

**(2002) 10 OHC CK 0012**

**In the Orissa High Court**

**Case No : Criminal Appeal No. 1037 of 2002**

State of Punjab and Another

APPELLANT

Vs

Rajesh Syal

RESPONDENT

**Date of Decision : 04-10-2002**

**Acts Referred:**

Constitution of India, 1950 — Article 142, 142(1), 32

Criminal Procedure Code, 1973 (CrPC) — Section 218, 220, 482

Penal Code, 1860 (IPC) — Section 120(B), 406, 420, 468, 471

**Citation : (2002) 10 OHC CK 0012**

**Hon'ble Judges : K.G. Balakrishnan, J;B.N. kirpal, J;Arijit Pasayat, J**

**Bench : Full Bench**

**Final Decision : Allowed**

## Judgement

1. Order Special leave granted.

2. The Respondent is a former Director of Messrs Golden Forest (India) limited. This Company had collected money from the general public for purchasing land and had promised that the amount would be returned after expiry of the maturity period fixed through cheques. When monies were not repaid and complaints were received by the State, the Vigilance Department registered FIRs against the Respondent as a co-accused in the cases registered against Messrs Golden Forest (India) Limited. The offences were under Sections 406, 420, 468, 471, 120-B of the Indian Penal Code, 1860 (for short "Indian Penal Code") and Section 7(2) of the Punjab Land Reforms Act, 1972. According to the prosecution, crores of rupees had been obtained by the said Company from members of the public. But on the maturity date the sums were not returned. When proceedings were initiated in different Courts the Respondent filed an application u/s 482 of the Code of Criminal Procedure, 1973 ( for short "Code of Criminal Procedure") in the High Court praying that the charges framed against him may be dropped. Another application u/s 482 was filed to the effect that the cases which have been instituted against him should be tried in one Court. In

this connection, reliance was placed by the Respondent on a decision of this Court in the case of V.K. Sharma Vs. Union of India and Others, to which decision we shall presently revert to. In the said case by the order dated 28.3.2000, liberty was granted to move the appropriate High Courts for bringing all the criminal cases pending before different Courts within the territorial jurisdiction of that High Court to one single Court or more than one Court consolidated, in a petition filed under Article 32 of the Constitution of India, 1950 (in short "the Constitution"). But while passing the said order it was observed that the said order was not to be treated as a precedent.

3. The High Court, by treating the order in V.K. Sharma Vs. Union of India and Others, as a precedent allowed the petition u/s 482 and transferred those cases which were pending in different Courts in the State of Punjab against the Respondent to the Special Judicial Magistrate.

4. It is the aforesaid decision of the High Court transferring the cases pending before different courts to the Court of Special Judicial Magistrate, Patiala which is challenged before us.

5. Learned Counsel for the Respondent drew our attention to another order passed by this Court in P.K. Sharma v. Union of India WP (Crl.) Nos. 72-75 of 2000, dated 5.5.2000 (SC) dated 5.5.2000, whereby it directed that the said petition be disposed of in terms of the earlier order of 28.3.2000 in V.K. Sharma Vs. Union of India and Others, .

6. On a query being raised by this Court, the learned Counsel for the Respondent sought to rely on Sections 218 and 220, Code of Criminal Procedure in an effort to justify his plea for the consolidation of the cases. Mr. Bali submitted that because of the proviso to Section 218, even where there are distinct offences being tried, the Magistrate can direct that the same be tried together. In our opinion, proviso to Section 218 would apply only in such a case where the distinct offences for which the accused is charged are being tried before the same Magistrate. In the instant case, offences were being tried before different Magistrates and proviso to Section 218 cannot give any single Magistrate the power to order transfer of cases to him from different Magistrates or Courts. Even Section 220 does not help that Respondent as that applies where any one series of acts are so connected together as to form the same transaction and where more than one offence is committed, there can be a joint trial.

7. In the present case, different people have alleged to have been defrauded by the Respondent and the Company and therefore each offence is a distinct one and cannot be regarded as constituting a single series of facts/transaction.

8. We are not convinced that, as presently advised, that there is any provision which could be of assistance to the Respondent in seeking such a transfer. This is also not a case where the High Court has sought to invoke its jurisdiction u/s 482 and transfer the cases so as to prevent the abuse of the process of any Court or to secure the ends of justice. The High Court has mechanically followed the order

of this Court in V.K. Sharma Vs. Union of India and Others, even though the said order states that the order should not be treated as a precedent.

9. Before concluding, we would like to observe, with respect, that by directing that the order which was passed in V.K. Sharma Vs. Union of India and Others, should not be treated as a precedent implies that the said order is otherwise not in accordance with law and therefore should not be regarded as a precedent. This Court has ample jurisdiction to pass orders under Article 142(1) of the Constitution which may be necessary for doing complete justice in any case or matter. But even in exercising this power, it is more than doubtful that an order can be passed contrary to law. In V.K. Sharma Vs. Union of India and Others, this Court did not purport to exercise any jurisdiction under Article 142. The decision to direct the applicant to file applications to be moved for consolidation of the cases pending in different courts for different offences to be tried in a single court was not in accordance with law, and the said decision of V.K. Sharma Vs. Union of India and Others, and that of P.K. Sharma WP (Crl.) Nos. 72-75 of 2000, dated 5.5.2000 (SC) are overruled.

10. For the aforesaid reasons, this appeal is allowed and the impugned decision of the High Court is set aside. We make it clear that any observations made in this order shall not prejudice the Respondent in the trial of the cases against him.

Appeal allowed.