

**A.F.R.**

**Court No. - 85**

**Case :- APPLICATION U/S 482 No. - 20241 of 2021**

**Applicant :- Pradeep Kumar Dubey**

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

**Counsel for Applicant :- Radhey Shyam Shukla,Vipul Shukla**

**Counsel for Opposite Party :- G.A.**

**Hon'ble Gautam Chowdhary,J.**

Heard learned counsel for the applicant and learned A.G.A. for the State.

The present 482 Cr.P.C. application has been filed praying for quashing of impugned order dated 16.8.2021 as well as the entire proceedings of S.T. No. 298 of 2014 (State Vs. Munesh Kumar & others), arising out of Case Crime No. 111 of 2014, under Sections- 147, 148, 149, 302, 504, 506, 307, 452 I.P.C., Police Station- Mirzapur, District- Shahjahanpur and further to connect cross complaint case no.1121 of 2019 (Pradeep Kumar Vs. HariNarayan & others), under section 147, 148, 307, 323, 506 I.P.C., Police Station- Mirzapur, District- Shahjahanpur and decide both the cases simultaneously.

Learned Additional Government Advocate submits that no useful purpose would be served in issuing notice to opposite party No. 2 and keeping this application pending before this Court and the same may be disposed of.

Learned counsel for the applicant submits that according to the F.I.R. lodged by the informant regarding some dispute in between the parties in respect of house for which the litigation is going on before the civil court. It is argued that some quarrel took place in between the parties in which both the persons of the parties received some injuries and one Ajay Kumar alias Kallu died. Further submission is that cross version of the same incident has been lodged by a complaint after moving of an application under section 156(3) Cr.P.C. Contention is that the case in which F.I.R. was lodged is attaining finality and on the other hand the complaint case is at initial stage before the court below. Submission is that both the cases may be clubbed together and be heard together so that it may cause no prejudice to the justice.

Placing reliance upon the judgement of Hon'ble Supreme Court in Nathi Lal Vs. State of Uttar Pradesh 1990 SCC (Cri) 638 and in the case of Sudhir and others Vs. Sate of M.P., (2001)2 SCC 688, learned counsel for the applicant submits that when two

criminal cases relate to the same incident, they should be tried and disposed of by the same court. The Court held as under:

*"8. It is salutary practice, when two criminal cases relate to the same incident, they are tried and disposed of by the same court by pronouncing judgments on the same day. Such two different versions of the same resulting in two criminal cases are compendiously called "case and counter-case" by some High courts and "cross-cases" by some other High courts. Way back in the nineteen hundred and twenties a Division Bench of Madras High Court (Waller and Cornish, JJ) made a suggestion (Goriparthi Krishtamma, In re: 1929 MWN 881 that "a case and counter-case arising out of the same affair should always, if practicable, be tried by the same court; and each party would represent themselves as having been the innocent victims of the aggression of the other".*

*10. We are unable to understand why the legislature is still parrying to incorporate such a salubrious practice as a statutory requirement in the Code. The practical reasons for adopting a procedure that such cross-cases shall be tried by the same court, can be summarised thus (1) It staves off the danger of an accused being convicted before his whole case is before the court. (2) It deters conflicting judgements being delivered upon similar facts. (3) In reality the case and the counter-case , to all intents and purposes, different or conflicting versions of one incident.*

*18. In the present case, the Sessions Judge ought not have transferred the second case to the Chief Judicial Magistrate as he did, but he himself should have tried it in the manner indicated in Nathi Lal (supra). To facilitate such a procedure to be adopted we have to set aside the order passed by the Sessions Judge in the second case. We do so.*

*19. Resultantly, we allow the appeal arising out of S.L.P. (Crl) No.4007 of 2000, and set aside the order of the High Court as well as the order passed by the Sessions Court by which the case was transferred to the Chief Judicial Magistrate. We direct the Sessions Court concerned to try and dispose of the first case and the second case in the manner set out in Nathi Lal's case (supra). In view of the above direction, the impugned order in the appeal arising out of S.L.P. (Crl.) No.3840 of 2000, will remain undisturbed."*

In view of the aforesaid legal position, the judgement and order dated 16.8.2021 passed by the Additional Sessions Judge Court No. 1, Shahjahanpur is set aside. Learned Judge is directed to decide both the sessions trial together and not to pronounce the judgment in Case Crime No.111 of 2014 at this stage.

However, it is provided that evidence recorded in one case should not be read in another and each case must be decide on its own merit.

With the aforesaid observations, this application is finally disposed of.

**Order Date :- 26.10.2021**

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