
(2025) 10 DH CK 0012

Delhi HC

Case No: Criminal Miscellaneous Petition No.1213 Of 2021 & Criminal Miscellaneous
Application No. 6156 Of 2021

M/s Andhra Pradesh
Gas Power Corporatio
Ltd

APPELLANT

Vs

CBI

RESPONDENT

Date of Decision: Oct. 27, 2025

Acts Referred:

- Constitution of India, 1950 — Article 21
- Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 219, 220, 221, 223
- Code of Criminal Procedure, 1973 — Section 197, 218, 219, 220, 220(1), 220(2), 223, 223(d), 233, 234, 235, 236, 239, 239(a), 239(c), 239(d)
- Indian Penal Code, 1860 — Section 120B, 420
- Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 19
- Evidence Act, 1872 — Section 10

Hon'ble Judges: Neena Bansal Krishna, J

Bench: Single Bench

Advocate: Kailash Pandey, Ranjeet Singh, Ripudaman Bhardwaj,

Final Decision: Dismissed

Judgement

Neena Bansal Krishna, J

1. Aforesaid four Petitions have been filed to impugn the Order dated 16.02.2021 of the Special Judge, CBI directing separate trial of the Petitioner in respect of the transactions with nine separate Companies.

2. **Briefly stated**, the factual matrix in which the controversy has been arisen, is that by the pricing Order dated 20.06.2005, MPNG had fixed the APM price for power, fertilizer, CGD and small consumers at INR 3200/1000 SCM. The accused, Shri Emani Venkata Sarveswara Rao

(hereinafter, referred to as E.V.S. Rao), was working with the Gas Authority of India Limited (GAIL) as General Manager, Pricing in 2006. During this period, the Ministry of Petroleum & Natural Gas (MPNG) issued a Notification dated 05.06.2006, regarding the revised applicable prices for the Administered Price Mechanism (APM) Gas at ■3840/1000 Standard Cubic Meters (SCM). As GM, Pricing, Petitioner E.V.S. Rao circulated this Notification to all Zonal offices of GAIL.

3. The allegations in the FIR are that the Petitioner as GM (Pricing) at GAIL, intentionally failed to implement the Pricing Order of the MPNG. Purportedly, queries were received from the customers/Companies who were either supplying electricity through a cable or through the grid, but only to their related Companies, by paying wheeling charges to the Electricity Board at commercially agreed tariffs.

4. Despite clear instructions in the Notification dated 05.06.2006, in furtherance of a criminal conspiracy with various Companies, including M/s MMS Steel, M/s Saheli Exports, M/s Kaveri Gas, M/s Coromandel Electric, M/s Arkay Energy, M/s OPG Energy, and M/s Sai Regency, the Petitioner wrote a Letter 27.06.2006 requesting an early clarification. However, intentionally he also proposed to charge the Companies on a provisional basis until the matter was clarified by the MPNG.

5. He thus, wrote a Letter dated 31.07. 2006 directing the GAIL Authorities to Bill consumers at the older rate of ■3,200/MSC instead of the revised rate of ■3,840/MSC. This resulted in wrongful loss of ■241.95 Crores to GAIL and a corresponding wrongful gain to the Companies.

6. The Preliminary Enquiry PEAC122013A0008, registered on 30.08.2015 by the CBI against the Petitioner E.V.S. Rao and other accused Companies, led to a written Complaint on 16.05.2014 by the Deputy Superintendent of Police, CBI AC-I, against the Petitioner, Companies and others.

7. An FIR vide RC-AC-I 2014 A0003 was registered on 19.05.2014 *under Section 120B read with Section 420 Indian Penal Code, 1860, and Section 13(2) read with Section 13(1)(d) Prevention of Corruption Act, 1988.*

8. The CBI submitted a Chargesheet dated 31.10.2017 before the learned Special Judge. The learned Special Judge took cognizance on the Charge sheet on 25.04.2018 and issued summons to all accused persons.

9. While the arguments were being addressed on the Charge, the Public Prosecutor submitted that the transactions of the Petitioner with the nine Companies, were separate and did not form a single large conspiracy, as alleged in the Charge Sheet. Thus, separate Charges should be framed for each transaction with each of the Company in view of Sections 218 and 219 Cr.P.C., to ensure an expeditious trial.

10. Accepting this submission, the learned Special Judge, vide the impugned Order dated 16.02.2021, *directed the severance of the Charge Sheet and the registration of separate cases for each Company.*

11. The Petitioners i.e. Mr E.V.S. Rao and the Gas Companies have challenged this Order by way of these Petitions.

Contentions of the Petitioners:

12. The Petitioner E.V.S. Rao has contended that the case of the Prosecution is based on two false assumptions, i.e. firstly, the applicability of the revised APM price as revised vide MoPNG's letter dated 05.06.2006, was so obvious that no clarification was required by E.V.S. Rao; and secondly that he was the sole authority in GAIL for implementing the revised APM price. It is not appreciated that both the said assumptions of the prosecution apart from being false, also lack any semblance of application of mind.

13. This is more so, as even after the Petitioner E.V.S. Rao had resigned in January 2007, the unrevised APM price continued to be charged to these customers till 2011, notwithstanding the fact two Internal Reports of GAIL as well as a CAG Report, made recommendations against the same.

14. It is argued that the learned Special Judge has failed to take note of the prejudice, grave hardship and the inconvenience that separate trials would cause to the Petitioner, given that he is a senior citizen and is the only natural person, who would have to face nine separate trials with respect of each of the nine accused Companies. He would be forced to face nine separate trials for what is essentially a single alleged transaction.

15. It is further submitted that the learned Special Judge erred in relying on letters written by the co-accused Companies to the Zonal office of GAIL, to conclude that there were multiple transactions. None of these Letters were marked to the Petitioner, and there is no evidence indicating the existence of separate conspiracies involving him.

16. Further, the Prosecution itself filed a single composite Chargesheet based on a single FIR dated 19.05.2014. The request for severance of the trial was made for the first time, on 22.10.2020, i.e. after over six years of the registration of FIR and three years after the Charge Sheet was filed, and more than 2 years after cognizance was taken by the said Ld. Special Judge (CBI) vide Order dated 24.04.2018.

17. The request was an afterthought, made for the convenience of the prosecution due to voluminous records, despite the singularity of transaction being apparent on the face of the record, as the entire controversy hinges on the single Letter dated 31.07.2006.

18. It is argued that a separate trial will cause great hardship to Petitioner E.V.S. Rao, who is a common accused in all cases, and also to all other Petitioners. It is further submitted that not even a prima facie case is made out against the Petitioner that he had entered into any conspiracy, much less separate conspiracies.

19. The Petitioner has vehemently argued that his prosecution was unwarranted, especially since sanction to prosecute officers senior to him, had already been denied. The Petitioner retired from

GAIL on 29.01.2007. The FIR was registered nearly 7 years after his retirement on 19.05.2014. The Petitioner highlighted that sanction to prosecute Dr. U.D. Choubey (the then Chairman & Managing Director) and Shri Bhuvan Chand Tripathi (the then Chairman & Managing Director) was denied by the Ministry of Petroleum and Natural Gas (MoP&NG) on 11.05.2017. Their names were therefore mentioned in Column No. 12 of the charge sheet (accused not charge sheeted).

20. The investigation concluded that since the accused E.V.S. Rao had opted for voluntary retirement and was an ex-employee of GAIL (a PSU), the sanction for prosecution under Section 19 of the P.C. Act, 1988 and Section 197 Cr.P.C. was not required from the competent authority. Therefore, the CBI continued with his prosecution without obtaining any sanction under Section 19 of the PC Act read with Section 197 Cr.P.C.

21. Petitioner, *M/s Andhra Pradesh Gas Power Corporation Ltd.* (hereinafter referred to as APGPCL), submits that it entered into an Agreement with GAIL on 21.11.1990, which was subsequently amended, for the supply of gas. The Petitioner contends that it was wrongly implicated in the Chargesheet for causing a loss of ₹335 crores to GAIL.

22. The common grounds to challenge the impugned Order by the petitioners is that the severance of cases qua nine Companies for the purpose of trial/enquiry, has been wrongly directed. It has not been considered that even if the offences are taken to be distinct, they form part of the same transaction, thereby deserving a single trial in terms of Section 220 Cr.P.C.

23. It has been overlooked that directions for separate Trial is contrary to the true scope of Section 223 of the Cr.P.C. The learned Special Judge has failed to consider the law on joint trials, laid down by the Supreme Court in *Kadiri Kunhahammad vs. State of Madras*, AIR 1960 SC 661.

24. Furthermore, since the witnesses and documents cited in the Chargesheet are common, any conclusion drawn in one case would invariably influence the others. Reliance is placed on the judgment of the Apex Court in *State of Andhra Pradesh vs. Chimlapati Ganeshwara Rao*, AIR 1963 SC 1850, which deals with the interpretation of a "single transaction".

25. Further, the Order violates the principles of joint trial under Section 220(1) read with Section 223(d) of the Cr.P.C. It is contended that the learned Special Judge erred in holding that since there are separate conspiracy, they have to tried separately and the joint trial would be contrary to law.

26. Reliance is placed on *M.S. Kochar vs. The State and Ors.*, 1986 SCC OnLine Del 117, where it was held that the discretion to hold a joint or a separate trial, must be guided by whether it would cause prejudice or harassment to the accused. It is contended that even if the offences are distinct, they form part of the same transaction and thus, warrant a single trial.

27. It is further submitted that the impugned Order is in contravention of the extant law for joint trial under Section 220(1) read with Section 223(d) Cr.P.C. A reference is made to *M.S. Kochar vs. The State and Ors.*, 1986 SCC OnLine Del 117, wherein Co-ordinate Bench of this Court has held that the discretion to hold a joint or separate trial of offences under Section 218, has to be

exercised applying the test of “whether it would lead to the prejudice or harassment of the accused”.

28. Reliance is also placed on *Rajnish B. Bhatia, vs. CBI and Ors.*, 2015 SCC OnLine Del 11862, wherein it was observed that Section 223 Cr.P.C. permits joint trial of several persons in specific cases, where various offences committed by them, are connected with each other.

29. Likewise, in *State of A.P. vs. Cheemalapati Ganeswara Rao and Anr.*, AIR 1963 SC 1850, the Supreme Court held that what had to be ascertained was whether offences arise out of acts so connected together so as to form the same transaction, for them to be clubbed together.

30. Reliance has also been placed on *Mohan Baitha vs. State of Bihar*, AIR 2001 SC 1490; and *Balbir vs. State of Haryana & Ors.*, (2000) 1 SCC 285, wherein also similar observations have been made.

31. It is submitted that the singularity of transaction is writ large from the fact that the sole basis of the allegations of conspiracy, cheating and criminal misconduct is one single Letter dated 31.07.2006 whereby clarification was sought about the revised APM gas price, after extensive internal discussions within GAIL.

32. It is therefore, submitted that impugned Order be set aside and the joint trial may be directed to be continued.

Contentions of the Respondent:

33. The Respondent/CBI in its Reply to the Petition has supported the impugned Order, stating that it is appropriate and in accordance with the law. It is submitted that distinct transactions should have distinct charges, and where the transactions are not with a common set of people, separate Charge sheets are the rule. The mass trial is an exception, and the normal rule is that every accused should be tried for the separate offences they committed. A joint trial in a case of separate conspiracies would be contrary to Article 21 of the Constitution of India, as it would cause great prejudice to the accused, complicate the proceedings, and prolong the trial.

34. The Chargesheet reveals separate conspiracies entered into by E.V.S. Rao with each of the accused Companies, as there is no evidence that any of these Companies were aware of the others. Each Company dealt with E.V.S. Rao, independently.

35. It is submitted that as a co-accused in a conspiracy trial occupies an uneasy seat. There generally will be evidence of wrong doing by somebody; thereby it will be difficult for the individual to make his own case stand on its own merits, in the trial.

36. The Trial Court rightly directed severance of the Charge sheet for convenient disposal. Thus, it is prayed that the Petition be dismissed.

37. The Petitioner, by way of Rejoinder, has reiterated its averments made in the Petition and refuted that contentions of the Respondent, and made a prayer for setting aside of the impugned Order.

Submissions heard and Record perused.

38. The issue at hand is whether the facts of this case constitute a single transaction thereby justifying a joint trial, or whether they involve multiple, separate transactions necessitating separate trials, as directed by the learned Special Judge.

39. It is a settled principle of law that a separate charge and trial for every distinct offence is the normal rule, and a joint trial is an exception.

40. The challenge of complex conspiracy cases involving multiple actors, has been judicially recognized. In *S. Swaminathnam vs. State of Madras*, AIR 1957 SC 340, the Supreme Court made a reference to the English case of *R. vs. Dawson*, (1960) 1 ALL ER 558, wherein Finnemore Judge made the following observations:

“... This Court has more than once warned of the dangers of conspiracy counts, especially these long conspiracy counts, which one counsel referred to as a mammoth conspiracy. Several reasons have been given. First of all if there are substantive charges which can be proved. it is in general undesirable to complicate matters and to lengthen matters by adding a charge of conspiracy. Secondly, it can work injustice because it means that evidence, which otherwise would be inadmissible on the substantive charges against certain people, becomes admissible. Thirdly, it adds to the length and complexity of the case so that the trial may easily be well-nigh unworkable and impose a quite intolerable strain both on the Court and on the jury.”

41. Relying on the aforesaid observations, the Apex Court in *S. Swaminathnam* (supra) resonated the same sentiment and warned against the dangers of long and complicated conspiracy counts. It was observed that such charges can work injustice by making evidence that is inadmissible on substantive charges, admissible against certain accused and they add to the length and complexity of a trial, imposing an intolerable strain on the Court and the parties.

42. The challenge in clubbing the complex conspiracy cases involving multiple conspiracies together, was highlighted by the United States of America in the case of *Krulewitch vs. United States* by observing that strictly, the prosecution should first establish prima facie the conspiracy and identify the co-conspirators, after which evidence of acts and declarations of each which evidence of acts and declarations of each in the course of its execution are admissible against all. The accused often is confronted with a hodgepodge of acts and statements by others which he may never have authorized or intended or even known about, but which persuade the Court of existence of the conspiracy itself. The trial of a conspiracy charge doubtlessly, imposes a heavy burden on the prosecution, but it is an especially difficult situation for the accused. The hazard from loose application of rules of evidence is aggravated when the prosecution institutes mass trials.

43. Similarly, in *Caminetti vs. United States*, 242 U.S. 470, it was noted that a co-conspirator in a conspiracy trial “occupies an uneasy seat,” as it is difficult for an individual to make their

case stand on its own merits, when the court is ready to believe that "birds of same feather are flocked together." If he is silent, he is taken to admit it, and if, as often happens, co-accused is prodded into accusing or contradicting each other, they implicate each other. There are many practical difficulties in defending against a charge of conspiracy.

44. Having so observed the complexities in the trial involving criminal conspiracy, reference be made to the provisions of Cr.P.C. to understand the law on joint/separate Trials.

45. Section 220(1) Cr.P.C. which provides for the trial of more than one offence committed in a series of acts connected to form the same transaction:

§ 220. Trial for more than one offence. -

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

...

46. The law concerning the joint trial of persons is primarily governed by Section 223 of the Cr.P.C. The relevant provisions state:

§ 223. 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 course of the same transaction;

...

(c)

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

47. The permissibility of a joint trial hinges on the expression "in the course of the same transaction." The term "same transaction" finds mention in Clause (a) (c) and (d) of Section 223 Cr.P.C. as well as Section 235(1) Cr.P.C. and they ought to be given the same meaning according to normal rule of construction of statutes.

48. The Supreme Court in *Chimlapati Ganeshwara Rao* (supra) explained that for a series of acts to constitute the "same transaction," they must be connected to one another. The test is whether the acts are so related in purpose or as cause and effect, or as principal and subsidiary, as to result

in one continuous action. Where there is a commonality of purpose or design and continuity of action, the persons involved can be tried jointly.

49. Thus, where there is commonality of purpose or design and where there is continuity of action, then all those persons can be accused of the same or different offences “committed in the course of the same transaction”.

50. Further, the Apex Court in the case of Chandra Bhal vs. State of U.P., 1971 (3) SCC 983, observed that while Section 233 Cr.P.C. (now Section 218BNSS) lays down the general mandatory rule of separate charges for distinct offences, Sections 234, 235, 236, and 239 (now Sections 219, 220, 221, and 223BNSS) provide exceptions. These exceptions are enabling provisions, and the Court retains the discretion to order a joint or separate trial, guided by the need to avoid embarrassment or prejudice to the accused in their defence.

51. In the case of Ranchodlal vs. State of MP, AIR 1965 SC 1248, it was observed that sub-Section 2 of Section 220 Cr.P.C. is an exception to meet a certain contingency and is not the normal rule with respect to framing of a charge in cases of Criminal Breach of Trust. However, if several distinct items, with respect to which criminal breach of trust has been committed, are not so lumped together, no illegality is committed in the trial of those offences.

52. Another illustration of whether the series of transactions would amount to one conspiracy or several conspiracies, can be drawn from Mercante vs. United States 49 F. Supp. 42, 46 (MD Pa. 1946) Aff'd, 165 F.2d 42 (3d Cir 1947), wherein a State Official solicited bribes from State wide Liquor Dealers and manufacturers. The spokes were aware of only the area in which each was operating. It was held that merely because there was one state official, but clearly, it was a case of not one conspiracy as the State Official was involved in taking bribe from different liquor dealers and manufacturers, but was held to be multiple conspiracies.

53. The similar facts were considered in Kotteakos vs. United States, 328 U.S. 750 (1946), there was one person who sent different Loan Applications to the Petitioner on behalf of various persons, who had acted similarly. They all also entered into loan transactions with the Petitioner relating to loans under National Housing Act. However, there was no connection between these persons. It was found that there were at least eight and perhaps more separate and independent groups, none of which had any connection with any other. It was held that where one person acted as a central hub for several independent groups (like separate spokes meeting at a centre but without the rim of a wheel to connect them), the proof established not a single conspiracy but several.

54. Applying these principles to the present case, the allegation is that Petitioner/E.V.S. Rao, as the GM (Pricing) at GAIL, was the concerned officer responsible for intimating the Power Companies about the applicable tariff. While the clarification may have been sought by him from the MoPNG through a single Letter, the facts remains that the Letters were separately written to the power Companies about the payable tariff. He dealt with different power Companies separately. Each Company responded independently, interpreting the tariff in its own way. The Prosecution’s

case is that E.V.S. Rao entered into similar, but distinct illegal Agreements with different Companies around the same time.

55. According to the prosecution, all of these power Companies had sold electricity to their group captive consumers/third parties through wheeling of power through the GRID of TNEB / TANGEDCO / APSEBs by paying wheeling charges in cash/kind.

56. The case of the Prosecution clearly reflects that the Petitioner/E.V.S. Rao, GM (Pricing), GAIL, was the Officer concerned, who was in charge and taking care of the administration of the power distribution and for intimating the power companies about the tariff that was liable to be paid. The Notification dated 05.06.2006 may have been issued by MPNG, giving the tariff charges, and Letter 27.06.2006 may have been written by the Petitioner/E.V.S. Rao, who had some doubts about the tariff payable by Petitioners/power Companies, who were selling their electricity to their group captive consumers/third parties through wheeling of power through TNEB grid, but the conspiracy is allegedly in writing Letter separately informing them to pay the tariff at given rate, which according to the Prosecution was fraudulent, intended to cause unlawful Loss to GAIL.

57. There is nothing on record to suggest that the accused Companies conspired together or were even aware of each other's existence, in this context. The common element is E.V.S. Rao, but the transactions themselves were separate and independent. It cannot be said that there was a larger conspiracy amongst all the power Companies and E.V.S. Rao, to cause loss to the Government. What emerges is a pattern of separate transactions between E.V.S. Rao and each of the power Companies. These acts cannot be said to be so connected by a commonality of purpose, as to form one continuous/comprehensive transaction. The acts are like spokes of a wheel but have no rim around them, making them connected.

58. The learned Special Judge has rightly observed that a mass trial is an exception, and conducting one trial where there are separate conspiracies, would be contrary to Article 21 of the Constitution of India as it is likely to cause great prejudice to the accused. A joint trial would unnecessarily complicate and prolong the proceedings, making it difficult for each accused to defend their case on its own merits. The cogent reasons given by the learned Judge, are as under:

As firstly, by virtue of Section 10 of the Indian Evidence Act, the prosecution can by principal of agency where there are reasonable grounds to believe that there is conspiracy introduce any evidence with regard to anything said done or written by any of the such persons in reference to their common intention of the conspiracy i.e. even hearsay evidence is admissible qua the said accused in furtherance of the common intention of the conspiracy.

Secondly, it adds to length and complexity of the case unnecessarily, so that the trial may easily become unworkable and impose quite an intolerable strain on the prosecution, defence and the court and thereby complicate and lengthen the matter.

Thirdly, due to the inherent vagueness in the charge I crime of conspiracy.

Fourthly, the broad venue or jurisdiction rules permitting prosecution to be at the place of agreement or at any place where an overt act has been committed. The vide latitude given to the prosecution to introduce any evidence which

even remotely tends to establish a conspiracy.■

59. It is held that in light of the aforesaid legal principles and the facts of the case, the Ld. Special Judge has rightly concluded that the transactions between Petitioner E.V.S. Rao and the individual Companies, are independent of each other and do not form part of the same transaction, and must be tried separately to avoid prejudice to the accused and to ensure a fair and manageable trial.

Conclusion:

60. There is no infirmity in the impugned Order dated 16.02.2021 of the Ld. Special Judge. The present Petitions are without merit and are hereby, dismissed.

61. The Petitions are accordingly disposed of along with pending Application(s), if any.