

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL REVISION APPLICATION No. 493 of 2008**  
**WITH**  
**CRIMINAL REVISION APPLICATION No. 498 of 2008**  
**WITH**  
**CRIMINAL REVISION APPLICATION No. 508 of 2008**  
**WITH**  
**CRIMINAL REVISION APPLICATION No. 515 of 2008**

**For Approval and Signature:****HONOURABLE MR.JUSTICE H.B.ANTANI**

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| 1 Whether Reporters of Local Papers may be allowed to see the judgment?  | YES |
| 2 To be referred to the Reporter or not?   | YES |
| 3 Whether Their Lordships wish to see the fair copy of the judgment?   | NO  |
| 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder? | NO  |
| 5 Whether it is to be circulated to the Civil Judge?   | NO  |
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**ASHWIN CHATURBHAI PARMAR AND ANOTHER - Applicants**  
**Versus**  
**STATE OF GUJARAT - Respondent**

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**Appearance :****CRIMINAL REVISION APPLICATION NO. 493 OF 2008**

MR AY KOGJE for the Applicants.

MS SHILPA R SHAH for the Complainant.

**CRIMINAL REVISION APPLICATION NO. 498 OF 2008**

MR DHARMESH BHATT for the Applicant.

MS SHILPA R SHAH for Respondent No. 2.

**CRIMINAL REVISION APPLICATION NO. 508 OF 2008**

MR PB BAROT for the Applicant.

**CRIMINAL REVISION APPLICATION NO. 515 OF 2008**

MR MK PATEL for the Applicant.

**CRIMINAL REVISION APPLICATION NOS. 493, 498, 508 and 515 OF 2008**

MS MANISHA L. SHAH, ADDITIONAL PUBLIC PROSECUTOR for the Respondent-State.

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**CORAM : HONOURABLE MR.JUSTICE H.B.ANTANI****Date : 31/07/2008**

**ORAL JUDGMENT**

1. **RULE.** Learned Additional Public Prosecutor Ms. Manisha L. Shah waives service of Rule on behalf of the respondent-State and learned Advocate Ms. Shilpa R. Shah waives service of Rule for the respondent-complainant. In the facts and circumstances of the case, the matter is taken up for hearing today.

2. As common question of law is involved in all the three Revision Applications, they are heard together and disposed of by this common judgment.

3. These applications are preferred under Section 397 of the Code of Criminal Procedure, 1973 ("**the Code**", for short) read with Section 401 of the Code in connection with Special Case No. 22 of 2008 pending before the Special Judge, Fast Track Court No. 1 at Patan. The petitioners are aggrieved by the order passed by the learned Additional Sessions Judge and Presiding Officer, Fast Tract Court, Patan, below Exhs. 53 and 54 by which the application preferred by the accused for framing of the separate charge was dismissed.

4. The main contention in all the Revision Applications preferred by the petitioners is that as the learned Judge has committed gross error in not appreciating the fact that the charge framed against the petitioners is against the provisions of law inasmuch as Section 218 of the Code mandates that the separate charge is required to be framed for distinct offences. The learned Judge has also erred in not correctly applying

Section 223 to the facts of the present case. On perusal of Section 223 of the Code, it becomes clear that Section 223 provides for categories of the persons who may be charged jointly. The facts of the present case do not attract any of the said categories as enumerated in sub-sections (a) to (g) of Section 223 so as to enable the learned Judge to charge the petitioners and accused jointly. It is submitted that the learned Judge has not considered the *proviso* to Section 223 of the Code. The *proviso* enables the Court to try all the persons charged with separate offences. However, it is the liberty of such accused persons to make the application for joint trial. The learned Judge ought to have considered the factual aspect of the case because as per the prosecution case, 5 different incidents of rape are alleged to have taken place against 6 accused persons. The first incident took place on 11-09-2007 at the PTC College wherein accused Nos. 1 to 3 were involved. The second incident took place on 28-09-2007 at the PTC College wherein accused Nos. 2, 3 and 4 are also alleged to have been involved. The third incident at PTC College took place on 01-01-2008 wherein accused Nos. 2, 4 and 5 are alleged to have been involved. The fourth incident took place on 11-01-2008 at Village: Kimbuva wherein accused Nos. 2, 4 and 5 are alleged to have been involved and the fifth incident took place on 25-01-2008 at PTC College wherein accused No. 6 is alleged to have been involved. On perusal of the aforesaid dates, it becomes clear that all the accused were not involved in all the incidents. This fact was overlooked by the learned Judge while framing the charge vide Exh. 29 on 13-06-2008. It is submitted that even the learned Special Judge has not taken into consideration the case of the prosecution in the charge-sheet. Even though the prosecution did not think it fit to

invoke Section 120B of the Indian Penal Code ("**IPC**", for short) in the charge-sheet as there was no element of conspiracy or meeting of minds so as to attract Section 107 of IPC. However, the learned Judge proceeded to add Section 120B of IPC in the charge framed vide Exh. 29 to the present case. The learned Judge has also erred in interpreting the phrase "*in the course of the same transaction*". While considering the aforesaid aspect, the learned Judge has considered all the five independent incidents to be part of one common transaction. Even though there was no evidence to that effect, it was held that there was commonality of purpose and design and, therefore, there was a continuous effect. The learned Judge has overlooked the fact that even the complainant had not stated in the complaint or in the further statement and not alleged that the accused had the common intention, and in support of each other to achieve the common goal in collusion / conspiracy with each other, they jointly committed the offences. Thus, the learned Judge has committed error in coming to the conclusion that all the incidents can be said to have arisen from the same transaction. It is submitted that the expression "same transaction" means different incidents which are interwoven in such a manner that one transaction is dependent upon the other and thereby make one transaction, and in the present case, for each of the alleged instances separate and independent complaints could have been filed and there was no reason for the complainant to wait till the incident dated 25-01-2008 because there was no connection between the first incident and last incident and likewise the incidents in between which were alleged to have happened between the first incident and the last incident and, therefore, the framing of the joint charge and joint trial itself is defective.

5. It is further submitted that the reasoning given by the learned Judge in the order vide Exhs. 54 and 55 is not just and proper in the facts and circumstances of the case and, therefore, the order passed by the learned Judge deserves to be set aside. It is submitted that the charge framed vide Exh. 29 is prejudicial to all the petitioners and it will deprive the petitioners of their fundamental right of free and fair trial and, therefore, it requires to be quashed and set aside. So far as original accused No. 4 is concerned, it is submitted that that provisions of Section 376 (g) cannot be made applicable to the said petitioner-accused No. 4, as he was not directly involved in the commission of rape, and, at the most the petitioner can be charged for the offences punishable under Section 377 of the IPC. It is submitted on behalf of original accused Nos. 1 and 3 that even if the charge is not framed separately and in a distinct manner against each accused, the offences against each accused may be mentioned separately in the same charge. As regards accused No. 6, it is submitted that the petitioner has been falsely implicated in the commission of offences. On the date of the incident, the petitioner was working as a Computer Teacher and not as a regular teacher or teaching staff and, therefore, he cannot be roped in along with other petitioners for the offences enumerated in the charge.

6. It is submitted that Chapter XVII of the Code deals with the framing of the charge. Section 211 is with regard to the contents of the charge. It is stated that every charge under this Code shall state the offence with which the accused is charged. Section 212 deals with the particulars as to time, place and person against whom offence is committed. It is

stated in sub-section (1) that the charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the manner with which he is charged. While Section 216 is with regard to alteration in the charge, the Court may alter or add any charge at any time before the judgment is pronounced. It is further mentioned in the said Section that every such alteration or addition shall be read and explained to the accused. While Section 218 deals with separate charges for distinct offences, sub-section (1) of Section 218 makes it clear that for every distinct offence of which any person is accused, there shall be a separate charge and every such charge shall be tried separately. The *proviso* is also made wherein it is stated that where the accused person, by an application in writing, so desires, and the Magistrate is of the opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person while sub-section (2) says that nothing in sub-section (1) shall affect the operation of the provisions of Sections 219, 220, 221 and 223. Section 219 provides that three offences of same kind within a year may be charged together. Section 220 provides for trial for more than one offence. Section 223 is with regard to the persons who may be charged jointly. It is stated therein that 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;
- (b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

- (c) persons accused of more than one offence of the same kind, withing the meaning of Section 219 committed by them jointly within the period of twelve months;
- (d) persons accused of different offences committed in the course of the same transaction;
- (e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;
- (f) persons accused of offences under Sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;
- (g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate or Court of Session may, if such persons by an application in writing, so desire, and if he or it is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

It is submitted on behalf of the petitioners that considering Section 218 of the Code, separate charge ought to have been framed by the learned Judge against each of the

accused as they were involved in distinct offences and, therefore, the order passed by the learned Judge deserves to be quashed and set aside. The provisions, as contained in Section 223 of the Code, more particularly, clause (a) - *"persons accused of the same offence committed in the course of the same transaction"* and clause (d) - *"persons accused of different offences committed in the course of the same transaction"* would not apply to the facts of the present case. Thus, it is submitted that considering the clear provision of law as provided under Section 218 of the Code, the learned Judge ought to have framed separate charge against the accused persons.

7. The learned Advocates for the petitioners-accused relied upon the following citations in support of the submission that prayer, as set out, in the applications requires to be granted and the order passed by the learned Judge below Exhs. 54 and 55 be quashed and set aside:

- (i) **Lalu Prasad Alias Lalu Prasad Yadav Vs. State Through CBI (A.H.D.), Ranchi, Jharkhand, (2003) 11 SCC 786.**

In this case, the Apex Court considered the powers of the Magistrate to amalgamate the cases. It was held that powers conferred under Section 223 of the Code is discretionary in nature. The Magistrate has to be satisfied that the persons would not be prejudicially affected and it is also expedient to amalgamate the cases. In the matter before the Apex Court, amalgamation of 6 cases were sought by the appellants on the plea that there was one conspiracy. The



charges were under the Prevention of Corruption Act and of the offence of conspiracy to defraud the Government exchequer of large sums of money. There was no finding by the High Court that there was a single conspiracy. The High Court rightly held that the said question could not be decided unless all the cases reach the stage of framing of charges. Out of 6 cases, 3 cases were at the appearance stage. Further, the accused in all the said cases did not apply for the joint trial. That apart, the charge of conspiracy was only an alleged charge. The main charges (under the Prevention of Corruption Act) were in respect of separate and distinct acts i.e. monies siphoned out of different treasuries at different times. In view of the aforesaid reasoning, it was held that the said cases could not be amalgamated.

(ii) **Om Prakash Vs. Delhi Administration and Another, (1976) SCC 637.**

In this case, the Apex Court considered the provisions of Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954. In the case before the Apex Court, more than one sample of the same item of food was taken from different receptacles. It was held that each sample was a separate sale and each such sale constituted a distinct and separate offence if such sample is found adulterated. Whether the act of storing was a single act or separate acts, it was held immaterial in the absence of another charge of storing adulterated food for sale.

(iii) **State of West Bengal Vs. Mohd. Abu Bakar Siddique Molla, AIR 1989 SC 129.**

In this judgment, the Apex Court considered the provisions of Sections 221 and 454 of the Code and held that in judging the question of prejudice, as of the guilt, the Court must act with broad vision. Looking to the substance and not to the technicalities and their main concern should be to see whether he knew as to what was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself. While dealing with Section 218 of the Code, the Apex Court held that Section 218 embodies the general rule as to the trial of accused persons which provides for separate trial for each accused person for every distinct offence and is based on fundamental principal of criminal law that each person must have notice of the charge which he has to meet. Section 221 which is an exception to Section 218 applies to a case only when from the evidence led by prosecution, it is doubtful which of several offences has been committed by the accused person. There must not be any doubt as to 'single act or series of acts' which constitute the transaction i.e. to say there must not be any doubt as to the facts. The doubt must be as to the inference to be deduced from these facts, thus making it 'doubtful' which of the several offences the facts which can be proved will constitute.

(iv) **Somabhai Shamabhai Patel and Others Vs. State of Gujarat, 1986 GLH 857.**

The judgment is rendered by our High Court wherein the provisions of Sections 218 and 223 of the Code were

considered. Sections 218 to 223 which deal with the joinder of charges should be read together and not in isolation insomuch as they deal with same subject-matter and set out different aspects of it. It is true that general rule is that for every distinct offence of which any person is accused, there shall be separate charge and every such charge shall be tried separately and joint trial is an exception. It appears that the object of Section 218 in requiring that there shall be separate trial for every charge is two-fold, firstly, to giving the accused notice of charges and secondly to see that he is not embarrassed by having to meet charges in no way connected with one another. It is further held that right from Sections 219 to 220, certain exceptions to above rule have been carved out.

(v) **Priya Sharan Maharaj alias Yadavendra Parashar And Others Vs. State of Maharashtra, 1995 Criminal Law Journal 3683.**

In this judgment, our Bombay High Court considered the provisions of Section 218 of the Code with regard to the framing of the charge and held that the accused therein was charged with the commission of five offences of rape. There was no proximity of time or place or unity for purpose, design or continuity of action. The Court held that each of the offences would be a different offence and, therefore, the clubbing all the five offences of rape in one was illegal.

(vi) **Kershi Pirozsha Bhavnagar Vs. State of Gujarat, 2007 (3) GLR 2508.**

In this judgment, our High Court considered the

provisions of Section 138 of the Negotiable Instruments Act, 1973 as well as Sections 218 and 219 of the Code and dealt with the question of joint trial of three offences of the same kind and held that dishonour of each cheque is a separate offence and the contention which was raised by the accused that all the offences of dishonour of different cheques was given as a part of the same transaction can be tried together was negated.

(vii) **D. K. Chandra Vs. The State, AIR 1952 Bombay 177**

In this judgment, the Full Bench of the Bombay High Court considered the provisions of Sections 233, 234, 235 and 236 of the Code and held that joinder of the four charges did not fall within any of the three exceptions laid down in Section 233 and, therefore, was contrary to law. Although the accused was charged with having committed only two acts, in respect of those two acts he was charged with having committed four offences, not of the same kind and, therefore, there was clear contravention of Section 234 (1). The two acts in respect of which the charges were framed being separate and distinct, the joinder was not justified under Section 235 (1).

(viii) **Sakshi Vs. Union of India And Others, (2004) 5 SCC 518.**

This judgment is cited on behalf of accused No. 4 in support of the submission that considering the facts of the case, accused No. 4 could have been booked under Section 377 of IPC.

8. The learned Additional Public Prosecutor representing the respondent-State submitted that as per the prosecution case, all the accused persons were working as lecturers and teaching at the PTC College, District Patan. In connivance with each other, they abused their power and position in the capacity as Government servants and sexually abused and harassed the students residing at the said Institute and studying under them. They particularly singled out the victim who belonged to Schedule Caste and committed gang-rape at different times and different campus locations during the semester system. All the accused were aware that the prosecutrix belonged to the Scheduled Caste. Therefore, exploiting their position of authority and by putting her under serious threat of life, they committed serious crime of gang-rape on prosecutrix.

9. It is submitted by the learned Additional Public Prosecutor that the charge-sheet against the accused came to be submitted by the prosecution. Thereafter, accused Nos. 1, 2 and 3 preferred application for discharge under Section 227 of the Code. All the applications subsequently were withdrawn. Thereafter, the charge was proposed on behalf of the prosecution and the copy of the same was also given to the respective Advocates of the accused. It was argued on behalf of the accused that charge under Section 3 (1) (5) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act was not made out and hence be deleted and ultimately, the charge came to be framed on 13-06-2008 for the offences punishable under Sections 342, 354, 376 (2), (b), (c) and (g), 377, 292 (2) (A), 506 (2) and 120B of IPC as well as under

Sections 3 (1) (12) of the Schedule Castes and Schedule Tribe (Prevention of Atrocities) Act. The applications were preferred on behalf of the accused after nearly one month to quash the charge when the trial was about to commence and the prosecutrix was in the witness box only with a view to delay the trial. It is submitted by the learned Additional Public Prosecutor that if separate trial is held then it would seriously prejudice the case of the prosecution as the evidence to be led by the prosecution consists of all the same witnesses. Considering the traumatized condition of the prosecutrix coupled with the fact that large number of female students studying under the accused are to be examined along with the commonality of the evidence to be adduced to establish the charge of Sections 342, 354, 376 (2), (b), (c) and (g), 377, 292 (2) (A), 506 (2) and 120B of IPC as well as under Sections 3 (1) (12) of the Schedule Castes and Schedule Tribe (Prevention of Atrocities) Act, 5 separate trials for the gang-rape of prosecutrix would prove lethal to the prosecution case.

10. The learned Additional Public Prosecutor submitted that whether all the accused, as stated in the charge, conspired with each other to sexually harass the students of PTC Institute by demanding sexual favours for the internal marks by passing lewd comments and by exploiting their position of power and authority over the prosecutrix studying under them and repeatedly committed the offences is required to be considered by the Trial Court by proper appreciation of evidence. It has been urged on behalf of the petitioners that the provisions of Section 120B cannot be invoked along with Sections 342, 354, 376 (2), (b), (c) and (g), 377, 292 (2) (A), 506 (2) of IPC as well as under Sections 3 (1) (12) of the

Schedule Castes and Schedule Tribe (Prevention of Atrocities) Act, but the same cannot be answered before the commencement of trial, as the powers of revisional jurisdiction of this Court is very limited. The revisional powers can be exercised only in exceptional cases.

11. The learned Additional Public Prosecutor submitted that Section 216 of the Code empowers the Court to alter or add any charge at any time before the judgment is pronounced while Section 215 of the Code mandates that no error in stating either the offence or particulars would vitiate a trial if the accused had all the material before it. While Section 218 provides for separate charges for distinct offences. However, sub-section (2) stipulates that the said provision shall not affect the provisions of Sections 219, 220, 221 and 223 of the Code. While Section 223 (d) of the Code provides for the joint trial of persons accused of different offences committed in the course of the same transaction. The learned Additional Public Prosecutor submitted that phrase "offences committed in the same transaction" is nowhere defined either in IPC or the Code. However, if the ratio culled out through various judgments of the Apex Court is taken into consideration, it would mean that the offences should be so related to one another in point of purpose or cause and effect so as to result in one continuous action. Where there is commonality of purpose and design, there is continuity of action and all those persons involved can be accused of same offence or different offences, and merely because others joined in at the later stage or that the offence spread over time does not take away common object and, therefore, it should be considered as the same transaction. It has also been urged by the learned

Advocate for the petitioners that on account of the joint trial, prejudice would be caused to them, but the prejudice, which is alleged must be of a substantial nature and not merely technical. Thus, the learned Additional Public Prosecutor submitted that considering the scope of the revisional jurisdiction under Section 397 of the Code, it is not a fit case to interfere with the order passed by the learned Judge as the Revisional Court, while exercising powers under Section 397 of the Code, is not a Court of Second Appeal. In view of the aforesaid facts and circumstances of the case, the learned Additional Public Prosecutor submitted that the revision applications preferred by the petitioners is without any substance and the same is liable to be rejected.

12. The learned Assistant Public Prosecutor has placed reliance on the following citations and submitted that considering the ratio laid down in the judgments, the petitioners have not made out a case for interference by this Court under Section 397 of the Code and, therefore, the revision applications are liable to be dismissed:

- (i) **Hardeo Singh Vs. State of Bihar And Others, 2000 Criminal Law Journal 2978.**

In this case, it is held that while considering the conspiracy and the framing of the charge with regard to the conspiracy, some connecting link or connecting factor somewhere is good enough for framing the charge, since framing of the charge and to establish the charge of conspiracy cannot be possibly placed at par.



(ii) **Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chodia And Another, (1989) 1 SCC 715.**

In this judgment, the Apex Court considered as to the nature of inquiry to be made by Court in discharging an accused or framing charges against him. The Court need not undertake an elaborate inquiry in sifting and weighing the materials. It is also not necessary to delve deep into various aspects. All that the Court has to consider is whether the evidentiary material on record, if generally accepted would reasonably connect the accused with the crime.

(iii) **Mohan Baitha And Others Vs. State of Bihar And Another, (2001) 4 SCC 350.**

In this judgment, the Apex Court considered the question of “same transaction” and held that it is a question of fact to be determined in the circumstances of the case having regard to the factors such as proximity of time and place and continuity of action and purpose or design.

(iv) **The State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and Another, AIR 1963 SC 1850.**

In this case, after considering the question of same transaction, the Apex Court held that the expression “*same transaction*” included in clauses (a) and (d) of Section 239 of the Code as well as occurring in Section 235 (1) ought to be given the meaning according to the normal rule of construction

of statutes.

(v) **Kadiri Kunhahammad Vs. The State of Madras, AIR 1960 SC 661.**

In this judgment, the Apex Court considering the joint trial of the accused for different offences and to what extent it is permissible. The Apex Court also considered the test for the joint trial and held that the Court should consider the nature of the accusation made by the prosecution. The validity of the joint trial cannot be questioned merely because the accusation is not made out.

(vi) **Major E. G. Barsay Vs. State of Bombay, AIR 1961 SC 1762.**

In this case, the Apex Court considered the scope of the provisions of Sections 120A and 120B of IPC and held that when the accused is charged with having conspired to do certain illegal acts, they can be held guilty under Section 120B even if, for individual offences, all of them may not be liable.

(vii) **Ajay Aggarwal Vs. Union of India And Others, (1993) 3 SCC 609.**

In this case, the Apex Court, after considering as to what constitutes criminal conspiracy, held that the conspiracy can be only largely proved from inference drawn from acts or illegal omission committed by conspirators in pursuance of common design. The entire sequence of events must be examined as a whole and it has to be ascertained as to what in

fact the conspirators intended to do or the object they wanted to achieve.

(viii) **State of West Bengal Vs. Mohd. Abu Bakar Siddique Molla, AIR 1989 SC 129.**

In this citation, which is also relied upon on behalf of the accused persons, the learned Additional Public Prosecutor submitted it is held that Section 218 embodies the general rule that the accused must have notice of the charge which he has to meet. It is further held that in judging the question of prejudice, as of guilt, the Courts must act with a broad vision and look to the substance and not to the technicalities.

(ix) **State of Delhi Vs. Gyan Devi, (2000) 8 SCC 239.**

In this judgment, the Apex Court considered the provisions of Section 482, 228 and 240 of the Code and held that it is well settled that at the stage of framing of charge, the Trial Court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At this stage of charge, the Court is to examine the materials only with a view to be satisfied that a *prima facie* case of commission of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 of the Code seeking for the quashing of charge framed against them, the Court should not interfere with the order unless there are strong reasons to hold that in

the interest of justice and to avoid abuse of the process of the Court, the charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. Moreover, once the Trial Court has framed a charge against an accused, the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases.

(x) **State of Karnataka Vs. Narsa Reddy, (1987) 4 SCC 170.**

In this judgment, the Apex Court held that that where prosecution case against all the accused persons arose out of the same incident and evidence to be led by the prosecution against them was common, the splitting up of trial by High Court, while exercising powers under Section 482 of the Code, was not justified.

(xi) **Kamalanantha Vs. State of Tamil Nadu, (2005) 5 SCC 194.**

While considering the provisions of Sections 218, 464 and 465 of the Code, the Apex Court held that when there is misjoinder of charges by not having separate charge and trial for each distinct offence, it is an irregularity, not an illegality and is curable under Sections 464 and 465 of the Code, provided no failure of justice is occasioned thereby. The Apex Court also considered the relevant facts of ascertaining

whether any failure of justice had occasioned.

(xii) **State of Kerala Vs. Ayyapan, (2006) 13 SCC 320.**

In this case, the Apex Court considered the provisions of Sections 223 and 228 (1) of the Code and held that the direction made by the Sessions Court for separate trial of three of the accused by the Chief Judicial Magistrate, held on facts that no prejudice was likely to be caused to the above three accused if they were tried by the Sessions Court. Further, Section 228 (1) of the Code was not applicable to the facts of the case and the aforesaid direction was not proper and, therefore, the said three accused be tried by the Sessions Court.

(xiii) **State (NCT of Delhi) Vs. Navjot Sandhu, (2005) 11 SCC 600.**

In this case, the Apex Court held that a “fundamental defect” should be found in the charges if the Court has to quash them. The question whether Section 120B applies to the POTA offences or Section 3 (3) alone applies is not a matter on which a definite conclusion should be reached ahead of the trial.

(xiv) **Nemichand Jain Vs. Roshanlal, (2004) 13 SCC 461.**

This judgment is cited by the prosecution in support of the submission that the the High Court in revision cannot

quash the charges framed by the Trial Court in relation to the offences punishable under Sections 304B and 498A of IPC. At the stage of framing the charges, the High Court should not have considered the whole evidence and then concluded that there were no materials to frame charges under Sections 304B and 498A of IPC and, therefore, the order passed by the High Court was set aside and the Trial Court was directed to proceed on the basis of the charges framed under Sections 304B and 498A of IPC.

(xv) **State of Maharashtra Vs. Salman Salim Khan, (2004) 1 SCC 525.**

In this judgment, the Apex Court considered the inherent powers of the High Court under Section 482 of the Code and held that the truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial. The High Court was, therefore, not justified in this case in giving a finding as to the non-existence of material to frame a charge for an offence punishable under Section 304 Part II IPC, which is too premature.

(xvi) **State of Madhya Pradesh Vs. S. B. Johari, (2000) 2 SCC 57.**

This judgment is cited by the learned Additional Public Prosecutor in support of the submission that while considering the discharge applications, the Court has only to see whether *prima facie* there was sufficient ground for proceeding against the accused. The Court cannot appreciate

the evidence and on the facts of the case, the Apex Court held that the High Court in the revision application erred in quashing the charge framed against the accused by the Trial Court by appreciating the material produced by the prosecution and on that basis, deciding that the accused was not guilty.

13. Heard the learned Advocates for the respective parties and the learned Additional Public Prosecutor for the respondent-State. I have also considered the averments made in the revision applications and the documents which are produced along with the revision applications. The order dated 14-07-2008 passed by the learned Judge below Exhs. 53 and 54 in Special Atrocities Case No. 22 of 2008 is perused by me. I have also considered all the authorities cited by the learned Counsel of both the sides and there is no dispute about the ratio or proposition laid down in those judgments.

14. All the revision applications are directed against the order rejecting the application of the petitioners for framing of the separate charge under Section 218 of the Code. The charge against the petitioners has been framed *vide* Exh. 29 for the offences punishable under Sections 342, 354, 376 (2), (b), (c) and (g), 377, 292 (2) (A), 506 (2) and 120B of IPC as well as under Sections 3 (1) (12) of the Schedule Castes and Schedule Tribe (Prevention of Atrocities) Act. The charge-sheet was submitted against all the petitioners and, thereafter, some of the petitioners preferred the discharge application under Section 227 of the Code. All the applications were withdrawn subsequently. Afterwards, the proposed charge was submitted on behalf of the prosecution and the copy of the same was

given to the learned Advocates representing the petitioners. When it was argued on behalf of the petitioners that the charge under Section 3 (1) (5) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act was not made out, the same was deleted by the learned Judge. Thereafter, the charge was framed on 13-06-2008 for the offences punishable under Sections 342, 354, 376 (2), (b), (c) and (g), 377, 292 (2) (A), 506 (2) and 120B of IPC as well as under Sections 3 (1) (12) of the Schedule Castes and Schedule Tribe (Prevention of Atrocities) Act. After framing of the charge, when the trial was about to commence and the witness was also summoned for examination by the learned Judge, the application was preferred for quashing the charge and for separate trial.

15. On perusal of Section 218 of the Code, it becomes clear that for every distinct offence of which any person is accused, there shall be a separate charge and every such charge shall be tried separately. Thereafter, a *proviso* is added to sub-section (1) which says that where the accused person, by an application in writing, so desires and the Magistrate is of the opinion that such person is not likely to be prejudiced thereby the Magistrate may try together all or any number of the charges framed against such person. While sub-section (2) makes it abundantly clear that nothing in sub-section (1) shall affect the operation of the provisions of Sections 219, 220, 221 and 223. Considering the facts of the present case, it is true that the incidents in question took place on 11-09-2007, 28-09-2007, 01-01-2008, 11-01-2008 and 25-01-2008. The incidents either took place in the PTC College or Village Kimbuva and all the accused were not involved in the alleged offences on the dates mentioned herein. Considering the aforesaid period,



different persons committed the heinous crime on the victim. The charge has been framed by the learned Judge on the basis of the material which was placed on the record of the case by the prosecution and when the Court found that the material which was placed before it was *prima facie* sufficient to frame the charge against all the petitioners, the charge was framed against all the petitioners. However, in view of the judgments rendered by the Apex Court in the case of **State of Maharashtra Vs. Salman Salim Khan** (*supra*), the truthfulness, the sufficiency and acceptability of the material produced at the time of framing of the charge can be done only at the stage of trial. In view of the aforesaid facts and circumstances of the case, joint charge came to be framed against all the accused.

16. It has been strenuously contended by the learned Counsel on behalf of the petitioners that the incidents in question which took place on different dates cannot be said to have occurred during the course of same transaction and the interpretation which is given by the learned Judge is erroneous. I have perused the statements of the victim dated 07-02-2008, 15-03-2008, 19-03-2008 and other statements of the witnesses. Considering the ratio laid down in **Mohan Baitha And Others Vs. State of Bihar And Another** (*supra*), wherein the Apex Court, after examining the question whether series of acts so connected together as to form same transaction constitutes "*same transaction*", held that such a determination is a question of fact that has to be determined in the circumstances of the case having regard to the factors such as proximity of time and place and continuity of action and purpose or design. Considering the statements given by

the victim and the manner in which the victim was assaulted and the heinous crime was *prima facie* committed by the petitioners at different places and on different dates i.e. at the Education Training Room, Laboratory, Computer Room or even during internship, *prima facie*, it becomes clear that there is continuity of actions of all the persons who were involved in the alleged commission of the offences though the offences have taken place at different places and time. One has to see the common object and merely because some of them were not joined or they were joined later on, it would not change the complexion of the matter and, therefore, it is required to be considered as arising out of the same transaction. Thus, the contention raised by the learned Counsel on behalf of the petitioners in all the revision applications that separate charge was required to be framed for distinct offences as the incidents in question had not taken place during the same transaction is without any substance and it is hereby rejected.

17. It has been urged on behalf of the petitioners that as provided under Section 219 of the Code, three offences of the same kind within a year may be charged together and since the offences have not taken place within a span of one year, the framing of a joint charge against the petitioners is not proper in the facts and circumstances of the case. However, considering the continuity of the offences alleged to have been committed by the petitioners with impunity, the learned Judge has rightly framed the joint charge against the petitioners. Section 219 of the Code cannot be read in isolation. It is to be read along with Sections 220, 221, 223 of the Code. Section 223 is with regard to what persons may be charged jointly. It has been stated therein that following persons may be charged

and tried together namely: clause (a) *“persons accused of the same offence committed in the course of the same transaction”*, and clause (d), which is important for our purpose *“persons accused of different offences committed in the course of the same transaction.”* In view of the elaborate discussion with regard to the offences committed during the course of same transaction, the provisions contained in Sections 223 (a) and (d) cannot be overlooked by this Court, and considering the aforesaid aspect of the matter, the learned Judge has, in my considered view, rightly framed the joint charge against the petitioners as the incident in question took place during the same transaction and, therefore, the aforesaid contention is also hereby negated.

18. It has been contended on behalf of the petitioners that if the joint charge is framed against the petitioners, then it would cause prejudice to them and, therefore, the joint charge, as framed by the learned Judge, requires to be quashed and set aside. The learned Advocate for the petitioners have not substantiated the aforesaid contention. On the contrary, if the prayer, as prayed for separate charge is considered and granted, then it is likely to cause prejudice to the prosecution case, as the prosecution has to adduce evidence which would be common in all the matters. This Court has to consider the travails and tribulations that the victim and other witnesses might face if the trial is held separately, as prayed for by the petitioners. The prosecution is also likely to examine several female students who are studying under the petitioners in order to bring home the charge of Section 120B read with Sections 342, 354, 376 (2), (b), (c) and (g), 377, 292 (2) (A), 506 (2) of IPC as well as under Sections 3 (1) (12) of the

Schedule Castes and Schedule Tribe (Prevention of Atrocities) Act and, therefore, the prejudice which is likely to be caused to the petitioners as well as to the prosecution case is required to be taken into consideration. Thus, considering the facts and circumstances of the case, the contention raised by the petitioners that it is only likely to cause prejudice to the petitioners is without any substance and the same is hereby rejected.

19. It has been contended on behalf of accused No.4 that if the *prima facie* offence against Section 375 has not been made out against the petitioner and he has been falsely roped in for the offences punishable under Sections 342, 354, 376 (2), (b), (c) and (g), 377, 292 (2) (A), 506 (2) and 120B of IPC as well as under Sections 3 (1) (12) of the Schedule Castes and Schedule Tribe (Prevention of Atrocities) Act. Considering the fact that the petitioner was merely present and he had not indulged in any overt act, the provisions of Section 376 (2) (g) cannot be invoked. However, on perusal of the provisions of Section 376 (2) (g), which is with regard to gang-rape, and *Explanation 1*, it is clear that where a women is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section. In view of the aforesaid *Explanation*, the contention raised on behalf of the said accused has no substance and the same is rejected.

20. It is submitted on behalf of accused No. 6 that the petitioner has been falsely implicated in the commission of offences. On the date of the incident, the petitioner was

working as a Computer Teacher and not as a regular teacher or teaching staff and, therefore, he cannot be roped in along with other petitioners for the offences punishable under Sections 342, 354, 376 (2), (b), (c) and (g), 377, 292 (2) (A), 506 (2) and 120B of IPC as well as under Sections 3 (1) (12) of the Schedule Castes and Schedule Tribe (Prevention of Atrocities) Act. However, considering the fact that there is continuity in the actions of all the persons involved in the alleged commission of offences, this submission has no substance and the same is rejected.

21. In view of the aforesaid facts and circumstances of the case, the revision applications preferred by the petitioners do not call for any interference by this Court under Section 397 of the Code as the power of this Court is supervisory in nature and it can only examine the legality or validity of the order but cannot supplant the conclusion arrived at by the learned Judge which is based on material on the record of the case.

22. For the foregoing discussion, all the Criminal Revision Applications fail and are dismissed. Rule discharged.

### FURTHER ORDER

On behalf of the petitioners, it is submitted that as the petitioners intend to approach the Apex Court, the order passed by this Court today as well as the trial before the concerned Trial Judge may be stayed.

Learned Additional Public Prosecutor vehemently objected to the request for stay of the trial and stated that, as

no stay was granted even during the pendency of the Revision Applications, there is no question of either granting stay of the order or the trial now.

Considering the entirety of the case and the fact that the trial was not stayed even during the pendency of Revision Applications, I find much force in the submission of the learned Additional Public Prosecutor and I am of the considered opinion that stay, as prayed for, cannot be granted. Hence, the prayer for stay is rejected.

**[H. B. ANTANI, J.]**

/shamnath