

Mohd Rashid And 2 Others vs State Of U.P. And Another on 4 February, 2025

Author: Raj Beer Singh

Bench: Raj Beer Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:15034

Court No. - 73

Case :- APPLICATION U/S 482 No. - 26809 of 2024

Applicant :- Mohd Rashid And 2 Others

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Awaneesha Kumar,Harikrishna Tiwari,Narendra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh,J.

1. Supplementary affidavit filed today is taken on record.
2. Heard learned counsel for the applicants and learned AGA for the State.
3. It has been submitted by learned counsel for the applicants that regarding an incident on 05.09.2021 one Salman Khan has lodged a first information report against the applicants and in that FIR there were allegations that the opposite party no.2 Farida Begum and her son Kaish and have sustained injuries. In that case after investigation charge sheet has been submitted against the applicants and others for offences under Section 147, 323, 504, 506, 336 IPC. After that the opposite party no.2 has lodged the impugned complaint regarding same incident whereas her statement has already been recorded as a witness in the case, which was lodged by Salman Khan. In view of these

facts, two trial cannot be held regarding same incident and thus, the impugned proceedings are liable to be quashed.

4. Learned AGA has opposed the application and submitted that in the case lodged by Salman Khan, he has not made any allegation of outraging the modesty of complainant-opposite party no.2 and her daughter. The opposite party no.2 has lodged the impugned complaint making allegations that the applicants-accused have abused and tried to outrage the modesty of the complainant and her daughter.

5. I have considered the rival submissions and perused the record.

6. Perusal of record shows that on 05.09.2021 one Salman Khan has lodged a first information report against applicant and five others, alleging that named accused persons have quarreled with informant on account of a previous case of one Rahamto Nisha. It was alleged that said named persons have assaulted his mother Sarbeena Bano and his sister Khusnuma, as well as his neighbour Farida Begum and his son Kaish. Said Farida Begum has made an application under Section 156(3) Cr.P.C. regarding the same incident against applicants and others on 26.10.2021. In the case, lodged by the said Salman Khan, police have submitted charge sheet against applicants and others. In the impugned complaint lodged by Farida Begum, applicants have been summoned by impugned summoning order dated 02.03.2024. The main contention of learned counsel for the applicants is that the statement of complainant/ opposite party no.2 has already been recorded as a witness in the investigation of the case lodged by Salman Khan regarding same incident, thus, the impugned complaint lodged by Farida Begum is not maintainable.

7. It may be seen that in the case lodged by Salman Khan applicants and some other persons were charge sheeted for offence under Sections 147, 323, 504, 506, 336 IPC, whereas in the impugned complaint, the complainant has made allegations that applicants-accused abused her and they did 'cherkhani' with complainant and her daughter. The said version is supported by the witnesses examined under Section 202 Cr.P.C. and applicants have been summoned for offence under Section 323, 504, 506, 354-A IPC.

8. At this stage, it may be stated that Section 210 of CrPC deals with a situation where two parallel proceedings are pending on the basis of same allegation. Provisions of section 210 CrPC read as under:

"(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person

who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code."

9. In case of Pal @ Palla (supra), Hon^{ble} Apex Court held as under:

22. Section 210 Cr.P.C. provides the procedure to be followed when there is a complaint case and police investigation in respect of the same offence. Sub-Section (1) of Section 210 provides that when in a case instituted otherwise than on a police report, namely, a complaint case, the Magistrate is informed during the course of inquiry or trial that an investigation by the police is in progress in relation to the offence which is the subject matter of inquiry or trial held by him, the Magistrate is required to stay the proceedings of such inquiry or trial and to call for a report on the matter from the Police Officer conducting the investigation. Sub-Section (2) provides that if a report is made by the Investigating Officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person, who is an accused in a complaint case, the Magistrate shall inquire into or try the two cases together, as if both the cases had been instituted on a police report. Sub-Section (3) provides that if the police report does not relate to any accused in the complaint case, or if the Magistrate does not take cognizance of any offence on a police report, he shall proceed with the inquiry or trial which was stayed by him, in accordance with the provisions of the Code.

23. Although, it will appear from the above that under Section 210 Cr.P.C. the Magistrate may try the two cases arising out of a police report and a private complaint together, the same, in our view, contemplates a situation where having taken cognizance of an offence in respect of an accused in a complaint case, in a separate police investigation such a person is again made an accused, then the Magistrate may inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. That, however, is not the fact situation in the instant case, since the accused are different in the two separate proceedings and the situation has, in fact, arisen where prejudice in all possibility is likely to be caused in a single trial where a person is both an accused and a witness in view of the two separate proceedings out of which the trial arises. In our view, this is a case where the decision in Harjinder Singh's case (supra) would be more apposite. In the said case, the question of Article 20(2) of the Constitution, as well as Section 300 Cr.P.C., relating to double jeopardy was considered. A similar situation has arisen in this case where the version in the complaint case and the police report are totally different, though, arising out of the same incident. In our

view, this is a case where the two trials should be held simultaneously but not as a single trial.??

10. This Court in the case of Sukhpal & others V. State of UP & another 2007 (57) 373, after examining the provisions of Section 210 CrPC, held as under:

"I am of the view that in respect of the same subject matter, a police report under section 173(2) CrPC is submitted and the cognizance has been taken against the accused by the learned Magistrate and the complaint has been filed, some more persons including accused who have been charge-sheeted, the learned Magistrate is competent to take cognizance against those accused persons who have not been charge-sheeted and there is no bar for taking cognizance of offence on private complaint against remaining accused."

11. Similar view has been taken in case of Smt. Hansa Devi & Others Vs. State of U.P. [2012 (79) ACC 937] and this Court held as under:

??10 Although cognizance is taken of the offence and not of the offender, but there is nothing in the Code that prohibits taking cognizance on a private complaint even though the Court may have already taken cognizance on a police report. It is only the consequences that may arise out of such an eventuality that have been addressed to by the provisions of section 210 of the Code, as has been noticed above.

11. The decision in the case of Jile Singh (supra), which has been relied upon by the learned counsel for the revisionists is not applicable to the facts of the present case as admittedly the police challani case has not yet been committed to the Court of Session. If there had been a committal order then, in such a situation, it is the Session's Court alone which could have exercised the power to summon additional accused by exercising its power under Section 319 Cr.P.C. upon recording of evidence, as per the law laid in Jile Singh's case following the decisions of the apex court in the cases of Ranjit Singh Vs. State of Punjab (1998) 7 SCC 149 and Kishori Singh Vs. State of Bihar (2004) 13 SCC. However, in the present case, the case has admittedly not been committed to the Court of Session and there was no investigation pending and thus, there was no embargo on the court of Magistrate with respect to summoning the revisionists upon a private complaint after recording the statements of the complainant and of the witnesses in support thereof, particularly, when the persons so summoned were not accused in the police report.

For the reasons discussed above, I do not find any illegality, impropriety or jurisdictional error in the order passed by the court below.??

12. Thus, it is apparent that in respect of same subject matter if a police report under Section 173(2) Cr.P.C. is filed and cognizance has been taken, the complaint of victim regarding the same incident for the offences for which no charge sheet has been filed, would be maintainable and Magistrate is

competent to take cognizance accordingly. The said complaint cannot be quashed merely on the ground that a case regarding same incident has already been lodged by another victim. In fact, the issue involved in the matter is covered by provisions of Section 210 Cr.P.C., as mentioned in above referred case laws.

13. In view of aforesaid, the prayer sought by applicants is refused. It is directed that in case, applicants move an application before the Court concerned for consolidation of impugned complaint case in terms of Section 210 Cr.P.C., the same shall be considered and decided expeditiously in accordance with law.

14. With the aforesaid observations, the application under Section 482 Cr.P.C. is disposed of accordingly.

Order Date :- 4.2.2025 RKM