

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
MINGORA BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)**

**Cr.R No. 89-M/2018**

***Sultani Room s/o Asfandiar r/o Singpora, Tehsil Matta,  
District Swat (Appellants)  
Versus***

***1) Muhammad Inam and others***

***(Respondents)***

**Present:**

*Mr. Abdul Jalal, Advocate for the petitioner.*

*Muhammad Rahim Shah, Assistant. A.G. for  
State.*

*Mr. Siraj Ali, Advocate for the respondents.*

Date of hearing: **15.05.2019**

**JUDGMENT**

**SYED ARSHAD ALI, J.-** This is a criminal revision petition filed by Sultani Room, the petitioner herein, against the order dated 02.10.2018 rendered by learned Sessions Judge/Zilla Qazi, Swat whereby application of the petitioner for transfer of his complaint case from the Court of Assistant Commissioner, Tehsil Matta to the Court of learned Additional Sessions Judge, Matta, was turned down.

**2.** Brief facts of the case are that Muhammad Inam (Respondent No.1) charged the present petitioner and his other co-accused namely Gul Bacha and Muhammad Waqas u/s 302/337-F(i)/ 34 P.P.C vide case F.I.R No. 670 dated 26.05.2018

registered at Police Station Matta, District Swat. Regarding the said occurrence, the present petitioner also filed a cross case through private complaint before Assistant Commissioner/Magistrate 1<sup>st</sup> Class, Matta, wherein he charged the present respondents under section 337-A(i), 337-F(i), 506/34 P.P.C. On 29.08.2018, the petitioner filed an application before the learned Sessions Judge, Swat for transfer of the complaint case from the Court of learned Assistant Commissioner to the Court of learned Additional Sessions Judge, Matta, where the F.I.R case was pending, however, application of the petitioner was turned down vide order dated 02.10.2018, hence, this petition.

3. The learned counsel appearing on behalf of the petitioner has argued that indeed both the cases i.e the one which was reported through F.I.R No. 670 and the other regarding which a private complaint was submitted before the Assistant Commissioner, relate to one and the same occurrence and thus proprietary demands that both the cases should be heard by one Court as essentially if both the cases are not heard together it may result



in conflicting judgments. The learned counsel relied upon PLD 1981 Supreme Court 522, 1996 P Cr. L J 1138 [Supreme Court (AJ&K)], 1986 P Cr. L J 989 [Lahore], PLD 1995 Lahore 30 and 2008 SCMR 126.

4. On the other hand, the learned counsel for the respondents has argued that in light of close perusal of both the cases, not only there is difference in times of occurrence but the places of occurrence are also different as is evident from the site plan prepared by Investigating Officer in the F.I.R case.

5. Arguments heard and record gone through.

6. It is evident from the record that on 26.05.2018, the Respondent No.1 namely Muhammad Inam had reported the matter to local police consequent upon which F.I.R No. 670 was registered against the present petitioner and other two co-accused who were arrested on the same day in injured condition. They were produced before the doctor who, after examining them, confirmed injuries on their bodies, however, no counter F.I.R was registered against the opposite party for the said

injuries sustained by present petitioner and other co-accused.

7. It was on 29.08.2018 when the present petitioner had filed private criminal complaint before the Assistant Commissioner, Matta wherein he nominated Muhammad Amin (deceased) and the present respondents namely Muhammad Inam, Shah Khalid and Noman (deceased) for causing injuries to them. They are deceased and complainant in F.I.R case. In the private complaint, the date of occurrence has been stated as 26.05.2018 whereas the time of occurrence has been shown as 13:45 hours. The time of occurrence and the parties mentioned in both the cases are almost the same, however, at the moment nothing could be said with certainty regarding the place of occurrence being the same or otherwise because the petitioner has not made any special reference to it in his complaint.

8. The learned Sessions Judge has refused the desired transfer of complaint on the grounds firstly that the complaint case is exclusively triable by Magistrate, thus, it would deprive either of the parties from the right of appeal before the Court of Sessions and secondly copy of the complaint was

5...

not annexed with the application from which it could be confirmed that the complaint was the outcome of the occurrence regarding which the rival side had lodged F.I.R. Bare perusal of the complaint as well as of the F.I.R would show that both are the cross versions of one incident in which Muhammad Amin and Numan lost their lives while complainant Muhammad Inam and Sajid sustained injuries on their bodies. Investigation in the said F.I.R suggests that the present petitioner and his co-accused had also sustained injuries on their persons in the same occurrence which fact can be confirmed from the injury sheets and Madd No. 30 dated 26.05.2018 available on the file/record of F.I.R No. 670.

2. In criminal administration of justice, the trial Judge seized of a criminal case should know about all the attending circumstances of the offences so that to reach at a just conclusion regarding the roles of each individual vis-à-vis his innocence and motive behind the offences. The trial Court while awarding punishment has also to consider the mitigating circumstances and this is possible only when the versions of both the sides are before the



Court and for this purpose the necessary documents of the cross case are also exhibited for reaching at the just conclusion. Apart from the above, it is settled practice that counter cases are tried side by side by same Court till their conclusion and judgments are pronounced simultaneously. It was held in "*Abdul Rehman Bajwa Vs. Sultan and 09 others*" (PLD 1981 Supreme Court 522) that:

"21. The question of the mode of trial of cross-cases, one initiated through a private complaint and the other by Police through a challan, about the same incident, giving different versions and against two different sets of accused persons, was considered by this Court in Nur Elahi v. The State (PLD1966SC708) and it was held that both the cases should be tried by the same Court, one after the other. The procedure prescribed in Nur Elahi's case was later considered by this Court in Zulfikar Ali Bhutto v. The State (PLD 1979SCI). The circumstances in the cases of Nur Elahi's and that of Zulfikar Ali Bhutto were materially different, inasmuch as in the last mentioned case the accused in the private complaint as well as the police case were the same persons. In other words, they were not 'cross-cases' in the sense in which the expression is generally understood. It was, therefore, held that the procedure prescribed in Nur Elahi's case need not be followed invariably. We may, however, reiterate that propriety demands that whenever the facts or circumstances permit, cross-case, giving two different versions of the same incident and have



two different sets of accused, should be tried by the same Court, together. As already observed, the logic behind this view is obvious because if the two cases giving different versions of the same incident are not tried together, there would be serious likelihood of conflict in judgments”.

The principle laid down in the above referred judgment was followed in “*Rafaqat Ali Vs. Hidayat Ali and others*” (1986 P Cr. L J 989 [Lahore], “*Muhammad Mahroof Khan Vs. The State and 04 others*” (1996 P Cr. L J 1138) and “*Muhammad Nadeem Vs. Additional Sessions Judge, Lahore and others*” (PLD 1995 Lahore 30).

10. The law laid down in Abdul Rehman Bajwa case was reaffirmed by the august Supreme Court of Pakistan in “*Bashir Ahmad Vs. Haji Muhammad Ashraf and others*” (2008 SCMR 126) wherein it was observed that:

“9. It is a well established practice based on a rule of propriety that counter cases should be tried together. This rule of propriety has generally been followed because the rationale is that if the counter cases emanating from the same transaction are tried by two different Courts, they are likely to end up in conflicting judgments and even the appreciation of evidence may be subjected to different criteria. However, this rule of propriety is not inflexible rule

and the Court may part with it for the reasons recorded in certain situations. One such case is Muhammad Sadiq supra to which reference has been made by the respondent's learned counsel”.

The learned trial Court has relied upon the judgment delivered in the case of “*Muhammad Sadiq Vs. The State and another*” (PLD 1971 SC 713) wherein it was observed by the august Supreme Court as under.

“The accused persons in the challan case fully participated in the trial of that case and defended themselves. At no stage, the accused persons in the challan case moved the Sessions Court to postpone its hearing because of the counter-case i.e. the complaint case pending in the Court of the Magistrate. It was only after the conclusion of the trial of the challan case and the fixation of a date for the delivery of judgment that the application under section 561-A was made in order to prevent the delivery of the judgment in that case”.

However, the ratio of the above referred judgment was distinguished by the august Supreme Court of Pakistan in the Bashir Ahmad's case *Supra* by holding that the request in Muhammad Sadiq case for trial of both the cases by one Court was raised at a very belated stage and it was for that reason that the request was not considered. In such



situation, in order to resolve the present controversy, the law laid down in Bashir Ahmad case is to be followed.

II. As far as findings of the learned Court below that if both the cases are tried together by Sessions Court then one of the parties may lose the right of appeal before the said forum, suffice it to note that the trial by the Sessions court in the complaint case would not deprive either of the parties from appeal which is available under sections 410 or 417 of the Criminal Procedure Code because in case of acquittal of the accused in the complaint case, no appeal there against would lie to Sessions Court rather acquittal of the accused is to be challenged before this Court under section 417 (2), Cr.P.C. Similarly, in case of conviction of the accused in complaint case, the convicts would be at liberty to challenge their conviction before this Court by way of appeal u/s 410, Cr.P.C. Indeed only appeal if provided by statute is a vested right whereas the parties have no vested right in a forum of appeal. Thus, the reasons rendered by learned Sessions Judge refusing transfer of the case are not



legally correct, hence, this revision petition is allowed and the impugned order is set aside. Resultantly, Private Complaint No. 71/AC/M of 2018 titled "Sultan-e-Rome Vs. Muhammad Amin and 02 others" is withdrawn from the diary of learned Assistant Commissioner, Matta and entrusted for adjudication to the Court of learned Additional Sessions Judge, Swat at Matta, where the trial against the petitioner and other co-accused in case F.I.R No. 670 dated 26.05.2018 u/s sections 302, 337-A(i)F(i)/34 is pending adjudication. Needless to mention that the learned trial Court shall proceed with both the cases in accordance with law and relevant procedure.

Announced.  
15.05.2019

  
**JUDGE**

Office  
20/05/19