

Constable 565 Maharaj Singh (P.N.O. ... vs State Of U.P. Thru. Its Addl. Chief Secy. ... on 2 January, 2025

Author: Saurabh Lavania

Bench: Saurabh Lavania

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LK0:126

Court No. - 12

Case :- APPLICATION U/S 482 No. - 10452 of 2024

Applicant :- Constable 565 Maharaj Singh (P.N.O. 892463280) And Another

Opposite Party :- State Of U.P. Thru. Its Addl. Chief Secy. Home Lko. And 2 Others

Counsel for Applicant :- Amitabh Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Heard.
2. In view of order proposed to be passed issuance of notice to opposite parties is dispned with.
3. Present application has been filed for the following main relief:-

"WHEREFORE, it is prayed that this Hon'ble Court may kindly be pleased to quash the order dated 14.10.2024 passed in Session Trial No. 734/2024 State Vs. Maharaj Singh & others arising out from the Case Crime No. 0691/2017 U/s- 386, 394, 427,

506, 308, 336, 352, 411 I.P.C. Police Station- Para, Lucknow pending in the Court of Additional Sessions Judge/ Special Judge (P.C. Act-6), Lucknow and further be pleased to direct the Trial Court (Special Judge PC Act-6, Lucknow) to proceed with single Trial of both Session Trial No, 734/2024 State Vs. Maharaj Singh & others arising out from the Case Crime No. 0691/2017 U/s- 386, 394, 427, 506, 308, 336, 352, 411 I.P.C. AND Session Trial No, 733/2024 State Vs. Maharaj Singh & others arising out from the Case Crime No. 0692/2017 U/s 386, 394, 427, 506, 308, 336, 352, 411 IPC."

4. For the purposes of seeking main relief, quoted above, in the instant application, learned counsel for the applicants placed the following facts before this Court:-

(i) The FIR No. 0691 of 2017 was lodged by opposite party No.2/Sarnaam Singh on 09.12.2017 at about 11:05 hours under Section 386, 394, 427, 506, 308, 336, 352 IPC at P.S.-Para, District-Lucknow. According to this FIR, the incident occurred at about 10:30 hours and the crime as indicated in the FIR was committed by applicant No.1 and one unknown person i.e. applicant No.2, whose name surfaced afterwards. As per this FIR, the accused-applicant snatched Rs.5,000/- from the pocket of the Jagdev Singh, driver of Truck No.UP 32 FN 4105 of the informant/opposite party No.2 who alongwith Atul Mishra S/o Ramesh Kumar Mishra reached the place of crime by his Car bearing registration No. UP 32 DT 6207, and when the applicant No.1 was chased, applicants assaulted the informant and other persons of the side of the informant with 'Patthar' (stones/bricks) and danda. In the incident, vehicles bearing registration No. UP 32 ET 2462 and UP 32 DT 6707 were damaged. This FIR also indicates that one constable Manoj Kumar on account of injury sustained became unconscious and applicant No.1 was arrested from spot. This FIR further indicates that the applicant No. 1 presented himself as driver of RTO.

(ii) Another FIR No. 0692 of 2017 was lodged by Sub-Inspector Ashok Kumar Singh on 09.12.2017 at about 11:45 hours under Section 353, 352, 336, 332, 308, 506 IPC at P.S.-Para, District-Lucknow. According to this FIR, Maharaj Singh and Jitendra Singh, present applicants, were apprehended by police party headed by informant namely Sub-Inspector Ashok Kumar Singh. The FIR also indicates that police party tried to resolve the dispute between the constable Arun Kumar and constable Sagir Ahmad (first party) and second party i.e. present applicants but the efforts were in vain and the accused-applicant assaulted with 'Eent' (Brick) and 'danda' and on account of the same constable Manoj Kumar Yadav sustained head injury and became unconscious. This FIR further indicates that the applicants torned the uniform of constable Ajay Kumar and after being apprehended Rs.5,000/- were recovered from the pocket of the shirt of accused and on being asked in this regard, it was told that the same were snatched from the driver of the truck related to FIR/Case Crime No. 0691 of 2017, detailed above.

(iii) The charge sheet(s), (Annexure Nos. 4 and 5 to the present application), in both the cases have been filed. The column No. 16, which indicates 'Particular of witnesses to be examined', of both the charge sheet(s), would show that all the witnesses are common except three persons namely Sarnaam Singh, Atul Mishra and Jagdev Singh, whose names find place in charge sheet related to Case Crime No.0691 of 2017.

5. Based upon aforesaid facts it is stated that it is evident that incident(s) indicated in the FIR Nos. 0691 of 2017 and 0692 of 2017 are connected together so as to form the same transaction and the trial Court without considering the entire facts in its true spirit rejected the application preferred by the applicants in terms of Section 243 of BNSS, 2023.

6. Sri Ajay Kumar Srivastava, learned AGA appearing for the State, opposed the present application.

7. Considered the aforesaid and perused the record as also relevant provision of Section 243 of BNSS, 2023.

8. Section 243 of BNSS, 2023 is extracted hereinafter:-

"Section 243. Trial for more than one offence.

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section 235 or in sub-section (1) of section 242, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect section 9 of the Bharatiya Nyaya Sanhita, 2023.

Illustrations to sub-section (1)

(a) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and convicted of, offences under sub-section (2) of section 121 and section 263 of the Bharatiya Nyaya Sanhita, 2023.

(b) A commits house-breaking by day with intent to commit rape, and commits, in the house so entered, rape with B's wife. A may be separately charged with, and convicted of, offences under section 64 and subsection (3) of section 331 of the Bharatiya Nyaya Sanhita, 2023.

(c) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 337 of the Bharatiya Nyaya Sanhita, 2023. A may be separately charged with, and convicted of, the possession of each seal under sub-section (2) of section 341 of the Bharatiya Nyaya Sanhita, 2023.

(d) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding, and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under section 248 of the Bharatiya Nyaya Sanhita, 2023.

(e) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 230 and 248 of the Bharatiya Nyaya Sanhita, 2023.

(f) A, with six others, commits the offences of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sub-section (2) of section 117, sub-section (2) of section 191 and section 195 of the Bharatiya Nyaya Sanhita, 2023.

(g) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under sub-sections (2) and (3) of section 351 of the Bharatiya Nyaya Sanhita, 2023.

The separate charges referred to in illustrations (a) to (g), respectively, may be tried at the same time.

Illustrations to sub-section (3)

(h) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sub-section (2) of section 115 and section 131 of the Bharatiya Nyaya Sanhita, 2023.

(i) Several stolen sacks of corn are made over to A and B, who knew they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sub-sections (2) and (5) of section 317 of the Bharatiya Nyaya Sanhita, 2023.

(j) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 93 and 105 of the Bharatiya Nyaya Sanhita, 2023.

(k) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 201 of the Bharatiya Nyaya Sanhita, 2023. A may be separately charged with, and convicted of, offences under section 233 and sub-section (2) of section 340 (read with section 337) of that Sanhita.

Illustration to sub-section (4)

(l) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sub-section (2) of section 115 and sub-sections (2) and (4) of section 309 of the Bharatiya Nyaya Sanhita, 2023."

9. Upon due consideration of aforesaid, this Court finds that the impugned order dated 14.10.2024 is liable to be set aside. It is for the reason(s) that the trial Court while rejecting the application preferred by the applicants under Section 243 of BNSS, 2023 failed to consider the entire aspects of the case including story of the prosecution narrated in both the FIRs, in brief, indicated above as also the fact related to witnesses to be examined against the applicants in both the charge sheet(s).

10. For the reasons aforesaid, the impugned order dated 14.10.2024 is hereby set aside. The matter is remanded back to trial Court concerned to pass a fresh order expeditiously.

11. The instant application is allowed in above terms.

Order Date :- 2.1.2025 Vinay/-