
(1969) 02 DEL CK 0014

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 47 of 1968

Jai Narain and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 25-02-1969

Acts Referred:

Citation : (1969) 5 DLT 648

Hon'ble Judges : S.K. Kapur, J;P.N. Khanna, J

Bench : Division Bench

Advocate : S.A.K. Dhar and B.B. Lal, for the Appellant;

Judgement

S.K. Kapur, J.

(1) This order will dispose of Criminal Miscellaneous (Main) No. 47 of 1968, and Criminal Miscellaneous (Main) No 91 of 1968, and Criminal Revision Nos. 422, 423 and 434 of 1963.

(2) I will first narrate the facts of Criminal Miscellaneous (Main) No. 47 of 1968. There are 652 petitioners in this petition u/s 526, 239, 435, 139 and 56:-A, Criminal Procedure Code, 662 of them were being tried in pursuance of three complaints, one u/s 188, Indian Penal Code ; another u/s 7 Criminal Law Amendment Act, section 4 of Police Forces (Restriction of Rights) Act and sections 147, 149 and 353. Indian Penal Code, and the third u/s 7 of the Essential Services (Maintenance) Ordinance and section 29 of the Police Act. There are nine other petitioners against whom the first complaint is for violation of section 188, Indian Penal Code, and section 3 of the Police Forces (Incitement to Disaffection) Act, 1922. Against the remaining eleven petitioners, the first complaint is u/s 188 Indian, Penal Code. The second complaint against six petitioners is u/s 7 of the Criminal Law Amendment Act, section 4 of the Police Forces (Restriction of Rights) Act, 1966, and sections 147, 149 and 353 of the Indian Penal Code, and against 14 petitioners u/s 7 of the Criminal Law Amendment Act and sections 147, 149 and 353 of the Indian Penal Code. The

third complaint out of the petitioners mentioned above other than 662 petitioners is only against Chhida Singh u/s 7 of the Essential Service (Maintenance) Ordinance and section 29 of the Police Act. Complaints one and two have already been merged but with respect to the merged complaints I and 2 and the third complaint each petitioner is being tried separately. Under the orders of the Supreme Court the cases are being tried by four Magistrates and the learned counsel for the parties showed us a copy of the order of their Lordships of the Supreme Court and argued that the earlier order of the Supreme Court transferring these cases of the four Magistrates did not fitter, in any manner, the power of this Court to order joint trial of all the accused persons, which is one of the principal prayers of the petitioners. The cases against these 602 petitioners arise out first information report No. 88 of 1967 lodged in police Station Chankya Puri, and Mr. Bipin Behari Lal, the learned counsel for the respondents, pointed out to us that complaints had to be filed because

(1) in view of section 195, Criminal Procedure Code, cognizance of offence u/s 185, Indian Penal Code, could be taken only upon a complaint ; and (2) similarly complaints were necessary for cognizance of the offences being taken by the Magistrate under the Essential Services Maintenance Ordinance as well as under the Criminal Law Amendment Act.

(3) The petitioners moved the Court of Session for transfer of cases to one Magistrate. The learned Sessions Judge, while recognising the desirability of trial of all the accused persons by one Magistrate, felt that it may not be practicable to have the trial of all the petitioners, numbering about 600 to 700, in one Court. The learned Sessions judge also observed that regarding the "numerous cases pending against the same accused, it is left to the discretion of the Magistrate whether he would order separate or joint trial in accordance with law. In case the Magistrate passes a wrong order, the party aggrieved can come up in revision. The P. P. agrees in principle that all cases against one accused should be tried by one Magistrate and that the same accused should not be dragged to different courts. He tells me that steps are already being taken to avoid any such harassment to the accused". The learned Sessions Judge by his order dated 19th March, 1968, disposed of the application with the above observations.

(4) The prayer of the petitioners in this petition is for transfer of all these cases to one Court "for consolidation and joint trial as one case in the said Court ...". Mr. Bipin Behari Lal, the learned counsel for the respondents, conceded that there was no legal bar to the ordering of joint trial of all the 682 petitioners with respect to complaints I and 2. He however, underlined and, while opposing the petition, depended mainly on the practical difficulties involved in the joint trial. I will deal with those practical difficulties a little later. With respect to the third complaint, Mr. Bipin Behari Lal argued that combined trial of the third complaint with the first and the second complaints, or the joint trial of all the persons being prosecuted under the third complaint, was not permissible in law and this legal bar operated besides the practical difficulties. I will first deal with the legal

aspect. Before I do so I wish to make it clear that even if I feel a reasonable doubt about the validity of Mr. Sital K. Dhar's contention that joint trial is permissible, I will prefer, particularly having regard to the practical difficulties, not to combine the trial of the accused persons under the third complaint with the trial under the first and the second complaints or of all the persons under trial in the third complaint. That is not because the petitioners will be able to challenge later, having once asked for it, that the joint trial was in violation of any provision of the Criminal Procedure Code but because in that process I may be ordering something which ultimately turns out to be against law. As to the legal position, clauses (a) and (d) of section 239, Criminal Procedure Code, permit joint trial of persons accused of the same offence committed in the course of the same transaction or of persons accused of different offences committed in the course of the same transaction. Mr. Dhar's emphasis was that all these offences were committed in the course of the same transaction. Section 239 is an enabling provision and. Therefore, necessarily leaves it to the Court to adopt such course as may be most conducive to the ends of justice, the object of the section being to avoid multiplicity of trials. The manner in which this discretion is to be exercised must depend on the facts and circumstances of each case. What then is the meaning of the term "in the course of the same transaction". The words "same transaction" cannot mean that the acts are so related to one another in point of purpose, or as cause and effect, or as principal and ancillary so that they constitute one transaction or a continuous action. Continuity of action contemplated is not in the sense that one act follows the other without any connection but in the sense of intimate connection between the different acts. There must be a community of purpose and a concert. The accused persons even committing offences of the same kind but separately may not be regarded as having committed those in the course of the same transaction. Whether or not a joint trial can be ordered under these clauses must, Therefore, turn on the facts of each case.

(5) Mr. Dhar referred us to the complaint u/s 7 of the Essential Services (Maintenance) Ordinance, and particularly paragraph 7 thereof, which says "that on 15th April, 1967 the said accused without leave or permission from the competent authority deliberately absented himself from duty without reasonable cause in order to join the illegal demonstration and Dharna organized by the Sangh outside the residence of Home Minister". He argued that since all the accused persons are alleged to have absented themselves from duty to be able to join the demonstration, the offence u/s 7 and the offences alleged in complaints 1 and 2 were committed by all of them in the course of the same transaction. Mr. Bipin Behari Lal, on the other hand, contended that u/s 5 of the said Ordinance abandoning the employment or absence from work per se constitutes an offence which would be complete as soon as there is abandonment or absence. The purpose for which an employee absents himself or what he does after absenting is indifferent to the said Ordinance and, Therefore, the offences cannot be said to have been committed in the course of the same transaction. He

explained that the statement in the complaint that the accused persons absented to joint the illegal demonstration was added only with a view to avoiding any of the accused persons turning round and setting up an excuse for absence. According to Mr. Bipin Behari Lal. the further statement was not an ingredient of the offence. Mr. Dhar relied on various decisions, such as, B.K.Liganna and others v. State of Mysore Mukanda and others v. State, Kameshwar and another v. Stated, The State of Andhra Pradesh v. Kandimalla Subbaiah and another, Purushottamdas Dalmia v. State of West Bengal, In re Lachman Nanda and N. M. Narayana Setty v. Court of Munsif, Kolar. I need not elaborate on these decisions because there was no controversy at the bar about the legal proposition. Mr. Bipin Behari Lal accepted the proposition propounded by Mr. Dhar about what constitutes the same transaction and that has been discussed by inc already. The difficulty in such matters arises not about the principle of law what about its applicability to the facts of each case. The allegations regarding offence u/s 188 etc., Indian Penal Code, against the petitioners arc that :-

(A)On 15th of April. 1987 they went in procession in violation of order u/s 144. Criminal Procedure Code, and held a demonstration outside the Home Minister's House thereby committing offence under sections 188 147, 149 etc., Indian Penal Code; (b) they were guilty of causing or attempting to cause or doing any act knowing that such act is likely to cause disaffection towards, the Government established by law in India by the members of police Force or inducing or attempting to adduce or doing acts knowing that such acts were likely to induce any member of Police Force to withhold his services or to commit breach of discipline in violation of section 3 of the Police (Incitement to Disaffection) Act, 1922: and (c) they also committed offences u/s 4 of the Police Force (Restriction of Rights) Act, 1966, and section 7 of the Criminal Law Amendment Act.

All these offences are alleged to have been committed in the course of taking out the procession and holding demonstration outside the Home Minister's house. Mr. Dhar's argument was that the allegations by the prosecution, taken at their face value, are that all the petitioners absented themselves from duty and committed various other offences with a view to ultimately assembling in violation of lawful order at the house of the Home Minister on 15th April 1967, and holding a demonstration there so that all the offences were in the course of the same transaction as they were so related to one another in point of purpose or as a cause and effect or us principal and subsidiary as to constitute one continuous act. Similarly, said Mr. Dhar, the offences alleged against the petitioners of the violation of section 7 of the Essential Services (Maintenance) Ordinance and of the Police Act must be treated as having been committed in the course of the same transaction as the object of each one, of them, according to the prosecution, was to absent from duty and hold a demonstration outside the Home Minister's house. The position is not free from difficulty and it may be said with force that having regard tp the allegation of the prosecution in the third complaint that the petitioners absented themselves from duty with a view to pining the illegal demonstration outside the residence of the Home Minister, these

offences and the offences alleged in the first and the second complaints were committed in the course of the same transaction. It is, in any case, not possible to accede to Mr. Dhar's other contention that all the petitioners should be tried jointly under the third complaint. There is no community of purpose clearly ascertainable from the allegations in the complaint. Each one of the petitioners is alleged to have absented from duty with a view to joining the demonstration but the act of each one is an individual act and at least from the allegations no clear community of purpose between all the petitioners is clearly discernible. In saying so have in mind the possibility that some of the petitioners, save five or six of them, may have got together and decided between themselves A demonstration is being held; let us go and join it". In such a situation there would be nothing to show that the offences were committed by all in the course of the same transaction. I, Therefore, find it difficult to hold that all the petitioners could u/s 239(a) of the Criminal Procedure Code be tried jointly. What I mean is that there is no allegation by the prosecution that each one of the persons prosecuted under the third complaint had a common purpose between them to absent and hold a demonstration so as to bring the case within section 239(a), Criminal Procedure Code. If that be a substantial difficulty in the way of the petitioners then I see no possibility of directing the joint trial of the petitioners under complaint 3 with those under complaints 1 and 2 In any case, having regard to the large number of the persons accused and the inherent practical difficulties. as I shall discuss hereafter. I do not consider it advisable that the petitioners should be tried jointly under complaint 3 with the accused persons under complaints 1 and 2.

(6) As to the practical aspects involved in the joint trial, Mr. Dhar said that -

(A)there is a possibility of conflicting decisions; (b) there will be multiplicity of proceedings and each one of the witnesses -the witnesses being common-will have to be examined several times; and (c) as soon as witness in one case are examined the defense of the petitioners will stand disclosed thereby seriously prejudicing their cases. Mr. Bipin Behari Lal, on the other hand, said that- (a) if a joint trial is ordered, even recording of the presence of all the witnesses will take a day so that proceedings may become impossible being conducted; (b) being complaint cases, statement of each accused will have to be recorded twice. About three hours per accused person will be consumed in recording the statements, which in all will mean about 2000 hours; and (c) if one of the accused person absents himself, the whole proceedings may have to be adjourned.

As to the last contention of Mr. Bipin Behari Lal, Mr. Dhar said that he was willing to give an undertaking that if on any day any accused so is unable to come he will seek exemption from personal appearance so that the trial is not held up and asking for personal exemption was mere or less a right of an accused person being a waiver of benefit conferred on an accused. Apart from the practical difficulties, I am not completely free from doubt as to whether or not the

offences alleged to have been committed under third complaint can be tried jointly with the offences under the first two complaints on the ground that they have been committed in the course of the same transaction. Whereas I do feel that there is a possibility of conflict of decisions, the practicality of the situation really revolts against all the three complaints being lumped together for a joint trial. The most obvious difficulty would be the one presented by Mr. Bipin Behari Lal, namely the time factor in recording the statements of the accused persons and the possibility of one or the other being absent at the time, their statements have to be recorded. I would, Therefore, decline to transfer these cases and hold that four Magistrates trying them should continue to try them. All the accused persons in complaints 1 and 2 should not, however, be tried separately and the learned trial Magistrate shall form batches of about 25 to 50 persons at his discretion and try from jointly so far as the first two complaints are concerned. That shall also reduce litigant's cost of the petitioners which factor has considerably oppressed me. With respect to the third complaint, I am not inclined to permit the joinder and in my opinion it is advisable to hold separate trial of each accused person as is being done. It may, however, be made clear that in case any of the accused persons being tried jointly with others is absent it will be open to the learned Magistrate to either grant exemption to such a person from personal appearance and proceed with the trial or to separate the case of such person so that trial is not held up. *Cri Misc. (Main) No. 47 of 1968* is thus partly allowed as discussed hereinbefore.

(7) That takes me to *Criminal Miscellaneous (Main) No. 91 of 1968* which arises out of the trial under first information report No. 87 of 1967. Seven persons are being tried jointly u/s 188, Indian Penal Code, on the allegation that on 14th April, 1967, at about 5.00 P. M. a procession comprising of about 2000 to 2500 police personnel arrived at the residence of the Home Minister from Tin Murti Marg side. The procession was led by Om Parkash Mehtani and a few others, all members of Delhi Police Non gazetted Karamchari Sangh and the processionists were raising certain slogans. The procession was stopped near Tin Murti Land and the persons forming the procession were advised that they should disperse as they were violating an order made u/s 144 Criminal Procedure Code but they continued using slogans and proceeded towards the Home Minister's residence. The Sub Divisional Magistrate, New Delhi, warned them to disperse but the processionists did not stop and the Magistrate directed use of tear gas. In the light of my discussion with respect to the scope of section 239, Criminal Procedure Code, I am of the opinion that this offence cannot be said to have been committed in the course of the same transaction as offences mentioned in *Criminal Miscellaneous (Main) No 47 of 1968* and Therefore, joint trial cannot be ordered with the complaints in *Criminal Miscellaneous (Main) No 47 of 1968*. The order dated 13th August, 1968, passed by the learned Additional Sessions Judge, is, Therefore, correct. Even otherwise it is not proper to add to the number of accused persons because of the practical difficulties discussed by me. I would, Therefore, dismiss this petition.

(8) That takes me to criminal Revision No. 422 of 1968 which arises out of first information report No. 284 of 1967. 36 persons are being tried separately and are alleged to have committed offences u/s 188, Indian Penal Code, section 3 of the Police (Incitement to Disaffection) Act, 1922, and section 4 of the Police Force (Restriction of Right) Act, 1966. Mr. Bipin Behari Lal, the learned counsel for the state Therefore, conceded that these 33 persons could be tried together This is not an unwieldy number and, in my opinion, it would be advisable to try them jointly to avoid the necessity of the witnesses, who are common, being examined several times and resulting in conflict of decisions. The learned Additional Sessions Judge declined to order joint trial in Criminal Revision No. 155 of 1968 by his order dated 7th August. 1968, on the ground that section 239, Criminal Procedure Code, was merely an enabling section. For the reasons discussed hereinafter I will allow this revision petition and direct that 36 persons be tried jointly. In case any accused person is absent it will be open to the trial Magistrate to either exempt such person from personal appearance in accordance with law or separate his trial.

(9) Criminal Revision No. 423 of 1968 arises out of a trial under first information report No. 94 of 1967. 27 persons are being tried u/s 188, Indian Penal Code, section 3 of the Police (Incitement to Disaffection)Act. 1922, and section 4 of the Police Force (Restriction of Rights) Act, 1966. For the reasons given while discussing Criminal Revision No. 422, of 1968, I allow this petition and direct that 27 persons be tried Jointly. This will not in any manner fetter the powers of the learned trial Magistrate to exempt any accused person from personal appearance or separate his trial if he is absent as observed when discussing Criminal Revision No. 422 of 1968.

(10) That leaves Criminal Revision No. 424 of 1968. 111 persons are being tried in pursuance of first information report No. 98 of 1967 u/s 7 of the Essential Service (Maintenance) Ordinance, 1941. For the reasons recorded while discussing Criminal Miscellaneous (Main) No. 47 of 1968, I am not inclined to order joint trial of 111 persons and, in my opinion, they should be tried separately as is being done. This Criminal revision, Therefore, fails and is dismissed. P. N. Khanna.J-I agree.