

RCC No. 147/2002
State of Mah.
..Vs..
Sunil Kedar & Ors.

ORDER PASSED BELOW EXH.3596
(Passed on 16/04/2024)

Accused No.3 has filed the instant application for issuing direction to the prosecution to file split-up chargesheet against him.

2. It is submitted that the police station Ganeshpeth, Nagpur has filed chargesheet against the present accused alongwith other 10 accused vide chargesheet No.150/2002 on 21/11/2002. The accused No.3 was also implicated in other similar type of offences around the state of Maharashtra, therefore he had filed writ petition before the Hon'ble Bombay High Court for clubbing all the cases to be tried by one Court. During the pendency of that petition, all the criminal cases pending against the accused No.3 were stayed and the trial of the present case was directed to be separated against rest of the accused from the applicant/ accused No.3. The trial was concluded on 22/12/2023 against the other accused and the case was disposed of.

3. It is further submitted that after conclusion of the trial of the present case, the accused No.3 was directed by the Hon'ble Apex Court and the Hon'ble High Court to remain present before this Court for facing the trial of the present case. Now, this Court is proceeding to frame the charge against the accused No.3.

4. It is the submission of the accused No.3 that after separation and conclusion of the trial of the present case against the other accused,

the prosecution has not filed the copy of split-up chargesheet against the present accused No.3. According to him, after splitting of the case against the present accused, the Court shall assign a fresh number to the split-up case and thereafter to comply the provisions of Section 207 of the Cr.P.C. Hence, it is necessary to give appropriate directions to the prosecution to furnish split-up chargesheet against the accused No.3 and to register the same. Due to absence of split-up chargesheet, great prejudice will be caused to the accused and it is also necessary for the fair trial of the case. The documents filed by the prosecution alongwith the chargesheet have been exhibited during the trial of the case against the other accused. Under such circumstances, if the split-up chargesheet is not filed on record then those exhibited documents would cause serious injustice upon the present accused No.3.

5. The learned Spl.A.PP has strongly opposed the application by filing her reply (Exh.3597). It is submitted that the chargesheet of the present case has been filed against all the accused including the present accused No.3 and the copy thereof was duly received by all the accused on 22/11/2002. Thus, the provisions of Section 207 has been duly complied.

6. The accused No.3 had received the copy of the chargesheet as well as supplementary chargesheet and all the documents on 25/08/2003. He had chosen to remain out of the trial from other accused. He was not absconding, therefore no question of filing of split-up chargesheet arises. No prejudice will be caused to the accused if the present application is rejected as it is a tactic to prolong the case. Hence, it is prayed for rejection of the application.

7. Heard the learned counsel for accused No.3 Shri Purohit and

the learned Spl.A.PP Smt. Chawariya at length. Perused the record.

8. It is not disputed that initially, the chargesheet No.150/2002 was filed against all the accused including the accused No.3. They have been supplied the copy of chargesheet alongwith all the documents and the supplementary chargesheet long back in the year 2002 and 2003. The present accused No.3 has acknowledged the receipt of the chargesheet through his learned counsel and it is duly reflected from the record of the case.

9. The main submission of the learned counsel for accused No.3 is that the trial of the case had been separated against the other 10 accused from the present accused No.3 and it came to be concluded. During the trial, the documents of the prosecution were exhibited. Therefore, if those documents would be considered while trying the case against the present accused, great prejudice will be caused to him. Therefore, the prosecution needs to be directed to file split-up chargesheet and the case needs to be registered separately against the present accused No.3. In support of his submission, he has placed his reliance on the case of **H. Aarun Badshah Vs. State represented by the Inspector of Police**, reported in **2018 SCC Online Madras 12845** wherein the Hon'ble Apex Court has issued various guidelines for dealing with the cases of the absconding accused and to follow the procedure under Section 299 of Cr.P.C.

10. On going through the supra case, it is seen that the facts of that case and the case in hand are totally different. In that case, the accused was absconding and the chargesheet was filed against rest of the co-accused who were present. Thus, on account of absconding of some of

the accused, the splitted chargesheet was filed against the accused who were present but in the case in hand, the present accused No.3 was never absconding. The chargesheet was filed against all the accused including the present accused and the provisions of Section 207 of Cr.P.C. was also duly complied by supplying the copy of the chargesheet to all the accused. However, due to filing of the writ petition by the present accused No.3 for clubbing all the cases against him before Single Court, the trial of the case was separated against the other 10 accused from the present accused No.3 and the same was disposed of but the case was kept pending against the present accused No.3. Under such circumstances, no question of filing of split-up chargesheet by the prosecution against present accused arises.

11. So far as the submission of the learned counsel for accused regarding exhibiting of documents of the prosecution during the trial of the other accused is concerned, indisputably, prosecution has to prove its case against the present accused No.3 independently. Moreover, the accused No.3 would also get opportunity of cross-examination of prosecution witnesses and of rebuttal of the documents, if any proved by the prosecution during the trial against him. Hence, no question of causing of any prejudice to the present accused No.3 would arise. On the other hand, prejudice will be caused to the prosecution if the direction to file split-up chargesheet is given as the prosecution has already filed the chargesheet against all the accused. Furthermore, it would also cause unnecessary delay and complications.

12. Hence, considering the supra discussion, I hold that there is no substance in the present application and filing of split-up chargesheet against the present accused No.3 is not necessary nor warranted.

Accordingly, the present application needs to be rejected. Hence, the following order-

ORDER

- 1] The application (Exh.3596) is rejected.
- 2] List the case for hearing before framing of charge.

Nagpur.

Date : 16/04/2024

(S.Z. Khan)
2nd Addl. Chief Judicial Magistrate
Nagpur.

CERTIFICATE

I affirm that the contents of this P.D.F. file of order are same word to word as per original order.

Name of Stenographer : G.A. Joshi (Grade-I).