**SUPREME COURT OF INDIA**

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Vs.

State of Uttar Pradesh

Crl.A.No.1830 of 2010

(Altamas Kabir)

22.09.2010

**JUDGEMENT**

**Altamas Kabir, J.**

1. Leave granted.

2. This appeal is directed against the judgment and order passed by the Allahabad High Court on 14th December, 2007, disposing of the Appellant's application under Section 482 Cr.P.C. 2 (Crl.M.A.No.29076 of 2007) with certain directions which were in keeping with the orders of the learned Magistrate impugned in the said petition.

3. On 1st July, 1996, the Appellant herein lodged a First Information Report at Nanauta Police Station in the District of Saharanpur, U.P., in regard to offences alleged to have been committed by Yashpal, Pramod, Dharma, Kalu and Kanwar, all residents of Village Bhojpur under Nanauta Police Station, under Sections 147, 323 and 302 I.P.C. The said five accused were alleged to have committed the murder of Bhartu, the father of the Appellant. According to the Appellant, the Investigating Officer began to conduct the investigation in a manner which was geared to favouring the accused. The Appellant, accordingly, filed a Writ Petition (Crl.) No.1166 of 1997, together with Gyan Singh, before the Allahabad High Court and prayed for the investigation to be entrusted to an independent agency.

4. While the aforesaid writ petition was pending before the High Court, the Investigating Officer submitted a charge-sheet against one Phool Singh and Vishwas on 23rd April, 1997, despite the fact that they had not been named by the Appellant in the First Information Report lodged by him.

> "Subsequently, another charge-sheet was filed by the Investigating Officer on 1st August, 1997, in which Gyan Singh, who was one of the petitioners in Writ Petition (Criminal) No.1166 of 1997, was named as an accused."

5. The writ petition came up for hearing before the High Court on 8th September, 1997, and was disposed of by the High Court which came to the conclusion that the investigation was improper, but, since charge-sheet had already been filed, the relief sought for by the Appellant for investigation by a different agency had become infructuous. The writ petition was, accordingly, disposed of by observing that the Appellant could seek other remedial measures available to him, including filing of a protest petition.

> "Thereafter, on 3rd February, 1998, the Appellant filed a protest petition before the Judicial Magistrate, Deoband, District Saharanpur, and the same was treated as a complaint and statements were recorded by the learned Magistrate under Sections 200 and 202 Cr.P.C. On 5th September, 1998, the learned Magistrate issued summons to all the five accused who were named in the complaint and whose names also appeared in the First Information Report lodged by the Appellant."

6. It is against the said order of the learned Magistrate issuing summons that an application was filed by the five accused under Section 482 Cr.P.C. in Criminal Misc. Application No.857 of 1999, challenging the said order which was, however, dismissed by the High Court on 15th May, 2002. The High Court upheld the order passed by the learned Magistrate on 5th September, 1998, but directed that both the cases, one on the basis of the charge-sheet filed by the police and the other on the basis of the complaint filed by the Appellant, would run simultaneously.

7. After their application had been disposed of by the High Court on 16th May, 2002, the accused persons made an application before the learned Sessions Judge on 11th April, 2004, praying that the two cases be tried separately, since, in the meantime, both the cases had been committed to the Court of Sessions for trial. After their cases were committed to the Court of Sessions, only one sessions trial, being S.T.No.772 of 2003, was commenced. The learned Sessions Judge framed charges against the accused named in both the cases, i.e., the charge-sheet submitted by the police and the complaint filed by the Appellant. As a result, all those persons, against whom the police had submitted a charge- sheet, were the witnesses named by the Appellant in his First Information Report. The accused in both the cases denied the charges and claimed to be tried. The charges against both sets of accused were framed in the same Sessions Trial No.772 of 2003 and the entire proceeding was being conducted both in respect of the complaint filed by the Appellant and that filed by the investigating authorities.

8. Difficulties arose when the prosecution started examining its witnesses according to the charge-sheet filed by the police and the Sessions Judge proceeded in the trial of cases adopting the procedure provided under Section 210(2) Cr.P.C., although, it was pointed out to the learned Sessions Judge that since none of the accused in both the cases was common, the procedure prescribed under Section 210(2) Cr.P.C. could not be legally adopted and the procedure prescribed under Section 210(3) would be applicable to the facts of the case. It was also pointed out that earlier also the High Court had directed the cases to be tried simultaneously and the accused in the complaint case had themselves made an application on 11th April, 2004, for separate trials of the two cases.

9. On 31st October, 2007, the prosecution examined its witnesses mentioned in the charge-sheet and an application was made by the Appellant for closing the evidence of the prosecution, which was rejected by the learned Sessions Judge upon observing that it was the prerogative of the prosecution to examine or not to examine any witness and the complainant had no say in the said matter. It is at this stage on 12th December, 2007, that the Appellant moved the Allahabad High Court under Section 482 Cr.P.C. praying for a direction that the trial of the two cases be held separately. The said application came up for hearing before the learned Single Judge of the High Court on 14th December, 2007, and was disposed of by the learned Judge upon holding that the procedure adopted by the Magistrate did not suffer from any infirmity or error in clubbing both the cases in which witnesses have been mentioned.

10. Being aggrieved by the order of the High Court in upholding the order of the Magistrate clubbing the two cases together, the Appellant filed the special leave petition, out of which the present appeal arises.

11. The question, therefore, which arises for consideration in this appeal is whether a common trial can be held in respect of two cases, one on the basis of the charge-sheet filed by the police and the other on the basis of a protest petition which has been treated as a complaint having been committed to the Court of Sessions, although, none of the accused in the said two cases are common. In fact, as indicated hereinabove, the accused in one of the cases are the witnesses in the other and vice versa.

12. At this stage, it may be indicated that at an earlier point of time, the learned Magistrate had taken cognizance on the protest petition filed by the Appellant, treating the same to be a complaint, and summons were issued against the persons arraigned as accused therein. The accused persons challenged the order of the learned Magistrate before the High Court in Criminal Misc. Application No.857 of 1999, which was dismissed on 16th May, 2002, but with the direction that the case arising out of the police report and the other case arising out of the complaint should be tried simultaneously by the Court of Sessions in order to find out as to whose version was true and who were the real culprits.

13. On the basis of the said directions, the learned Magistrate clubbed the two proceedings together, in keeping with the provisions of Section 210 of the Code, as there could be possibility of inconsistent findings. When the same was questioned before the High Court, it held that the Magistrate appeared to have adopted the correct procedure for clubbing both the cases and that the complainant would be at liberty to examine the witnesses shown in the complaint case in order to serve the cause of justice. The trial court was also directed to give permission to the complainant to examine the witnesses cited by him.

14. Mr. R.D. Upadhyay, learned counsel, who appeared for the appellant, urged that Section 210 Cr.P.C. provides for the procedure to be followed when there is a complaint case and a police investigation in respect of the same offence. He submitted that Sub-Section (2) of Section 210 makes it clear that if the Magistrate takes cognizance of an offence on a report

filed by the Investigating Officer under Section 173 Cr.P.C. against any person, who is also an accused in a complaint case, the Magistrate shall inquire into or try the two cases together, as if both the cases have been instituted on a police report. Mr. Upadhyay submitted that Sub-Section (3) of Section 210 was not attracted to the facts of this case since it deals with a procedure where, if the police report did not relate to any accused in the complaint case or the Magistrate did not take cognizance of any offence on the police report, he would proceed with the inquiry or trial, which might have been stayed by him under Sub-Section (1) in accordance with the provisions of the Code.

15. According to Mr. Upadhyay, the clubbing of the two cases together was not in accordance either with the provisions of Sub-Section (2) of Section 210 Cr.P.C. or the directions given by the High Court in the earlier proceedings between the parties. Mr. Upadhyay urged that having regard to the peculiar facts of the case, where the accused in one case is the witness in the other, difficulties were bound to arise at the time of examination of witnesses in a common trial. On the other hand, if the two cases were tried separately, as directed by the High Court and the witnesses were examined separately, it would be possible to arrive at the truth after comparing the two sets of evidences that would be led in the two separate cases. Learned counsel submitted that the order passed by the High Court was contrary to the provisions of Section 210(2) Cr.P.C. and was liable to be set aside.

16. In support of his submissions, Mr. Upadhyay firstly referred to the decision of this Court in *Harjinder Singh vs. State of Punjab & Ors.*[1], where in an almost identical situation, this Court, while interpreting Section 223 Cr.P.C., held that clubbing of the two cases, one on a police challan and the other on a complaint, was not permissible and if the prosecution versions in the two cases were materially different, contradictory and mutually exclusive, as in the instant case, such cases may be ordered to be tried together, but not consolidated. In other words, the evidence is to be recorded separately in both the cases and they should be disposed of simultaneously so that the procedure does not infringe the provisions of Article 20(2) of the Constitution read with Section 300 Cr.P.C.

17. In this regard reference was also made to an earlier decision of this Court in *Kewal Krishan s/o Lachman Das vs. Suraj Bhan & Anr.*[2], on which reliance had been placed in Harjinder Singh's case (supra), where the same views had been expressed and it had been observed that the two cases should be tried separately but by the same court to avoid risk of two courts coming to conflicting findings. Mr. Upadhyay submitted that Section 223 Cr.P.C. did not contemplate clubbing of cases, though, it provides for trial of two cases arising out the same transaction, on a police report and on a complaint, separately, but by the same court.

> "Learned counsel submitted that the High Court was, therefore, wrong in clubbing the two cases together in a single trial and the impugned order was, therefore, liable to be set aside."


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18. On behalf of the State of Uttar Pradesh, Mr. Shail Kumar Dwivedi, learned Additional Advocate General, tried to persuade us to take the view which has been taken by the High Court in clubbing the two cases together. He reiterated the reasoning of the High Court that in view of the fact that the High Court had earlier chosen not to quash the order dated 5th September, 1998, taking cognizance of the offence on the protest petition filed on behalf of the Appellant herein, the case arising out of the cognizance taken on the police report was required to be tried simultaneously with the other case by the Court of Sessions in order to find out as to whose version was true and who were the real culprits.

> "Mr. Dwivedi submitted that by clubbing the two cases together, the Sessions Court had substantially complied with the directions of the High Court by trying the two cases together and that having regard to the fact situation, the Sessions Judge had no option but to club the two cases together for trial. In fact, Mr. Dwivedi contended that unless the two cases were clubbed together, there could be a possibility of inconsistent findings and that the High Court had rightly held that the expression "simultaneously" would mean that both the cases should be taken together."

19. In support of his submissions, Mr. Dwivedi firstly referred to the decision of this Court in *Khetrabasi Samual Etc. vs. State of Orissa*[3], wherein, on the basis of Section 252 of the Code of Criminal Procedure, 1898, this Court upheld the direction given by the Magistrate to club the two cases together on the ground that Section 239 of the Code allowed the trial of a number of persons whether accused of the same offence or of different offences, if these were committed in the course of the same transaction.

20. Reliance was also placed on another decision of this Court in *Dilawar Singh vs. State of Delhi*[4], which, however, dealt with the procedure to be adopted under Section 210 Cr.P.C., 1973, as a whole. Mr. Dwivedi urged that the order passed by the High Court upholding the order of the learned Magistrate, did not call for any interference in the facts of this case.

21. Having heard learned counsel for the respective parties, we are unable to accept the submissions advanced by Mr. Dwivedi on behalf of the State of Uttar Pradesh.

22. Section 210 Cr.P.C. provides the procedure to be followed when there is a complaint case and police investigation in respect of the same offence. Sub-Section (1) of Section 210 provides that when in a case instituted otherwise than on a police report, namely, a complaint case, the Magistrate is informed during the course of inquiry or trial that an investigation by the police is in progress in relation to the offence which is the subject matter of inquiry or trial held by him, the Magistrate is required to stay the proceedings of such inquiry or trial and to call for a report on the matter from the Police Officer conducting the investigation. Sub-Section (2) provides that if a report is made by the Investigating Officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person, who is an accused in a complaint case, the Magistrate shall inquire into or try the two cases together, as if both the cases had been instituted on a police report. Sub-Section (3) provides that if the police report does not relate to any accused in the complaint case, or if

the Magistrate does not take cognizance of any offence on a police report, he shall proceed with the inquiry or trial which was stayed by him, in accordance with the provisions of the Code.

23. Although, it will appear from the above that under Section 210 Cr.P.C. the Magistrate may try the two cases arising out of a police report and a private complaint together, the same, in our view, contemplates a situation where having taken cognizance of an offence in respect of an accused in a complaint case, in a separate police investigation such a person is again made an accused, then the Magistrate may inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. That, however, is not the fact situation in the instant case, since the accused are different in the two separate proceedings and the situation has, in fact, arisen where prejudice in all possibility is likely to be caused in a single trial where a person is both an accused and a witness in view of the two separate proceedings out of which the trial arises. In our view, this is a case where the decision in Harjinder Singh's case (supra) would be more apposite. In the said case, the question of Article 20(2) of the Constitution, as well as Section 300 Cr.P.C., relating to double jeopardy was considered. A similar situation has arisen in this case where the version in the complaint case and the police report are totally different, though, arising out of the same incident. In our view, this is a case where the two trials should be held simultaneously but not as a single trial.

24. The facts of the case also warrant that the two trials should be conducted by the same Presiding Officer in order to avoid conflict of decisions. As was observed in Harjinder Singh's case (supra) clubbing and consolidating the two cases, one on a police challan and the other on a complaint, if the prosecution versions in the two cases are materially different, contradictory and mutually exclusive, should not be consolidated but should be tried together with the evidence in the two cases being recorded separately, so that both the cases could be disposed of simultaneously.

25. Although, the High Court has relied on the provisions of Section 210 of the Code in directing that the two cases be clubbed together, in our view, the fact situation does not really attract the provisions contemplated in the said section. On the other hand, as indicated hereinabove, the trial court, in the unusual facts of the case, is required to hear the two cases together, though separately, and take evidence separately, except in respect of all witnesses who would not be affected either by the provisions of Article 20(2) of the Constitution or Section 300 Cr.P.C.

26. The order of the High Court impugned in the appeal cannot, therefore, be sustained and is, accordingly, set aside.

27. The trial court shall proceed to hear the two cases simultaneously, but separately, in the light of the observations made hereinbefore and dispose of the same simultaneously as well, as expeditiously as possible.

28. The Appeal is disposed of accordingly.

[1]*(1985) 1 SCC 422*
[2]*(1980 (Supp.) SCC 499*
[3]*(1969) 2 SCC 571*
[4]*(2007) 12 SCC 641*