Special Case No.62 of 2016, the allegations pertain to cheating by M/s. PEC Ltd., a Public Sector Undertaking, causing wrongful loss of approximately Rs.120.75 crores and in Special Case No.34 of 2017 the allegations relate to cheating of another PSU M/s.MMTC Ltd. causing wrongful loss of approximately Rs.222.49 Crores. Thus, the victims, transactions and financial implications in both the cases are different. Merely because some witnesses and some accused are common, it cannot be considered as a ground to try the trial jointly.

6. It is contention of learned counsel for the applicant that the defense of the applicant would be disclosed in one case, if the trial is not tried jointly, thereby causing prejudice in other case. In my view, the charge-sheet have been filed in both cases and list of witnesses are cited by the prosecution, therefore question of opening of defense would cause harm to the applicant would not arise. Moreover, similarity in allegations does not override the fact that the transactions are different.

Section 219 of Cr.P.C. reads as under :

Section 219 — Three offences of same kind within year may be charged together:

(1) *When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three ………….*

Section 220(1) of the Cr.PC. reads as under :

Section 220(1) — Trial for more than one offence

(1) *If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.*

7. As per Section 219 of the Cr.PC., a joint trial is permissible only when offences of the same kind are committed within a period of twelve months. Further, Section 220(1) of the Cr.PC. permits a joint trial only when offences are part of same transaction, i.e. when there is a continuity of action and a clear nexus between the acts.

8. Section 223(d) of the Cr.PC. reads as :

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

(a)….

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

Section 223(d) of the Cr.PC. permit a joint trial of persons only when they are accused of different offences committed in the course of same transaction.

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9. In the present case, the alleged offence span from year 2007 to 2013, which falls outside the scope of Section 219 of the Cr.P.C. The material produced on record does show that in both the cases, the alleged conspiracies with respect to fraud and cheating are different and separate persons are involved in separate transactions relating to different entities, and alleged act do not form part of the same transactions. Thus, it appears that both the cases are of separate conspiracies and not a single general conspiracy.

10. In the view of above, the cases do not satisfy legal requirement for a joint trial. On contrary, a joint trial would lead to confusion in evidence, unnecessary delay in proceedings and possible prejudice to the parties. Considering these facts, I pass following order:

O R D E R

(a) The application is rejected.

(SHIVKUMAR DIGE, J.)