

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1166 of 2019

Rokia @ Rokiya Begam

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Uday Sankar Chatterjee,
Ms. Snigdha Saha,
Ms. Anishwary Datta.

For the State : Mr. Manoranjan Mahato.

For the Opposite Party : None.
Nos. 2 to 14

Hearing concluded on : 12.09.2023

Judgment on : 04.10.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 26.03.2019 passed by the Learned Sessions Judge, Burdwan, in Criminal Misc. Case No. 2294 of 2018 whereby the Learned Judge rejected the prayer of the petitioner under Section 408 of the Code of Criminal Procedure for transferring the G.R. Case No. 1057 of 2016 arising out of

Ketugram P.S. Case No. 366 of 2016 dated 20.12.2016 under Sections 148/448/380/427/436/506/34 of the Indian Penal Code from the Learned Court of Additional Chief Judicial Magistrate, Katwa, and trying the same by the Learned Additional Sessions Judge, Katwa, District-Burdwan along with Sessions Case No. 40 of 2017 corresponding to G.R. Case No. 911 of 2016 arising out of Ketugram P.S. Case No. 326 of 2016 dated 30.10.2016 under Sections 341/324/325/326/307/302/34 of the Indian Penal Code pending before the Learned Additional Sessions Judge, Katwa, District-Burdwan, as both the case are a 'case and counter case'.

- 2.** The petitioner's case is that the petitioner namely Rokia Begum, wife of Aabdula Mafuja Sk. is the informant of G.R. 1057 of 2016 arising out of Ketugram P.S. Case No. 366 of 2016 dated 20.12.2016 under Sections 148/448/380/427/436/506/34 of the Indian Penal Code against the opposite party nos. 2 to 14 herein.
- 3.** On the basis of the said written complaint a formal F.I.R. was registered by the Ketugram Police Station, being Ketugram Police Station Case No. 366 of 2016 (G.R. Case No. 1057 of 2016) dated 20.12.2016 under Sections 148/448/380/427/436/506/34 of the Indian Penal Code against twelve accused persons.
- 4.** Police investigated the matter and submitted Final Report in the form of mistake of facts and discharged the accused persons. Thereafter the petitioner filed a protest/naraji petition against the said report filed by the police before the Learned Trial Court and the Learned Chief Judicial Magistrate, Katwa was pleased to direct the Officer-in-charge, Ketugram

Police Station to further investigate the matter. Thereafter the police authorities investigated the matter and submitted charge-sheet under Section 173 of the Code of Criminal Procedure against the opposite party nos. 2 to 14 including Goyel @ Gopal Sk. who had been alleged to have been murdered subsequently on that day, i.e. October 29, 2016 and in the matter of the alleged murder of Gopal Sk., G.R. Case No. 911 of 2016 arising out of Ketugram Police Station Case No. 326 of 2016 dated 30.10.2016 was started against the relatives of the petitioner.

5. On the basis of the selfsame incident particularly in the alleged murder of Goyel @ Gopal Sk., his wife Chanu Bibi lodged a written complaint before the Inspector-in-Charge, Ketugram Police Station against Sukit Sk. being the petitioner's brother-in-law, Dipu Sk. @ Mofuz Sk. being the petitioner's husband, some relatives of the petitioner's and other villagers and on the basis of such complaint Ketugram Police Station Case No. 326 of 2016 (G.R. Case No. 911 of 2016) dated 30.10.2016 under Sections 341/324/325/326/307/302/34 of the Indian Penal Code and Sections 25 and 27 of the Arms Act and Section 3 and 4 of the Explosive Substances Act was started against the seven accused persons. After investigation, charge sheet was submitted by the police authorities on 26.01.2017 under Sections 341/324/325/326/307/302/34 of the Indian Penal Code read with Section 25(IB)(a) of the Arms Act and Section 9(b)(II) of the Indian Explosive Act against the seven accused persons originally named in the F.I.R.

- 6.** The accused persons in the G.R. Case No. 1057 of 2016 arising out of Ketugram Police Station Case No. 366 of 2016 are the in-laws and relative of the petitioner/de facto complainant of G.R. Case No. 911 of 2016 arising out of Ketugram Police Station Case No. 326 of 2016.
- 7.** G.R. Case No. 911 of 2016, Sessions Case No. 40 of 2017 was committed by Learned Sessions Judge, Burdwan and thereafter the same was transferred to the Learned Additional Sessions Judge, Katwa, for trial and charge was framed by the order no. 25 dated 25.06.2018 against the accused persons and fixing of schedule of evidence is to be on 30th of July, 2018 by the said order.
- 8.** G.R. Case No. 1057 of 2016 initiated on complaint of the petitioner is pending before the Learned Chief Judicial Magistrate, Katwa, Burdwan and with respect to the case only charge sheet has been submitted.
- 9.** The petitioner states that the accused in Sessions Case No. 40 of 2017 arising out of G.R. Case No. 911 of 2016 namely Dipu Sk. is the husband of the present petitioner and Sukit Sk. is the brother-in-law of the present petitioner. Whereas, opposite party no. 3, namely, Toyeb Sk. and opposite party no. 7, namely, Lal Sk. are the accused in G.R. Case No. 1057 of 2016 as well as witness in Sessions Case No. 40 of 2016 arising out of G.R. Case No. 911 of 2016.

10. The petitioner filed an application under Section 408 of the Code of Criminal Procedure before the Learned Sessions Judge at Burdwan and the same was registered as Criminal Misc. Case No. 2294 of 2018.
11. On 26.03.2019, the Learned Sessions Judge, Burdwan, was pleased to reject the application of the petitioner under Section 408 of the Code of Criminal Procedure for transfer of the Ketugram Police Station Case No. 366 of 2016 from the Court of the Learned Additional Chief Judicial Magistrate, Katwa, to the Learned Additional Sessions Judge, Katwa, whereas the Sessions Case No. 40 of 2017 is pending.
12. **Mr. Uday Sankar Chatterjee, learned counsel for the petitioner** has submitted that the finding of the Learned Judge was that there are two cases in which though the accused persons are same but the complainant, time and place of occurrence as well as the nature of the offence of both the cases are different and hence the Learned Judge found no substance in the submission of the learned Advocate for the petitioner.
13. It is further submitted that, it is settled position of law that whenever there is a case and counter case in between the same parties over the selfsame incident then it is desirable that both the cases should be simultaneously tried and disposed of by the same Court and the judgment should be pronounced on the same day.

- 14. Mr. Manoranjan Mahato, learned counsel for the State** has placed the case diaries and submits that it is a fact that the two cases are between the same parties and arises out of the same incident.
- 15. In spite of due service there is no representation on behalf of the opposite party nos. 2 to 14.**
- 16. Mr. Chatterjee** has relied upon the judgment in ***Asar Sheikh vs. The State of West Bengal (2004 C Cr LR (Cal) 800), Para 8 to 12*** which reads as follows:-

“8. The Code of Criminal Procedure is silent relating to trial of case and counter case. In order to remove this grey portion of the Code the Supreme Court in several decisions has observed that that it should be replenished by judicial pronouncement. Long back in 1929 a Division Bench of Madras High Court in Gori Parthi Krishtamma in re, reported in 1929 MWN 881 observed that, “A case and counter case arising out of the same affair should always, if practicable, be tried by the same Court.” The Supreme Court in Kewal Krishan v. Suraj Bhan & Anr., AIR 1980 SC 1780; 1980 CrLJ 1271 (SC) has observed that if case and counter case are tried by the different Courts there is a risk of two Courts coming to conflicting findings. In order to obviate such a risk, it is ordinarily desirable that the two cases should be tried separately but by the same Court.

9. The Supreme Court reported in Nathi Lal v. State of U.P., 1990 SCC (Cr) 638 and in Sudhir Ors. v. State of M.P., reported in (2001) 2 SCC 688 has observed that case and counter case should be disposed of by the same Court and judgements should be pronounced on same day. The Supreme Court further observed that where one of the counter cases involved an offence triable by Sessions Court but the other did not, the Magistrate could nonetheless commit under Section 323 of Cr.P.C. even the latter case to Sessions Court.

10. In Nathi Lal’s case (supra) the Supreme Court observed that “We think that the fair procedure to adopt in a matter like the present where there are

cross-cases, is to direct that the same learned Judge must try both the cross-cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter, he must proceed to hear the cross-case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross-case cannot be looked into. Nor can the Judge be influenced by whatever is argued in the cross-case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross-case. But both the judgments must be pronounced by the same learned Judge one after the other.”

11. *The principle of law as has been enunciated by the Supreme Court in the aforesaid cases makes it clear that in the matter of case and counter cases exclusively triable by Court of Sessions it is desirable that the same Court should try and pronounce judgment in such cases. It is also desirable that if between case and counter case one is exclusively triable by Court of Sessions, the Magistrate exercising power or jurisdiction under Section 323 of Cr.P.C. should commit the other case also to the Court of Sessions for trial by same Judge. In Sudhir’s case (supra) it was made further clear that case and counter case should be disposed of by the same Court and Judgement should be pronounced on same day. The Supreme Court made it clear that if the trial of one case is concluded earlier the learned Judge should not deliver the judgment until the counter case reaches stage of delivery of judgment.*

12. *In view of the discussions made above concerning legal position in such a matter, I am of opinion that, the learned Judge made no mistake by rejecting the prayer of the petitioner by observing that there is no ground to stay progress of the trial. The learned Judge clearly observed that the judgment should be reserved till the counter case reaches concluding stage. I am of opinion that the learned Judge could have instructed the learned S.D.J.M. to commit the counter case i.e. Nakashipara P.S. Case No. 26/03 as expeditiously as possible after exhausting process against absconding accused persons, if any. I am of opinion that the*

pronouncement of the Supreme Court as indicated above does not prescribe that the trial of the Sessions Case which has already been committed to the Court of Sessions should be stayed. The learned Judge may proceed with the trial of Sessions Case No. 13(9) of 2003 arising out of Nakashipara P.S. Case No. 25/03 but the must proceed with such a speed so that before the delivery of judgment the counter case being Nakashipara P.S. Case No. 26/03 after commitment also reaches concluding stage of trial and reaches stage of delivery of judgment and thereafter the learned Judge should deliver the judgment of case and counter case on same day one after another.”

17. From the materials on record it is apparent that:-

- i) Both the case and the counter case arise out of the same incident.
- ii) The parties are also same/related in both the cases.
- iii) Offences alleged arise out of the same incident.
- iv) The date of incident in both the cases is the same and **arises in course of the same transaction.**

18. (i) The Hon'ble Supreme Court *Nathi Lal and Others vs State of U.P. and Anr., Criminal Appeal No. 372 of 1988, on July 19, 1988*, held:-

“2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in

that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.”

(ii) The Supreme Court in **Nasib Singh vs The State of Punjab & Anr., Criminal Appeal Nos. 1051-1054 of 2021 with Criminal Appeal Nos. 1055-1059 of 2021, on 08.10.2021**, held:-

*“41. The decision of this Court in **Nathi Lal** is reported as an order which states that cross cases must be disposed of by two separate judgments without referring to the evidence in the other case. The order is extracted below in its entirety:*

“1. Special leave granted. Heard both the sides.

2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.

3. We allow this appeal partly to the aforesaid extent and direct the learned Judge to proceed with the police case and the cross case instituted by the respondent-complainant by way of a private complaint and hold the trial in both the matters in the light of the directions given hereinabove. Learned Judge will accord priority to these cross cases and dispose of both the cases expeditiously.”

19. Thus, the findings in the order under revision being not in accordance with law, is liable to be set aside, in the interest of justice.
20. **The revisional application being CRR 1166 of 2019 is accordingly allowed.**
21. The impugned order dated 26.03.2019 passed by the Learned Sessions Judge, Burdwan, in Criminal Misc. Case No. 2294 of 2018 whereby the Learned Judge rejected the prayer of the petitioner under Section 408 of the Code of Criminal Procedure, **is set aside.**
22. Accordingly G.R. Case No. 1057 of 2016 arising out of Ketugram P.S. Case No. 366 of 2016 dated 20.12.2016 under Sections 148/448/380/427/436/506/34 of the Indian Penal Code pending before the Learned Court of Additional Chief Judicial Magistrate, Katwa is transferred to the file of the learned Sessions Judge, Katwa, Burdwan, to be tried along with Sessions Case No. 40 of 2017 corresponding to G.R. Case No. 911 of 2016 arising out of Keteugram P.S. Case No. 326 of 2016 dated 30.10.2016 under Sections 341/324/325/326/307/302/34 of the Indian Penal Code pending before the Learned Additional Sessions Judge, Katwa, District-Burdwan, as per the guidelines in ***Nasib Singh vs The State of Punjab & Anr. (Supra).***
23. All connected applications, if any, stands disposed of.
24. Interim order, if any, stands vacated.
25. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

- 26.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)