
(2000) 04 PAT CK 0118
In the Patna High Court
Case No : Cr. Misc. No. 25150 of 1999

Lalu Prasad @ Lalu Prasad Yadav

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 21-04-2000

Acts Referred:

Citation : (2000) 04 PAT CK 0118

Judgement

Nagendra Rai, J.—These four cases have been filed against the order dated 15.9.1999 passed by the Special Judge, C.B.I. in Special Case No. 65 of 1996, whereby he has rejected the prayer of the accused Petitioners to amalgamate the trial of Special Case No. 65 of 1996 and Special Case No. 22 of 1996 as well as to frame charges jointly and proceed further in the matter.

2. A public cry was raised with regard to misappropriation of a huge sum of money running into one thousand crores and above by the officials of the Animal Husbandry Department with the connivance of other officers of the State Government, suppliers and politicians. The same resulted into filing of a number of Public Interest Litigation cases by the public spirited persons. The said P.I.L. cases bearing C.W.J.C. Nos. 161/96, 164/96, 1644/96, 1066/96, 459/96(R), 602/96(R), 675/96(R) and 687/96(R) were filed before the Patna Bench as well as before the Ranchi Bench of this Court and the same were directed to be heard together. During the pendency of the said writ applications in this Court, the cases were registered with regard to fraudulent drawals in the Animal Husbandry Department at the different Police Stations in the State of Bihar. The said writ applications were finally disposed of on 11.1.1996 Sushil Kumar Modi and Others Vs. State of Bihar and Others, and this Court directed the Central Bureau of Investigation (for short "the C.B.I.") to enquire and scrutinise all cases of excess withdrawals and expenditure in the Animal Husbandry Department in the State of Bihar during the period 1977-78 to 1995-96 and lodge cases, where drawals were found to be fabricated in character and take investigation in those cases to the logical end as early as possible, preferably within four months. It was also directed that the investigation by the State Police in the cases already instituted

shall remain suspended in the meantime. The said matter was challenged before the Apex Court and the Apex Court disposed of the matter on 19.3.1996 [1996(1) PLJR (SC) 218] and upheld the order of this Court with the modification in regard to the suspension of investigation in the cases already instituted by the State Police to the extent that the entire investigation to be conducted by the State Police shall stand entrusted to the C.B.I. and the C.B.I. was directed to take over the investigation already made by the State Police inclusive of the F.I.Rs., arrest and attachments and deal appropriately therewith.

3. In pursuance of the aforesaid directions, the C.B.I. registered 41 cases and in course of investigation, it has also registered 15 more cases. Thus, a batch of 56 cases have been registered by the C.B.I. with regard to the fraudulent withdrawals made in the Animal Husbandry Department. Special Case No. 22 of 1996, corresponding to R.C. Case No. 20-A of 1996 was registered by the C.B.I. under Sections 409, 420, 467, 468, 471, 477, 477-A, 201, 511 and 120-B of the Indian Penal Code and Sections 13(2), read with 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988 and the same arises out of Chaibasa Sadar P.S. Case No. 12/96 dated 20.2.1996 lodged by the then Deputy Commissioner, Chaibasa. Special Case No. 65 of 1996, corresponding to R.C. Case No. 64-A of 1996, was registered under Sections 120-B, 418, 420, 467, 477-A, 409, 201, 501 of the Indian Penal Code and 13(2), read with 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988 during the investigation of the cases lodged earlier.

4. In R.C. Case No. 20-A/96 (Special Case No. 22 of 1996), mainly eight accused persons were named in the F.I.R., but charge-sheet has been submitted against 56 persons. In R.C. Case No. 64-A/96 (Special Case No. 65/96), in the F.I.R., 29 persons were named and charge-sheet has been submitted against 34 persons, out of them only 25 accused persons are accused in both the cases, meaning thereby that about 31 persons facing prosecution in Special Case No. 22 of 1996 are not accused in Special Case No. 65 of 1996.

5. The allegation in Special Case No. 22 of 1996, in brief, is that the accused persons entered into a criminal conspiracy to do or cause to be done an illegal act or acts or to do an illegal act by illegal means at Chaibasa, Patna and at other places and in pursuance of which an amount of Rs. 37,70,39,743/- was illegally withdrawn by the District Animal Husbandry Officer, Chaibasa, during 1994-95 under major head 2403 from Chaibasa Treasury for purchase of feed, fodder, medicines and instruments etc. for Animal Husbandry Department against the contingency bill, which were neither required nor supplied in quantities, but falsely purported to have been supplied and received. The payment of a sum of Rs. 37,70,39,743/- was made to the suppliers for either no supply or grossly short supply of materials. As a consequence, Government funds were misappropriated by the accused persons known and unknown. An amount of Rs. 74.40 crores was provided to the Animal Husbandry Department by the State of Bihar for the year 1994-95 as budgetary grant, whereas, a sum of Rs. 245.01

crores was spent during the said year and as such an additional amount of Rs. 170.61 crores were dishonestly withdrawn against the legislative sanction over and above the sanctioned budget allocation. The District Animal Husbandry Officer, West Singhbhum, was allotted an amount of Rs. 4,09,180/- only for purchase of feed, fodder, medicines and instruments but in furtherance of criminal conspiracy, 78 fake allotment orders for Rs. 39 crores were issued by the accused persons, on the basis of which payments were made to the suppliers against their fake supply bills for fodder etc. It further reveals that the conspirators distributed the money amongst themselves at the ratio of 20% of the billed amount for the suppliers and the remaining 80% for the Animal Husbandry Department officers, Government officers, Minister, Chief Minister and other politicians for their respective roles in the conspiracy. It is alleged that all these Petitioners and others in pursuance of the conspiracy misappropriated the huge sum of public money by either releasing the fund in excess of the budgetary allocation or by forging and fabricating allotment letters and made the payment on the lesser supply of materials or no supply of materials.

6. The allegation in Special Case No. 65 of 1996 relates to the accused persons, including the Petitioners for the period 1990 to 1994 with regard to the fraudulent withdrawals of money from the Deoghar Treasury on the basis of the forged allotment letters and money amounting to Rs. 95,08,140/- was fraudulently withdrawn in cash by the District Animal Husbandry Officer, Deoghar and his subordinate officer in connivance with the Treasury Officer, Deoghar on the basis of the forged and fabricated allotment letters, which were issued by Dr. Shesh Muni Ram, the then Regional Director, Animal Husbandry Department, Dumka when the allotment of lesser amount was made but more amount was withdrawn on the basis of the forged allotment letters and amounts were also paid to the suppliers on the basis of the forged and fabricated documents. The Petitioners and others had played an important role and specific instance has been given with regard to the active parts played by these Petitioners and others. Thus, according to the allegation, Special Case No. 22 of 1996 relates to the misappropriation of the public fund from the District of Chaibasa (West Singhbhum) and Special Case No. 65 of 1996 relates to the fraudulent withdrawal of money by the District Animal Husbandry Officer, Deoghar, with the connivance of the suppliers and politicians.

7. In both the cases, the Police, after investigation, submitted charge-sheet and in the charge-sheet in both the cases, it was stated that further investigation was continuing under the provision of Section 173(8) of the Code of Criminal Procedure (for short "the Code"), for which separate report would be submitted in due course. The Special Judge, C.B.I., Patna, took cognizance in the matter. The documents as provided u/s 207 of the Code were supplied to the accused persons and, therefore, the Special Judge fixed a date for framing of the charges. At that point of time, petitions were filed by the Petitioners and others praying therein that both the occurrences were part of the same transaction in the sense that they were alleged to have been committed in pursuance of a single

conspiracy and as such both the cases should be tried jointly. Their assertion was that according to the allegations, the conspiracy was hatched between the officers of the Animals Husbandry Department, suppliers and politicians who fraudulently withdrew the money from the Government Treasuries on the basis of fake and fabricated allotment orders, the officers posted in the Secretariat associated in the aforesaid conspiracy and similarly the politicians including the accused Petitioners also gave patronage to the scam, as a result of which the fraudulent act of misappropriation continued for several years resulting in loss of several crores of rupees to the Government of Bihar and R.C. Case No. 20-A/96 is a parent case and the evidence collected in this case as well as in Special Case No. 65 of 1996, in which the Petitioners and other accused persons are also facing prosecution, is common and also that the conspiracy being one hatched at the headquarter and was executed in several districts and at several places and all the offences, alleged to have been committed in pursuance of a common conspiracy hatched up in the Patna Secretariat, form part of the same transaction and as such both the cases should be tried together by virtue of the reason that the trial of the accused Petitioners in several cases on the same set of omission and commission as alleged against them and other accused, will result in their unnecessary harassment as well as wastage of public time and heavy expenses. This apart, the defence of the accused Petitioners would be prejudiced. Several prosecution with regard to the acts or offences forming part of the same transaction will be violative of Article 20 of the Constitution of India.

8. The C.B.I. opposite party filed a rejoinder in the court below wherein it objected to the prayer of the accused persons being allowed on the ground that fraudulent withdrawals have been made in pursuance of a conspiracy on the basis of separate false and forged allotment orders from different treasuries of Bihar during different periods and at different places and by different accused persons. It was asserted on its behalf that the accused persons in both the cases are not common. The informants in both the cases are different and the amount involved is also different. The fake allotment letters and the supply bills are also different and even the High Court as well as the Supreme Court have treated all the cases as independent of each other and separate and directed separate investigation of the cases. The huge withdrawals have been made in pursuance of the conspiracy on the basis of separate and forged allotment letters from the different Treasuries of Bihar during different periods and at different places and by different accused persons and the amount involved in Special Case No. 65 of 1996 is not the subject matter of investigation in any case. If all the cases will be tried together, it will cause prejudice to other accused persons, who are not common in both the cases. In Special case No. 65 of 1996, Dinesh Chandak is a prosecution witness, whereas, he is approver in Special Case No. 22 of 1996 and if both the cases are tried jointly, it will cause prejudice to the prosecution as well as him. Both the cases are not part of one or the same conspiracy, rather they are separate cases and joint trial is not permissible. In other words, their contention was that the offences committed in both the cases are not outcome of

the single conspiracy, on the other hand, the offences committed in both the cases are outcome of different conspiracies, which does not form part of the same transaction and as such they cannot be tried together as prayed for by the accused Petitioner u/s 223(d) of the Code.

9. The Special Judge, after hearing learned Counsel for the Petitioners and the C.B.I. rejected the said prayer by the impugned order as according to him both the offences were not the outcome of a single conspiracy or form part of the same transaction.

10. In this case, the learned Counsel appearing for all the Petitioners addressed the court separately. It was submitted that in this case, there was a single conspiracy of wide ramification spreading from 1978 to 1996 and in pursuance of the said conspiracy several acts constituting different offences were committed in the districts of Chaibasa, Deoghar and other places and the main object of the single conspiracy was to misappropriate public fund and to achieve that the accused persons including the Petitioners are alleged to have done several acts at different places constituting different offences in a different manner to achieve the aforesaid object. The withdrawal of Rs. 37,70,39,743/- from the Chaibasa Treasury by the officials of the Animal Husbandry Department to help suppliers with the connivance of the Petitioners during the period 1994-95 and the withdrawal of Rs. 95,08,140/- from the Deoghar Treasury during the period 1990-94 by the officials of the Animal Husbandry Department with the connivance of the other accused persons including the Petitioners are the acts committed in pursuance of the aforesaid conspiracy and as such as the acts constituting the offences in these cases are part of the same transaction and as such a joint trial is to be held in terms of the provisions contained in Section 223(d) of the Code. Learned Counsel for the Petitioners also cited decisions in support of the said submissions which will be referred to at the appropriate stage. They also contended that even if it is found that Section 223(d) is not attracted in this case, the trial court should have considered in terms of the proviso to Section 223 as to whether a joint trial should be held with regard to all the offences keeping in view the expediency.

11. Learned Counsel for the C.B.I., on the other hand, submitted that the two cases are not the part of the same transaction and if they will be tried jointly, it will cause prejudice to several other accused persons, who are not common in both the cases. In support of the fact that those are different cases altogether, it has been stated that all the documents and witnesses as well as the accused persons are not the same in both the cases. In R.C. Case No. 64-A/96, the matter relates to fraudulent withdrawal of Government money from the Deoghar Treasury on the basis of fake allotment orders issued by different accused persons and the Petitioners are alleged to have connived with them, whereas, in R.C. Case No. 20 A/96, the Petitioners along with others are alleged to be involved in fraudulent withdrawals of 37 crores of rupees from Chaibasa Treasury. Learned Counsel for the C.B.I. also relied upon certain case laws which would be

referred to at the appropriate stage.

12. No person is to be condemned unheard. This is one of the requirements of the principle of the natural justice. To meet the aforesaid requirement, the charges are framed against the accused to make him aware of the accusation so that he may defend himself before the trial comes to the conclusion. General rule is that there should be separate trial against each of the accused with regard to each of the offences. The Code of 1861 did not contain any provision for joint trial. Later on, the provision of joinder of charges was incorporated in the Code of 1872. Sections 452 to 458 dealt with the joinder of the charges. In the Code of 1898, Sections 233 to 239 contained the provision with regard to joinder of charges and in the present Code of 1973, it is contained in Sections 218 to 223. The provisions regarding joinder of charges or joint trial contained in the Code are exception to the general rule and they can be resorted to only if the case is covered by any of the exceptions. Though general rule is that there should be separate trial but there are many cases where joinder of charges and joinder of accused cases become necessary for the ends of justice. The provision for joinder of charges and joinder of accused was made with the object to avoid the necessity of the same witnesses being examined and giving the same evidence for two or three times in different trials and to join the same trial over which the evidence may overlap. This was also added with a view to avoid multiplicity of trial and prevent wastage of time of the court as well as harassment to the parties. Though as stated above Sections 218 to 223 deal with the matter with regard to joinder of parties under Chapter XVII of the Code, the relevant provision for the purpose of the present case is Section 223 of the Code, which provides as to what persons may be charged jointly. The said section reads as follows:

223. What persons may be charged jointly. -The following persons may be charged and tried together, namely,

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of Section 219 committed by them jointly within the period of twelve months;

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

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of property possession of which is alleged to have been transferred by any such offence committed by the first-

named persons, or of abetment of or attempting to commit any such last- named offence;

(f) persons accused of offences under Sections 411 and 414 of the Indian Penal Code (45 of 1860), or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860), relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offence and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

13. In these cases, I am concerned only with Clause (d) and proviso to the said Section 223 of the Code. Clause (d) provides that the persons accused of different-offences committed in the course of the same transaction may be charged and tried together and the proviso thereof provides that if persons are charged with separate offences and do not fall within any of the categories specified in this section and if the accused persons desire, the court on being satisfied may try such persons together provided the accused are not prejudicially affected and the same are expedient and necessary for the ends of justice.

14. At this stage, I would like to mention that the provision of joint trial is an enabling one as the said section itself provides that the court may charge and try the accused jointly. It is not incumbent or obligatory for the court to try the cases jointly even if the offences committed by one or the other accused persons are part of the same transaction. No joinder of charges should be permitted, which would result in bewildering or causing any prejudice to the prosecution or any of the accused facing the joint charges. Whether there should be joint or separate trial depends upon the discretion of the Presiding Judge. However, that discretion is not to be exercised arbitrarily but judiciously. The ends of justice is the paramount consideration while deciding the said question. If the trial court has exercised its jurisdiction properly, the superior court will not interfere unless the exercise of discretion was improper. In this connection, reference may be made to the case of *Daniel Youth v. the King* reported in AIR 1945 PC 140, wherein it has been held that the question of joint trial or separate trial is always in the discretion of the Presiding Judge.

15. The Apex Court in the case of *Purushottamdas Dalmia Vs. The State of West Bengal*, also held that Sections 235 to 239 (now Sections 219 to 213) are enabling sections, the Legislature, rightly, did not use the expression which would have made it incumbent on the court to try a person of the various

offences at one trial or to try various persons for the different offences committed in the course of same transaction together.

16. The next question for consideration is as to what would be the stage to decide as to whether there should be a joint or separate trial if a prayer for joint trial is made on the ground that different offences, alleged to have been committed by the accused persons are part of the same transaction. The law is well-settled on this point. This question is to be decided on the basis of accusation and not on the eventual result. In this connection, reference may be to the case of Babulal v. Emperor reported in 1938 PC 130, wherein it has been held that relevant point of time in the proceedings at which the condition as to sameness of transaction must be fulfilled is the time of accusation and not that of the eventual result.

17. The view taken by the Privy Council was approved by the Supreme Court in the case of Kadiri Kunhahammad Vs. The State of Madras, wherein the Apex Court held that in deciding a question u/s 239(d), the court has to consider the nature of the accusation made by the prosecution. If the accusation made by the prosecution justifies the joint trial of more persons, then on the one ground or the other, the validity of such trial cannot be effectively challenged if the said accusation is not established according to law. However, this does not mean that this question can be decided only at the time of framing of charges and not at a later stage of trial. In the context of fact this question may crop up during trial. The court cannot refuse to decide only on the ground that the stage of framing of charges is over. It depends upon the facts and circumstances of the case. However, this question cannot be decided at a far end of the trial as it would hamper the progress of the trial.

18. The word "same transaction" has not been defined under the Code. It is also not capable of exact definition. The legislature advisedly used this word without giving it any particular meaning. The question whether the series of acts committed by the accused persons constituting offences form part of the same transaction or not depends upon the facts and circumstances of each case. No definite set of facts can be said to constitute or form one transaction. However, if the series of acts alleged to have been committed by the accused persons are so connected together by proximity of time, community of criminal intent, continuity of action, and purpose and by relation of cause and effect so as to constitute one transaction in the opinion of the court, the accused, may be tried jointly u/s 223(d) of the Act.

19. The meaning of word "same transaction" has been considered in catena of cases by different High Courts as well as by the Supreme Court and it will not be proper to overburden this judgment by referring to all the cases. However, I will refer the cases decided by the Apex Court with regard to the same.

20. In the case of State of Andhra Pradesh v. Ganeswara Rao reported in AIR 1963 SC 1850, the Apex Court considered the question as to the meaning of

"same transaction" and after observing that it is difficult to define precisely what the expression means, it has been held in paragraph 27 as follows:

.... What is meant by "same transaction" is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon particular facts of each case as it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any court which has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of series of acts, it may be possible to infer that they form part of the same transaction. It is, however, should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction. The connection between a series of acts seems to us to be an essential ingredient for those acts to constitute the same transaction and, therefore, the mere absence of the words "so connected together as to form" in Clauses (a), (c), (sic) and (d) of Section 239 would make little difference. Now, a transaction may consist of an isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently they would not form part of the same transaction but would constitute a different transaction or transactions. Therefore, even if the expression "same transaction" alone had been used in Section 235(1) it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression "same transaction" occurring in (a), (c) (sic) and (d) of Section 239 as well as that occurring in Section 235(1) ought to be given the same meaning according to the normal rule of construction of statutes. Looking at the matter in that way, it is pointless to enquire further whether the provision of Section 239 are subject to those Section 235(1). The provisions of Sub-sections (2) and (3) of Section 235 are enabling provisions and quite plainly can have no overriding effect. But it would be open to the court to resort to those provisions even in the case of a joint trial of several persons permissible u/s 239.

21. Recently, same view has been reiterated by the Apex Court in the case of *Balbir v. State of Haryana* reported in (2000) 1 SCC 285, in paragraph 12, which runs as follows:

For several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction."

22. Thus, in absence of any exact meaning of the expression "same transaction"

the court trying the case has to find out as to whether several acts alleged to have been committed by the accused constituting one offence or more offences are part of the same transaction or not. No fixed test has been laid down to arrive at a conclusion. However, continuity of action and purpose is one of the basis to find out as to whether several acts committed by the accused persons constituting one offence or offences form part of the same transaction or not.

23. In a case of conspiracy, if there is allegation of conspiracy and the several acts are alleged to have been committed by several accused persons constituting different offences in pursuance of or to achieve the purpose or object of the conspiracy, then all the acts committed by different sets of accused persons will be treated to form part of the same transaction. It may be that in course of time some of the conspirators may leave it and the others may join later on. They may commit several different offences but that will not make any difference if the acts are done by them to achieve the object or purpose of the conspiracy.

24. The apex court in the case of Kadiri Kunhahammad (supra) held that in case of conspiracy if specific offences are committed in pursuance of the said conspiracy, all persons, who are party to the said conspiracy and are concerned with the offences can be lawfully tried jointly at the same trial u/s 239(d) (now 223(d)). The same view has been reiterated in the case of Purusottam Das Dalmia (supra). In that case, it has been held that it is desirable that the offences of criminal conspiracy and all other acts committed in pursuance of that should be tried together for the reason that to establish the offence of criminal conspiracy, evidence of the every act must be given by the prosecution. Such evidence will be tested by the defence by cross-examination. The court has to arrive at a conclusion about the credibility of such evidence and on the basis of such evidence it has to be seen as to whether a criminal conspiracy has been established or not.

25. Thus, if it is found that there is single conspiracy and in order to achieve the object, design or purpose of conspiracy series of acts constituting different offences have been committed by different accused persons at different places at different intervals and in course of the acts being committed to achieve the object of conspiracy, some of the accused persons have left the group and several others have joined them all the series of acts committed by such accused persons will form part of the same transaction and the court may order for joint trial. At this stage, I would like to clarify that only because the accused persons are alleged to have committed the offence with the same purpose, that by itself will not prove that they are doing in pursuance of a single conspiracy. There may be bigger conspiracy. There may be smaller conspiracy formed by some of the persons, members of the bigger conspiracy and some outsiders. Crucial test is as to whether the acts or offences committed or done by them with a view to achieve the purpose and object of the same conspiracy or of a different conspiracy entered into between different sets of persons to achieve the same object. In this connection, I am tempted to quote paragraph 15 of the judgment

of the Supreme Court in the case of Mohd. Husain Umar Kochra etc. Vs. K.S. Dalipsinghji and Another etc., which is as follows:

As to the second question the contention was that the evidence disclosed a number of separate conspiracies and that the charge of general conspiracy was not proved. Criminal conspiracy as defined in Section 120A of the I.P.C. is an agreement by two or more persons to do or cause to be done an illegal act or an act which is not illegal by illegal means. The agreement is the gist of the offence. In order to constitute a single general conspiracy there must be a common design and a common intention of all to work in furtherance of the common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished. The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be a general plan to accomplish the common design by such means as may from time to time be found expedient. New techniques may be invented and new, means may be devised for advancement of the common plan. A general conspiracy must be distinguished from a number of separate conspiracies having a similar general purpose. Where different groups of persons co-operate towards their separate ends without any privity with each other, each combination constitutes a separate conspiracy. The common intention of the conspirators then is to work for the furtherance of the common design of his group only. The cases illustrate the distinction between a single general conspiracy and a number of unrelated conspiracies.

26. Proviso has been provided to Section 223 of the present Code and it provides that where a number of persons are charged with separate offences and they do not fall under any of the categories specified in this section, the court may try all such persons together provided an application to that effect in writing is filed by such persons making a prayer for joint trial and the court is satisfied that such persons would not be prejudicially affected by holding the joint trial and it is expedient to do so. Thus, even if different offences committed by the accused persons are not treated as part of the same transaction, the court can order for holding of joint trial in case it finds that the same is expedient in the interest of justice and a prayer to that effect has been made by the accused and it does not cause prejudice to any of the accused persons facing the trial.

27. Having considered the legal aspects involved in the case, now I proceed to consider as to whether the order passed by the Special Judge requires interference by this Court or not. The trial court having found that no doubt the modus operandi in both the cases is more or less similar with an addition in Special Case No. 65 of 1996, where the Regional Director, Animal Husbandry Department, had issued sub-allotment letters, all the accused persons in both the cases have no privity in between them in relation to achieving the object of

withdrawal of money in two different Treasuries. He also came to the conclusion that the order regarding charge is to be passed on the basis of the statements of the witnesses and the documents but the Petitioners have only referred to the contents of the charge sheet and not the statements of the witnesses. The accused persons in both the cases have independently of the other group entered into criminal conspiracy with separate object. All the accused persons in both the cases have not made a prayer for analgamation of the cases. The trial court, in any view, has not considered the relevant facts to decide the controversy as required in law.

28. The fact that separate cases have been registered and are being investigated separately and also the fact that this Court during investigation while considering the question as to whether remand in one case will mean the remand in all other cases, has held that some of the cases form different transactions, are not decisive to the question involved in the case. This Court made observations during the course of investigation while deciding the question of remand only. The separate investigation by itself is not decisive to the fact that all the cases are separate. It is only after investigation that the question has to be decided as to whether they are part of the same transaction or not. Similarly, the fact that the accused persons in both the cases are not common is also not an important fact as even in the cases of single transaction, different offences are committed by different set of the accused persons. The relevant question that was to be considered by the trial court was whether the series of the acts committed by the accused persons forming different offences at different times and at different places were with a view to fulfil one common purpose and there was a community of criminal intent so as to form a single transaction or different offences were committed independently with a view to fulfil different purpose or object though there was similarity between the purpose and object in the cases. Even if the trial court would have found that the offences alleged to have been committed did not form one transaction, it should have also considered the cases of the Petitioners in terms of proviso to Section 223 of the Code whether it was expedient in the ends of justice to hold a joint trial on such prayer being made in writing by the accused persons and the same was not causing any prejudice to any of the accused persons. The trial court has also not made any effort to find out as to what is the view of the other accused persons facing the trial. For all these reasons, the order passed by the trial court suffers from legal infirmity.

29. The next question is as to what order should be passed in this case after having come to the conclusion that the order passed by the Special Judge suffers from legal infirmity. Whether the matter is to be remanded for fresh consideration at this stage or some other direction is to be given taking into consideration the facts and circumstances of the case.

30. During the course of argument and in the written argument filed on behalf of one set of the accused, it was submitted on behalf of the Petitioner that the offences committed in these two cases and other cases are the part of the same

transaction, but they have not given the details of other cases. In other cases either charge-sheets have been submitted or the same are still to be submitted. In that circumstance, this question cannot be decided by taking into consideration the allegation made in these two cases only. If this question is decided only after taking into consideration the allegations in these two cases then that matter will not come to an end as this question will be re-agitated time and again by the Petitioners and other accused persons as and when the other cases will be ripe for framing of the charges and the result would be that the trial will not proceed in any case.

31. Taking into consideration the peculiar facts and circumstances of the case arising out of the Animal Husbandry Scam, I am of the view that the said question is to be decided only when other cases are also ready and reach the stage of framing of the charges. At that stage, if a proper application is filed by the accused persons or by some of the accused persons, the trial court will consider the said question. While considering the question if some of the accused persons have not prayed for joint trial, then the trial court will also consider their stand in the light of the legal positions indicated above. The trial court will also consider whether it will be possible or practicable to dispose of all the cases or some of the cases jointly or they should be tried separately. It is to be clarified that the paramount consideration should be the cause of justice.

32. The further question, that arises for consideration, is as to whether on this ground the trial in these two cases and other cases to be ready for trial should be stayed till the aforesaid matter is disposed of. For the reasons stated hereinafter, it is not a case where the trial should be stayed till the aforesaid matter is finally disposed of. According to the materials on the record, it is clear that each case consists of voluminous documents and a large number of witnesses. If the trial in these two cases will be stayed on the ground that this question will be decided in future, then there will be no progress in the trial for many years, the trial will have to remain stayed, which will not be in the interest of justice. In case ultimately the matter with regard to joinder of charges is decided in favour of the accused persons, then other cases will be also tried along with Special Case No. 22 of 1996, which, according to them, is the parent case and necessary amendments in the charges will be made in the said case according to law and the parties will be afforded opportunity to lead evidence with regard to the allegations in other cases to be tried jointly with the aforesaid case. This course, in my view, taking into consideration the totality of the facts and circumstances, will serve the cause of justice and will not hamper the progress of the trial in these two cases.

33. With the aforesaid observations, these applications stand disposed of.