

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT JUDICIAL DEPARTMENT.

Criminal Revision No.58-P/2018

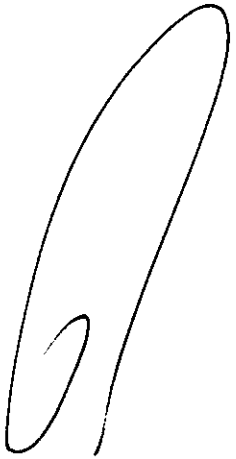
J U D G M E N T

Date of hearing : 11th October, 2023
Petitioner : By Barrister Waqar Ali Khan.
(Fazal Wahab etc)
Respondent : By Ms. Shakeela Begum, AAG.
(State)

S. M. ATTIQUE SHAH, J.- Petitioners, through the

instant criminal revision filed under section 439 of the CrPC, have called in question the judgment / order dated 02.04.2018 of the learned Special Judge, Anti-Corruption (Provincial) Khyber Pakhtunkhwa, Peshawar, whereby their application to consolidate the charge as required under section 234 read with section 239 CrPC has been dismissed.

2. The gist of the arguments of the learned counsel for the petitioners is that when the date of occurrence, date of report, registration of all the three FIRs and the complainant therein are one and the same being the result of a common open inquiry and technical report and; also committed within the period of twelve months, then in that eventuality, the charge of the petitioners is liable to be consolidated and they should be tried jointly in all the FIRs as required under section



234 read with section 239 CrPC, which fact has totally been ignored by the learned trial court while dismissing their application through the impugned judgment / order.

3. The main thrust of the arguments of the learned AAG is that the basic ingredients which are necessary for claiming joinder of charge and to be tried jointly as envisaged under the ibid sections of law are totally missing to the case of the petitioners insofar as committing the crime in different occasions is concerned, which fact has properly been appreciated by the learned trial court while declining their such request.

4. Heard. Record perused.

5. Before proceed, it would be more apt to reproduce herein below the relevant sections of law i.e. sections 222, 234 & 239 CrPC for ease of reference, which read as under:-

S.222.Particulars as to time, place and person.(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom; or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged;

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed,

and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234;

Provided that the time included between the first and last of such dates shall not exceed one year.

S.234. Three offences of same kind within one year may be charged together.(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, and number of them not exceeding three;

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Pakistan Penal Code or of any special or local law;

Provided that, for the purpose of this section, an offence punishable under section 379 of the Pakistan Penal Code shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the Pakistan Penal Code or of any special or local law shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence;

S.239. What persons may be charged jointly. The following persons may be charged and tried together, namely;

(a) persons accused of the same offence committed in the courses of the same transaction;

(b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of section 234 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last named offence;

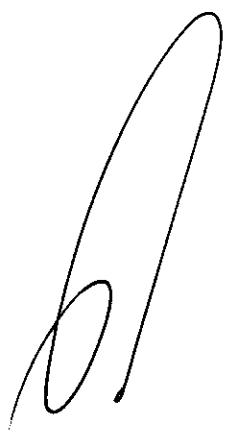
(f) persons accused of offences under sections 411 and 414 of the Pakistan Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence; and

(g) persons accused of any offence under Chapter XII of the Pakistan Penal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence;

and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges.

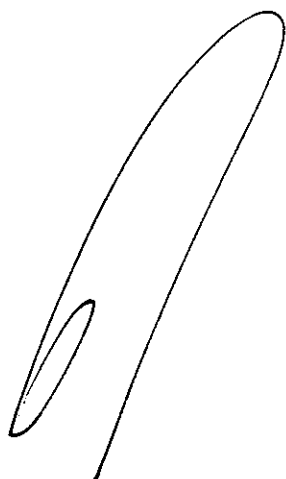
6. The object and purpose of section 234 CrPC is that an accused may be charged with and tried for a maximum of three offences at one trial if the same were allegedly committed during a period of twelve months from the first to the last of that kind of offences notwithstanding for the offence of criminal breach of trust or dishonest misappropriation of money, only gross amount and the dates between which the offence is alleged to have been committed would be sufficient to specify without mentioning specific items or exact dates as defined in section 222 CrPC. In the event of involving of more than one accused in multiple offences of the same kind committed by them jointly within the period, as defined in section 234 CrPC, all of them may be charged jointly and tried together within the meaning of section 239 CrPC. Combine reading of all the ibid sections of law reflects that persons accused who commit crime / offence jointly in the same transaction and the basic elements of continuity of intention and action are there, they are to be tried jointly.

Such legal proposition / issue was tackled by the Hon'ble Supreme Court of Pakistan in the case of **Nadir Shah**



vs. State (1980 SCMR 402) and observed in the following manner”

Thus while there is a limitation of maximum three offences/items which can be combined under section 234, there is no such limitation with regard to offence of criminal breach of trust provided for in subsection(2) of section 222. Therefore, subject to the other conditions, if a person is charged with having committed several offences of criminal breach of trust, within a period of one year, they can all be combined into one charge. But the provision being only an enabling one, it will not be necessary to do so in all the cases; because the general rule in this behalf is, as provided in section 233, Cr.PC, that for every distinct offence there shall be a separate charge and the same shall be tried separately, except, of course when the Code itself permits otherwise. This provision is based on a salutary principle that when each charge is tried separately, there is much less apprehension of prejudice to the accused as compared to a trial wherein several offences are combined together. In the present case, it appears that the provisions contained in section 233, Cr.P.C. were followed and the enabling provisions contained in section 222 (2), Cr.P.C. and/or section 234, Cr.P.C. were not made use of. We agree with the learned counsel for the State that in the circumstances of the case, if the learned trial Court thought, of course, before the pronouncement of the judgment as provided in section 227, Cr.P.C., that combination of the charges would help the



accused in facilitating his defence, he could have altered the charge/s and proceeded accordingly, as provided in section 228, Cr.P.C and the sections next following. He could not have made the so called defect as the ground for acquitting the accused. The High Court was fully justified in correcting the error.

The same view / wisdom was also followed by the Hon'ble apex court in another case reported as **Shah Nawaz vs. State (1992 SCMR 1583)** and observed as under:-

Legal position, correctly and aptly stated in the case of Nadir Shah, supra, by the Supreme Court is that while three offences/items are permitted to be combined under one charge as contemplated by section 234, Cr.P.C. such limitation is not applicable in the case of criminal breach of trust in which several offences committed within a period of one year, are permitted to be combined under one charge as is allowed under section 222(2), Cr.P.C. Another rule laid down is that errors committed in stating either offence or particulars of charge or omissions in such behalf are not material unless accused is misled by such errors or omissions and failure of justice is occasioned.

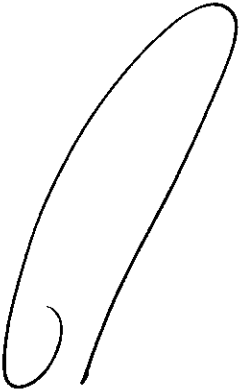
Regarding such proposition, way back in the year, 1932, the Calcutta High Court in the case of **Negendra Nath Sen vs. Emperor (A.I.R 1932 Calcutta 486)** held as under:-

Under Section 234 a person may be charged and tried at one trial for three offences of the same kind committed within a space of 12 months. Therefore three offences of criminal

breach of trust may be tried together and three offences for falsification of accounts may be tried together. But an offence of criminal breach of trust is not of the same kind as an offence of falsification of accounts. Therefore the trial of two or more charges of criminal breach of trust cannot legally be joined with two or more charges of falsification of accounts: see the case of Raman Behari Das v. Emperor A.I.R. 1915 Cal.296 in which it was held that a joinder of three charges under Section 409 with three under Section 477-A, relating to different transactions, is not warranted by any of the exceptions provided in the Code and is illegal and that a misjoinder is absolutely fatal to the trial.

7. Seen the *ibid* provisions of law in juxtaposition with the judgments (*supra*), it is crystal clear that when the offence is committed by the persons accused jointly in the same transaction and the necessary ingredient of continuity of intention and action are available / present, then their joint trial of more than one cases is permissible in terms of the *ibid* provisions of law, discussed therein.

8. Now adverting to the merits of the case. The record depicts that way back in the year, 2011, tenders for inviting bids were floated by the C&W Department, district Nowshera through publications in daily 'Express' Peshawar on 05.03.2011 & 13.03.2011 for the repair, rehabilitation and reconstruction of flood affected food grain godowns at NRC



Azakhel and PRC Nowshera and thereafter task was assigned to contractors. However, pursuant to complaints from the locality regarding the use of substandard material in the reconstruction work, an open inquiry was initiated by the Anti-Corruption department way back in the year, 2015 against the concerned officials of C&W Department, District Nowshera and after conclusion of the same, it surfaced that due to use of substandard material in the desired reconstruction work, huge loss was caused to the government exchequer, for which, the petitioners along with others were held responsible. Pursuant thereof, three different FIRs bearing No.13, 14, 15 of the same date i.e. 28.09.2015 under section 409 PPC read with section 5(2) of the PC Act have been registered against them. The petitioners were arrested therein, however, released on bail. The prosecution submitted separate challans against them in the learned trial court and accordingly, they were summoned to be charge sheeted. However, the petitioners filed an application under section 234 read with section 239 CrPC for joinder of charge in all the three FIRs and to be tried jointly, which was dismissed by the learned trial court vide the impugned judgment / order dated 02.04.2018. Being aggrieved, the petitioners have filed the instant criminal revision.

9. It is evident from the record that the desired reconstruction / repair / rehabilitation work was completed

within period of twelve months and the entire payments were also made to the contractors within such period. Moreover, all the three FIRs are the outcome of one and the same inquiry and; technical report for the same offence of criminal breach of trust against the same persons i.e. the petitioners who are the officials of the C&W department while the complainant being official of Anti-Corruption Establishment is also the same nevertheless the prosecution split up the case into different FIRs / cases. It is the plain language of section 222 CrPC that when period between the dates of the first and the last items does not exceed one year, then charge in respect of all the items shall be deemed to be charge of one offence within the meaning of section 234 CrPC. Bifurcation of the items would definitely prejudice the case of an accused. As such, the case of the petitioners is exclusively covered under sub-section(2) of section 222 CrPC and their charge is to be consolidated and they are to be tried jointly in all the FIRs as required under section 234 read with section 239 CrPC. Being so, this court understands that the petitioners have succeeded in making out a case for the interference of this court in its revisional jurisdiction under section 439 of the CrPC. In this view of the matter, this court is left with no option but to allow this revision petition.

10. For the reasons discussed above, this court admits and allows this revision petition, set asides the impugned

✓ judgment / order dated 02.04.2018 of the learned trial court
and in turn accepts the application of the petitioners for
joinder of charge in all the three ibid FIRs with the direction to
the learned trial court to proceed in the matter accordingly.

Announced
11. 10. 2023


J U D G E ✓

(Fayaz)

(S.B) Justice S M Attique Shah, HJ