

Mamman Khan vs State Of Haryana on 12 December, 2024

Author: Mahabir Singh Sindhu

Bench: Mahabir Singh Sindhu

Neutral Citation No:=2024:PHHC:168826

CRM-M-61516-2024

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(1)

CRM-M-61516-2024

Date of Decision: 12.12.2024

Mamman Khan

.....Petitioner

Versus

State of Haryana

.....Respondent

(2)

CRM-M-61515-2024

Mamman Khan

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU Present: Mr. R.S. Cheema, Senior Advocate assisted by Mr. A.S. Cheema, Advocate, Mr. Siddharth Bhukkal, Advocate & Mr. Satish Sharma, Advocate for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

MAHABIR SINGH SINDHU. J.

Controversy involved in both the cases is similar in nature; hence, being disposed off by this common order.

2. For brevity, facts have been noticed from CRM-M-61516-2024.

3. Present petition has been filed under Section 528 of Bharatiya Nagark Suraksha Sanhita, 2023 (for short "BNSS") for quashing of the impugned order dated 28.08.2024 (P-3) passed by Ld.

Additional Sessions Judge, Nuh; thereby directing the prosecution to file separate charge-sheet qua petitioner and to segregate the trial from other co-accused in FIR No.150 dated 01.08.2023 (P-1), under Sections 107, 120-B, 180, 153A, 201, 379A, 395, 427, 1 of 10 Neutral Citation No:=2024:PHHC:168826 CRM-M-61516-2024 436, 506, 148 read with Section 149 of Indian Penal Code, 1860, (for short "IPC") registered at Police Station Nagina, District Nuh. 3.1 Further challenge has been made to the order dated 25.11.2024 (P-5), whereby charges were framed against the petitioner.

CONTENTIONS

4. ON BEHALF OF THE PETITIONER 4.1 Learned Senior counsel contends that FIR No.150 dated 01.08.2023 (ibid) was registered with the allegations of rioting and destruction of public property against various accused and petitioner has been implicated with the aid of Section 120-B IPC, while alleging that he actively participated in the commission of crime; thus, in such a situation, there is no justification to segregate the trial qua him.

4.2 Further contends that if the course adopted by learned trial Court is allowed to continue, then there would be many more trials in the above FIR and that will require the prosecution also, to lead evidence, repeatedly, one after the another, for proving the charges against remaining accused and thus; the approach of learned trial Court is completely illegal and unwarranted. 4.3 Again contends that learned trial Court has grossly erred while passing the impugned order dated 28.08.2024, as no opportunity of hearing was afforded to the petitioner before segregation of trial. 4.4 Also contends that learned trial Court passed the impugned order on the premise that Hon'ble the Supreme Court has directed to decide the cases of MPs/MLAs on priority basis while taking up the same on day-to-day basis, but till date, there is no such direction by Hon'ble the Supreme Court and reference in this regard has been made to Ashwani Kumar Upadhyay Versus Union of India, 2020 SCC Online SC 1234.

2 of 10 Neutral Citation No:=2024:PHHC:168826 CRM-M-61516-2024 4.5 Again contends that acts which are forming part of the same transaction will have to be tried together and in the instant case, it is not the stand of prosecution that acts allegedly done by the petitioner are in any way separate transaction; thus the segregation of trial would be per se illegal. 4.6 Yet again contends that learned trial Court has erred in passing the direction to file separate charge-sheet against the petitioner in view of the fact that there is no such power vested with learned trial Court under the Code of Criminal Procedure, 1973 (for short 'the Code') and/or BNSS. 4.7 Learned Senior counsel also contends that in the case in hand, there was no request made by the prosecution for segregation of trial, rather learned trial Court, at its own, has taken such a drastic step, without there being any cogent reason.

4.8 Lastly contends that due to segregation of trial, petitioner shall be denied the right of fair trial, which is sine qua non in criminal jurisprudence; hence, a serious prejudice is most likely to be caused on that count. 4.9 In support of the contentions, learned Senior counsel has relied upon the following judicial precedents:-

(i) Nasib Singh Vs. State of Punjab and Another 2021 SCC Online 924;

(ii) State of Kerala Vs. Ayyappan and others (2006) 13 SCC 320;

(iii) State of Karnataka Vs. Narsa Reddy, (1987) 4 SCC 170.

5. ON BEHALF OF THE RESPONDENT 5.1 Per contra, learned State counsel submits that petitioner being an MLA hatched a criminal conspiracy to incite the public for commission of crime; hence the allegations against him are very serious in nature.

3 of 10 Neutral Citation No:=2024:PHHC:168826 CRM-M-61516-2024 5.2 Again submits that persons committing different offences in the course of same transaction, can be charged and tried together; however, it is not an absolute rule; rather learned trial Court is fully empowered and competent to try any of the accused, separately, if the circumstances so warrant. 5.3 Lastly submits that there is no thumb rule that in every case, all the accused shall be tried jointly; rather it is the wisdom of learned trial Court to see as to which course, would be appropriate to follow in the given circumstances.

6. Heard learned counsel for the parties and perused the paper-book.

7. OBSERVATIONS & FINDINGS 7.1 Allegations are that in order to take revenge of killing two persons, namely, Nasir and Juned, (residents of Ghatmika, Bhartpur, Rajasthan) at the hands of cow vigilantes, petitioner along with other co-accused hatched a criminal conspiracy, through social media as well as in person, for committing offences of rioting, dacoity, mischief by fire and criminal intimidation. 7.2 Learned trial Court while passing the impugned order dated 28.08.2024, inter alia, directed:-

"In the present case, one of the accused namely Sh. Mamman Khan is MLA of Haryana. The present case is not progressing on account of absence of one accused or the other. On the other hand, as per direction issued by Hon'ble Supreme Court, the cases of MPs/MLAs are to be decided on priority basis by taking up the case on day to day basis. The case has been identified for current action plan and therefore, in the interest of justice and fitness of things, case of accused Mamman Khan is to be tried separately.

The concerned Ahlmad of this Court is directed to issue notice to SHO of Police Station Nagina today itself through Naib Court of this Court with direction to prepare and file a separate challan of accused Mamman Khan.

4 of 10 Neutral Citation No:=2024:PHHC:168826 CRM-M-61516-2024 Now, to come up on 04.09.2024 for awaiting separate challan of accused Mamman Khan and appearance of accused Aadil through VC."

7.3 It is not in dispute that on the date of passing aforesaid order, the petitioner was very much present along with his counsel and the case was adjourned to 04.09.2024, for awaiting separate challan qua him. 7.4 During the course of hearing, State counsel, upon instructions, apprised the Court that separate challan against the petitioner was presented before learned trial Court on 28.10.2024 and after scrutiny of the same, it was supplied to the petitioner, free of cost, on 21.11.2024. 7.5 Thereafter, on 25.11.2024, while taking into consideration the final report, along with other documents available on record and upon hearing both sides, learned trial Court, prima facie, found that petitioner has committed offences punishable under Sections 120-B, 395, 435, 436, 506(II), 201 and 180 IPC and the case was adjourned to 11.12.2024 for recording prosecution evidence.

7.6 As per information gathered from the Official Website, on 11.12.2024 learned trial Court examined two prosecution witnesses, namely, V.K. Singh and Pop Singh (PW-1 & PW-2, respectively) and now the case is pending for 18.12.2024 and on that date, prosecution witnesses mentioned at serial Nos.6, 9, 13 and 14 have been summoned.

7.7 There is no quarrel that in view of the mandate of Article 21 of the Constitution, it is the obligation of State to ensure speedy trial and equally, a corresponding right in this regard is available to the accused as well.

5 of 10 Neutral Citation No:=2024:PHHC:168826 CRM-M-61516-2024 7.8 Of course, speedy trial does not mean that an accused can be denied fair trial; rather he shall be entitled to full opportunity of hearing, in accordance with law.

7.9 As already noticed, in the present case, after segregation of trial on 28.08.2024, charges were framed against the petitioner on 25.11.2024; two prosecution witnesses have been examined on 11.12.2024 and as such, trial is going on smoothly.

7.10 A fortiori, it is not the case of petitioner that charges framed by learned trial Court are prima facie not made out against him. Thus, in such a factual situation, mere segregation of trial shall not cause any prejudice to the petitioner; nor it can be contended that learned trial Court is lacking jurisdiction to follow such a course; rather in view of the provisions of Section 223 of the Code, learned trial Court is fully empowered to segregate the trial. 7.11 Further more, it would not be wrong to say that segregation of trial has made the job of prosecution more onerous and the petitioner is not going to suffer any prejudice on that count.

7.12 No doubt, in Ashwani Kumar Upadhyay's case (supra), there is no such direction that trial(s) against MP/MLAs is/are to be conducted on day-to-day basis, but at the same time, Hon'ble the Supreme Court has directed for expeditious disposal of cases involving MPs/MLAs. For reference, the operative part of the judgment is extracted as under:-

"21. Having considered the matter in detail, we direct that:

21.1. The learned Chief Justices of the High Courts shall register a suo motu case with the title, "In Re: Designated Courts for MPs/MLAs" to monitor early disposal of criminal cases pending against the Members of Parliament and Legislative Assemblies.

The suo motu case may be heard by the Special Bench presided by the learned Chief Justice or a Bench assigned by them.

6 of 10 Neutral Citation No:=2024:PHHC:168826 CRM-M-61516-2024 21.2. The Special Bench hearing the suo motu case may list the matter at regular intervals as is felt necessary. The High Court may issue such orders and/or directions as are necessary for expeditious and effective disposal of the subject cases. The Special Bench may consider calling upon the Advocate General or the Public Prosecutor to assist the Court.

21.3. The High Court may require the Principal District and Sessions Judge to bear the responsibility of allocating the subject cases to such court or courts as is considered appropriate and effective. The High Court may call upon the Principal District and Sessions Judge to send reports at such intervals as it considers expedient.

21.4. The Designated Courts shall give priority:

- (i) first to criminal cases against MPs & MLAs punishable with death or life imprisonment then to
- (ii) cases punishable with imprisonment for 5 years or more, and then hear
- (iii) other cases.

The trial courts shall not adjourn the cases except for rare and compelling reasons."

7.13 Also noteworthy that this Court on administrative side, vide letter 2712/SPL/Gaz.II.17 dated 28.11.2024 has directed to expedite the proceedings in all pending criminal cases against sitting/former MPs/MLAs and the same is recapitulated as under:-

"No. 2712/SPL/Gaz.II.17.

From The Registrar General High Court of Punjab and Haryana, Chandigarh.

To All the District & Sessions Judges, In the States of Punjab and Haryana and U.T., Chandigarh.

Dated, Chandigarh, the 28.11.2024.

7 of 10 Neutral Citation No:=2024:PHHC:168826 CRM-M-61516-2024 Subject: Consideration of information qua all Criminal cases and complaints against former and sitting MPs/MLAs in the States of Punjab and Haryana and Union Territory, Chandigarh for the quarters ending 30.06.2024 and 30.09.2024. Sir/Madam, I am directed to refer you on the subject cited above and to inform you that after considering reports for the quarters mentioned above, following orders have been passed:

XX XX XX The District and Session Judges in the States of Punjab, Haryana and U.T., Chandigarh shall monitor the progress of all pending criminal cases/complaints against sitting/former MPs/MLAs in which proceedings have not been stayed and submit a quarterly statement. The trial of the cases in which the charges have been framed for more than one year and the proceedings have not been stayed; be expedited. The District and Session Judges, especially of the Districts where there is increase in the number, shall also impress upon the concerned judicial officers, during monthly meetings, for taking earnest steps for disposal of these cases at the earliest.

You are, therefore, requested to make necessary compliance of aforesaid orders."

7.14 Needless to say that as a matter of fact, the trial is not being conducted on day-to-day basis; rather it is going on at a proper pace and thus, it cannot be said that proceedings are being conducted in undue haste and/or causing any prejudice to the petitioner.

7.15 Above all, in view of the charges framed by learned trial Court, prima facie, it is discernible that petitioner being a lawmaker (MLA), has broken the law and in order to maintain the faith of common man as well as to uphold the Rule of Law, there would be no harm, if the elected representative is brought to justice, expeditiously.

8. Although, learned Senior counsel cited various judicial precedents, but the same are not helpful for the following reasons:-

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(i) In Nasib Singh's case (supra), Hon'ble the Supreme Court, inter alia, observed that "the possibility of conducting a joint trial will have to be determined at the beginning of the trial and not after the trial, based on the result of trial". It was also observed that "a conviction or acquittal of the accused cannot be set aside on the mere ground that there was a possibility of a joint or a separate trial". However, in the present case, after segregation of the trial qua petitioner, charges have already been framed and now prosecution evidence is going on; therefore, the aforesaid judgment is not helpful to the petitioner in any way.

(ii) In Ayyappan'case (supra), the Court of Session while framing charges against three accused under Sections 120-B, 218 & 193 IPC, observed that offence under Section 302 IPC was not made out against them; therefore, the Court sent the matter to learned Chief Judicial Magistrate for trial and kept the matter of other accused with himself. In such a scenario, Hon'ble the Supreme Court held that there is likelihood of prejudice to the prosecution case if the trials are held separately. However, in the present case, the situation is altogether different as both the cases are being tried by the Court of Session.

(iii) In Narsa Reddy's case (ibid), in a revision petition pending before the Karnataka High Court, the High Court initially granted stay of the proceedings pending before learned Sessions Court. Thereafter, the High Court vacated the stay and directed learned Sessions Judge to proceed with the trial as early as possible. This direction was set-aside by Hon'ble the Supreme Court while directing the High Court to decide the criminal revision as early as 9 of 10 Neutral Citation No:=2024:PHHC:168826 CRM-M-61516-2024 possible. In the peculiar circumstances of the case, Hon'ble the Supreme Court observed that learned Single Judge of High Court ought to have decided the revision petition instead of making a direction of this kind, resulting in splitting up of trial. However, in the present case, factual position is entirely different.

9. In view of the above discussion, there would be no hesitation to observe that learned trial Court was/is fully justified while segregating the trial of petitioner and to proceed in the matter, expeditiously.

10. Hence, no ground is made out to interfere with the impugned orders passed by learned trial Court.

11. Consequently, there is no option, except to dismiss both the petitions.

12. Ordered accordingly.

13. The observations made above be not construed as an expression of opinion on the merits of ongoing trial, in any manner.

Pending application(s), if any, shall also stand disposed off. A photocopy of this order be placed on the file of connected case.

12.12.2024
SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No

