

Case No. 2845/2017

Tarunbir Singh Kalra Vs. M/s Unitech Limited And Ors

PS Saket

30.01.2018

Present: Sh. Manendra Mishra, Id. counsel for the complainant
with complainant in person.

Sh. R.K.Gosain, Id. counsel for accused no. 1 to 4.

Sh. Pratyush Sharma, Id. counsel for accused no. 6.

None for accused no. 5, 7 and 8.

Accused no. 2 is absent.

Accused no. 3 & 4 not produced from J/C through video
conferencing.

An application for personal exemption has been filed on behalf of
accused no. 2.

Heard. For the reasons assigned in the application, accused no. 2
is exempted from personal appearance for today.

Arguments on application U/s 210 Cr.P.C. filed on behalf of
accused no. 1 heard.

1. It has been emphatically contented by Id. counsel for accused no.
1 that FIRs bearing no. 515/16 and 548/16 were registered at PS Saket on
complaints lodged by various complainants which pertain to the same project viz.
Unitech Cascades. All these cases are pending investigation. The present case
also pertains the same project. The subject matter of the present complaint
and the aforementioned

FIRs is the same and they arise out of the same transaction / project. The present complaint has been filed on same / similar allegations.

2. It is mandatory provision of law that when investigation by police in relation to an offence is in progress, which is the subject matter of trial being held by the court of a Magistrate, the court of Magistrate shall stay the proceedings of such inquiry or trial and call for report from the police officer conducting investigation. Therefore, further proceedings in the present complaint case may be stayed till final reports are filed by the police in the aforementioned FIRs.

3. In all the above cases, accused are the same and most of the documents are also same and / or identical, defence of accused persons is the same. If all the cases are not tried jointly in a single trial, the defence of accused shall be disclosed to other party / complainant in other cases and the other complainants will fill cavity and cover up their case/defence in pursuance of the defence disclosed by accused in other cases. The applicant/accused will suffer great hardship on account of different trials on account of producing their witnesses and proving documents in their defence various times at appropriate stage in all the cases.

4. The judicial machinery will have to act various times for propounding the truth and give a verdict. Joint trials of all these cases will reduce process of law and will facilitate the court to probed in the

matter simultaneously. The likelihood of contradictory and / conflicting verdicts / judgments shall also be eliminated by amalgamation of cases. It is expedient in the interest of justice that all these cases be tried jointly.

5. Reliance is placed upon judgments rendered in the cases of 'T.T. Antony Vs. State of Kerala and Ors.' (2001) 6 SCC 181, 'Sankaran Moitra Vs. Sadhna Das and Anr.' (2006) 4 SCC 584, Zee News Limited Vs. State and Anr, 2016 (5) AD (Delhi) 638, State Vs. Ramesh Chand Kapoor 2012 (4) JCC 2709, State Vs. Harnarain 1976 Cr.LJ 562, State of A.P. Vs. Cheemalapati Ganeswara Rao and Anr. 1963 (2) Cr.LJ 671, Joseph Vs. Joseph 1982 Cr.LJ 595, Mona Bedi Vs. Reuben Solomon Cr.MC No. 3033/2004 dated 21.02.2004, Surendra Singh Rautela Vs. State of Bihar (2002) CrL J 555, Naresh Kakkar Vs. State 1995 CrL J 3062, Smarty Machra Vs. State 2007 (2) JCC 1570 and State Vs Ram Kumar Meena and Ors. CrL Misc. No. 1187/14, decided on 20.07.2015.

6. Per contra, it is emphatically contended on behalf of the complainant that one of the essential ingredient of Section 210 Cr.P.C. is that the subject matter of complaint case and police case should be the same. The occasions on which the offences of cheating and criminal breach of trust took place are different in the complaint case and the FIRs cited by the applicant / accused.

7. The court has not taken cognizance on the police reports / charge-sheets filed in the aforementioned FIRs. There is a significant difference in the allegations leveled in the FIRs and in the present complaint case. The offences mentioned in the FIRs are distinct and separate from the offences mentioned in the present complaint case. Merely because the accused and project are same, the offences committed against different persons at different points of time and in a different manner cannot be the same.

8. Payments were made by the complainant independently and under a separate deal, pursuant to which separate agreement was executed, which has no relation with the transaction in respect of which the aforementioned FIRs were lodged. Even the terms and conditions of the transaction were settled independently. Reliance is placed upon judgments delivered by Hon'ble Supreme Court of India in the cases of State of Punjab & Anr. Vs. Rajesh Syal (2002) 8 SCC 158, Narenderjeet Singh Sahni & Anr. Vs. Union of India & Ors (2002) 2 SCC 210, Ramesh Chandra Nandlal Parikh Vs. State of Gujarat & Anr. (2006) 1 SCC 732 and Babu Bhai Vs. State of Gujarat & Ors (2010) 12 SCC 254.

9. The court is of the considered view that it has been held by Hon'ble Supreme Court of India in the case of State of Punjab & Anr. Vs. Rajesh Syal (2002) 8 SCC 158 that in a case wherein different people are alleged to have been defrauded by the accused, each offence is a distinct one and cannot be regarded as constituting a single

series of facts / transaction. It has been held by the Hon'ble Supreme Court of India in the case of Narenderjeet Singh Sahni & Anr. Vs. Union of India & Ors (2002) 2 SCC 210 that each individual deposit agreement shall have to be treated as a separate and individual transaction brought about by the allurements of accused. Where parties are different, amount of deposit is different, all are independent transactions.

10. In the case of Ramesh Chandra Nandlal Parikh Vs. State of Gujarat & Anr. (2006) 1 SCC 732, the Hon'ble Supreme Court of India repelled the contention of petitioners that it was not legally permissible to file other complaints in respect of the offences alleged to have been committed in the course of the same transaction and held that subsequent complaints were not in respect of the same offence or same occurrence giving rise to one or more cognizable offences, nor were they committed in the course of same transaction or occurrence.

11. It is not in dispute that even in respect of the same project, negotiations for sale / purchase of unit / flat were held with each separate buyer at a different point of time which constitute an independent cause of action. Moreover, every such independent negotiation may or may not tantamount to an offence as the nature / content of representations / talks may be different. Admittedly, not all the buyers have levelled allegations of cheating against the accused persons. Many buyers have chosen to avail civil remedies.

12. It is not in dispute that even in respect of one project involving multi storeyed towers, some units / flats / floors may have been completed whereas construction of others may not have even commenced. Entering into independent agreements with different individuals / entities (buyers) at different points of time will not in any case constitute a single offence. Section 210 Cr.P.C. is not applicable to the present proceedings as the aforementioned five FIRs do not pertain to the **same offence**.

13. The application U/s 210 Cr.P.C. is not maintainable and the same is accordingly, dismissed.

Re-notify for pre-charge evidence on **09.05.2018**.

(Sandeep Garg)
ACMM (South),
New Delhi/30.01.2018