

(2001) 10 P&amp;H CK 0168

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Criminal Miscellaneous No. 21822-M of 2001 (O and M)

Brahm Parkash

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** Oct. 18, 2001**Acts Referred:**

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 323, 407, 482
- Penal Code, 1860 (IPC) - Section 148, 149, 307, 342, 427

**Citation:** (2001) 4 RCR(Criminal) 681**Hon'ble Judges:** V.M. Jain, J**Bench:** Single Bench**Advocate:** Pankaj Jain, for the Appellant; G.S. Gill, DAG, for the Respondent**Final Decision:** Allowed

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**Judgement**

V.M Jain, J.

This is a petition u/s 407 Cr.P.C. read with Section 482 Cr. P.C. read with Article 227 of the Constitution of India for the issuance of direction to the Judicial Magistrate to commit the case titled as State v. Sonu Verma etc. pending in the court of Judicial Magistrate.

2. Two FIRs were registered in PS Jaitu, District Faridkot. The first FIR is FIR No. 89 dated 3.9.1996 under Sections 342, 506, 427, 148, 149 IPC, copy Annexure P2, in which the date and time of the occurrence is mentioned as the night intervening 2/3rd September, 1996 at about 10 or 10.30 p.m. The other FIR is bearing No. 19 dated 22.2.1997 under Sections 342, 506, 427, 148, 149 I.P.C, copy Annexure P1, in which the date and time of occurrence is mentioned as 2nd September, 1996 at about 10.30 or 11 p.m. From a perusal of these two FIRs. thus it would be clear that time of occurrence is almost the same. The FIR No. 89 dated 3.9.1996, copy Annexure P2 was lodged by Brahm Parkash and in the said FIR Sonu Verma and

others are the accused. The other FIR No. 19 dated 22.2.1997, copy Annexure P1 was registered under the orders of this court at the instance of Sonu Verma, aforesaid against Brahm Parkash etc. Thus, it would be clear that in one FIR Sonu Verma is the accused and in the other FIR Sonu Verma is the complainant. Similarly, in one FIR Brahm Parkash is the complainant whereas in the other FIR Brahm Parkash is the accused. As per these two FIRs, the occurrence had taken place almost at the same time. Under these circumstances, in my opinion, it could not be said that these were two occurrences which were to be tried separately by different courts.

3. The case arising out of FIR No. 19 dated 22.2.1997 is stated to be pending in the Court of Sessions (after it was committed to the Court of Session by the learned Magistrate in view of Section 307 IPC), whereas the other case arising out of FIR No. 89 dated 3.9.1996 is stated to be pending in the court of Judicial Magistrate, Faridkot, as none of the offences or which the accused were to be charged was exclusively triable by the Court of Session.

4. Since the two cases arising out of two FIRs pertaining to the same occurrence were pending in two different courts, Brahm Parkash, petitioner filed the application before the learned Magistrate for commuting the case which was being tried by the learned Magistrate, to the Court of Session, so that both the cases could be decided by the same court. However, vide order dated 12.10.2000, the learned Judicial Magistrate dismissed the said application of Brahm Parkash. Thereupon, Brahm Parkash filed revision petition before the Session Court. The learned Sessions Judge, Faridkot vide order dated 5.4.2001, copy Annexure P3 dismissed the said application by taking an erroneous view of the matter by observing that in the two cases the place of occurrence is stated to be different inasmuch as in one FIR the place of occurrence is stated to be near Tandon Nursing Home at 10.30/11 p.m. whereas in the other case the place of occurrence is stated to be main bazar at about 10.15/10.30 p.m. The learned Additional Sessions Judge also considered that the case State v. Sonu Verma was at the stage of defence evidence whereas the case State v. Labhu Ram was at the stage of consideration of charge and it was likely to take long time in maturing the case.

5. After hearing the learned counsel for the parties and after perusing the record, in my opinion, the order passed by the learned Magistrate refusing to commit the case to the Court of Session and the order passed by the learned Sessions Judge, dismissing the revision petition are contrary to law and are liable to be set aside. In my opinion, the courts below had failed to take into consideration the provisions of Section 323 Cr. PC, in which it is specifically provided that if, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court. Considering that both the cases had arisen out of the same occurrence, in my opinion, the present case is one which ought to be tried by the Court of Session and the learned Magistrate should

have committed the case to the Court of Session instead of refusing the request of the petitioner in this regard. I am further of the opinion that the learned Addl. Sessions Judge had also erred in law in dismissing the revision petition.

6. For the reasons recorded above, the present petition is allowed and the orders passed by the courts below refusing to commit the case to the Court of Session are set aside and the Judicial Magistrate is directed to commit the case titled as State v. Sonu Verma and others, pending in his court to the Court of Session/forthwith.

7. Petition allowed.