N. K. S.

Before D. S. Tewatia and M. M. Punchhi, JJ.

STATE OF PUNJAB,—*Petitioner.*

versus

WASSAN SINGH AND OTHERS,—*Respondents.*

Criminal Revision No. 3-R of 1982

February 10, 1984

Code of Criminal Procedure (II of 1974)—Sections 173, 223, 300 and 319—One set of accused named in the F.I.R.—Police report subsequently against another set of accused—One accused, however, common to both sets—Accused mentioned in F.I.R. also summoned for trial under Section 319—Both sets of accused—Whether could be tried jointly.

Held, that one accused being common to both sets of accused there could be no difficulty in proceeding with the trial of the two sets of accused jointly. In this context, one is to be alive to the provisions of Article 20(2) of the Constitution of India providing that no person shall be prosecuted and punished for the same offence more than once. On the same principles, the provisions of

section 300, Criminal Procedure Code, are equally pertinent. It provides that when a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from one made against him might have been made under section (1) of section 221, or for which he might have been convicted under sub-section (2), thereof. Now if there were to be two separate trials, the first trial would in the normal circumstances tend to end up in either the conviction or acquittal of the common accused. In that eventuality, the second trial of the same accused can not proceed in view of the aforesaid provisions. It is to be remembered that the court takes cognizance of the offence and not the offender. Thus, when the Sessions Judge had taken cognizance of the offence and proceeded against the left over accused under section 319 of the Code, the court could proceed against the added accused for the offence which they appeared to have committed.

(Para 4).

Case reported by Shri T. S. Cheema, Additional Sessions Judge, Gurdaspur,—vide *his order, dated the 12th May,* 1982, *to the High Court for decision of a question of law where in a case where the first informant has named one set of culprits but the police has challaned a separate set of persons for the same offence, with one name being common, whether the accused in both the versions could be tried jointly, within the scope of Section* 223, *Criminal Procedure Code or should there be two separate trials.*

The Single Bench consisting of Hon'ble Mr. Justice M. M. Punchhi, forwarded the case to Hon'ble the Chief Justice,—vide *order, dated 18th May,* 1983, *for placing the case before a Division Bench as the case involves an important question of law.*

The Division Bench consisting of Hon'ble Mr. Justice D. S. Tewatia, and Hon'blie Mr. Justice M. M. Punchhi, decided the case on 10*th February,* 1984.

H. S. Riar, D.A.G., Punjab, *for the Petitioner.*

G. S. Grewal, Senior Advocate, with H. S. Nagra, Advocate, for Dar Singh, etc., M. S. Bedi, Advocate, for Wassan Singh, etc., *for the Respondents.*

JUDGMENT

M. M. Punchhi, J.

(1) The Sessions Judge, Gurdaspur, on his own had referred for decision of this Court the procedural question focussed hereafter and when placed before one of us was ordered to be heard by a Division Bench in view of its importance.

(2) The broad facts are these :—

One Ajit Singh was done to death in village Boparai on the night intervening 28th/29th September, 1981. The first information report was lodged by Charan Singh, a brother of the deceased. He claimed to be an eye-witness. He named therein Dar Singh, Karam Singh, Dewan Singh and an unknown Sikh person to be the culprits of the crime. This unknown Sikh person was subsequently identified as Wassan Singh. The police during investigation, found the date, time and place of occurrence given in the first information report as correct. However, the Investigator took the view that the first informant had not given the orrect names of the culprits. According to him, the crime was actually committed by the afore-referred to Wassan Singh and two others, namely, Gurnam Singh and Harjinder Singh. Accordingly, the Investigator filed a police report against Wassan Singh, Gurnam Singh and Harjinder Singh (hereafter referred to as Wassan Singh and two others). The Committing Court framed charge against Wassan Singh and two others and committed them to stand their trial before the Court of Session. The Sessions Judge, Gurdaspur, embarked upon the trial. On 19th April, 1982, after the learned Sessions Judge had recorded the statement of the brother of the deceased, the author of the first information report, the Police Prosecutor moved an application for stopping the trial and summoning the persons whom the first informant had named as the culprits. The first informant in his aforesaid statement had named Wassan Singh, Dar Singh, Karam Singh and Dewan Singh (hereafter referred to as Wassan Singh and three left-overs) as the culprits. The learned Sessions Judge allowed the application and summoned the three left-overs for 26th April, 1982. On their appearance on that date, the matter was adjourned for a couple of dates till 12th May, 1982. At that stage, he was confronted with

the problems as to how to frame the charge against them. He was caught in the turmoil whether the accused in both the versions could be tried jointly within the scope of section 223, Criminal Procedure Code, or should there be two separate trials. Yet he was cognizant of the fact that Wassan Singh accused was common to both the sets of the accused and the evidence against them was not mutually exclusive; rather most of it was common. He had views expressed in *Amar Singh and another* v. *The State* (1), *Nga Sar Kee* v. *The King* (2), and *Nga Mya Sein* v. *The King* (3), to set him doubting. Those cases had apparently arisen in the context of section 239 of the Code of Criminal Procedure, 1898 (now Section 223).

(3) We have examined the matter in considerable detail with the assistance of the learned Deputy Advocate General, Punjab and the learned counsel for the two sets of accused. At the outset, we must at the cost of repetition emphasise that Wassan Singh being common to both sets of accused and the evidence against each set being not mutually exclusive, the afore-referred to three precedents did not have any bearing on the point. In the Punjab case, for the occurrence, there were two versions of the murder of one Piara Singh. According to one set of witnesses, the deceased had been murdered at a particular time and place by Amar Singh and others (six persons). According to another set of witnesses, the deceased had been murdered by a seventh person (to the exclusion of six persons). The police in that situation first filed an incomplete challan against the seventh person. Then another challan against all the seven persons. And lastly a third challan as the complete challan. It is in that situation, the Court took the following view :—

> "Thus it was no part of the duty of the Public Prosecutor to put both versions before the Court, and after all a trial court is not to solve conundrums nor to determine as to who has committed the offence, but in all cases that function of the Criminal Court is to adjudicate between the State and the accused as to whether the accused in that particular case is guilty of the offence with which

(1) A.I.R. 1954, Punjab 106 (D.B.)
(2) A.I.R. 1939, Rangoon, 390.
(3) A.I.R. 1937, Rangoon, 512.

he is charged. In the present case, the prosecution were themselves not clear as to whether one set of accused had committed the offence or the other set, and to try the two sets together is in my opinion contrary to the provisions of the Code which has in Chapter XIX and sections 233 to 240 laid down provisions for joinder of charges."

The Rangoon cases are practically on the similar lines. All the same, in these cases, there were two or more than two prosecutions launched and it is in that context that the question of a joint trial arose. But here, in the instant case, as is patently clear, there is no such situation. The prosecution has put in one police report (challan) and that is against Wassan Singh and two others. There is one trial which commenced, i.e., against Wassan Singh and two others. It is during the course of that trial, the learned Sessions Judge in exercise of powers under section 319, Criminal Procedure Code, summoned the three left-overs to stand trial together with the accused already before him. Section 319, Criminal Procedure Code, is specific in that regard. So the newly summoned accused have to be tried together with the accused already facing trial. There is no occasion for a joint trial in that technical sense. All what is required by the Court is provided in sub-section 4 of section 319, Criminal Procedure Code, which is to the following effect :—

"Where the Court proceeds against any person under sub-section (1) then—

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a); the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

(4) Mr. G. S. Grewal, learned counsel for the left-overs, candidly conceded that in the presence of Wassan Singh being

common to both sets of accused, there was no difficulty in proceeding with the trial against the left-overs along with Wassan Singh and two others. In that context, one is to be alive to the provisions of Article 20(2) of the Constitution of India providing that no person shall be prosecuted and punished for the same offence more than once. On the same principles, the provisions of section 300, Criminal Procedure Code, are equally pertinent. It provides that when a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof. Now if there were to be two separate trials, the first trial would in the normal circumstances tend to end up in either the conviction or acquittal of Wassan Singh. In that eventuality, the second trial of Wassan Singh along with others cannot proceed in view of the aforesaid provisions. At this stage, it is to be remembered that the Court takes cognizance of the offence and not the offender. The Court of Session under section 193 of the Code of Criminal Procedure takes cognizance of the offence upon the committal of the case relating to that offence to it by a Magistrate. Under the old Code of 1898, it was the "accused" who was committed by a Magistrate to a Court of Session but now the position is different. The distinction has been noticed by a Division Bench in *Lal Chand and another* v. *State of Haryana* (4), while interpreting section 193 of the Code of Criminal Procedure. Thus, it seems to us that when the Sessions Judge had taken cognizance of the offence and had proceeded against three left-overs accused under section 319, Criminal Procedure Code, the Court could proceed against the added accused for the offence which they appeared to have committed.

(5) It was brought to our notice by the learned Deputy Advocate-General, Punjab, that the learned Sessions Judge committed an error in summoning the three left-overs just after the examination-in-chief of Charan Singh, P.W. He adopted the stance on the basis of *Amarjit Singh* v. *State of Punjab and an-*

(4) 1983, Criminal Law Journal, 1394.

other (5), a decision rendered by one of us, in which the view taken is that bare examination-in-chief of a witness could not be termed as 'evidence' upon which the Magistrate could act under section 319, Criminal Procedure Code, it being an incomplete statement. That view was taken on the strength of another Single Bench decision of this Court in *Gamdoor Singh* v. *The State of Punjab* (6). The existence of that view does not necessarily mean that we are obliged to quash the summoning order against the three left-overs which was passed as far back on 19th April, 1982. No steps were taken by those accused to challenge the matter in appropriate forums within a reasonable time. The learned counsel for those accused could offer us no reasonable explanation why the accused gave in and participated in the proceedings and had not challenged the order on the anvil of the aforesaid two cases. At this stage, we do not permit the said suggested error to be corrected or reversed in these proceedings on the touch-stone of section 465, Criminal Procedure Code. The error, if any, in that order, in our opinion, has not occasioned any failure of justice having regard to the fact that the objection could have been made by the accused on their appearance before the Court and should have been raised at an earlier stage in the proceedings, i.e., shortly after their appearance in Court. In this view of the matter, we need not go into the subsidiary question whether the Court at that stage could look into the first information report and statements of witnesses under section 161, Criminal Procedure Code, as if it was examining the case from the stand point of section 193, Criminal Procedure Code, because that stage on the facts of this case was over, *Lal Chand's case* (supra) permits such course at the stage of section 193, Criminal Procedure Code, undoubtedly.

(6) Thus, for the views afore-expressed, we answer the reference in this manner:—

(1) In the proceedings of the trial itself, the accused left-overs have been summoned and they shall be tried together with the accused already facing trial in the same proceeding with the aid of section 319(4), Criminal Procedure Code.

(5) 1983, Criminal Law Journal, N.O.C. 98.
(6) Cr. M. 5484M of 1980 decided on 17th December, 1980.

(2) Charge/charges which may require to be suitably amended, modified, altered or added to, are left to the judicial skill of the learned Sessions Judge as the facts and circumstances may require.

(7) The reference is answered accordingly. The parties through their counsel are directed to put in appearance before the learned Sessions Judge, Gurdaspur, on the next date fixed in the case for further proceedings.

D. S. Tewatia, J.—I agree.

N. K. S.

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