

# **MODE OF CONDUCTING TRIAL WHEN THERE IS PRIVATE COMPLAINT AND CHALLAN CASE REGARDING AN OCCURRENCE**

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## **NOOR ELAHI CASE (PLD 1966 Supreme Court 708)**

### **Ratio decidendi-Majority View**

- A.** The complaint case will be taken up first for trial by the trial court.
- a)** Shall examine the witnesses mentioned in the list annexed with the complaint as PWs.
  - b)** May call the witnesses mentioned in the police challan if they are not already examined on behalf of the complainant as court witnesses U/S 540-A of Criminal Procedure Code providing both the parties of the lis an opportunity to cross examine them.
- B.** If the trial results in conviction;
- a)** It would be for the public prosecutor to consider whether or not he should withdraw from the prosecution with the permission of the court U/S 494 of the Criminal Procedure Code in the police challan case.
- C.** If the trial ends in an acquittal;
- a)** The Public Prosecutor would consider whether the police version has not so seriously been damaged by what has been brought out in the first trial as to justify withdrawal of the prosecution.
- D.** If the Public Prosecutor does not opt for withdrawal of the prosecution of the challan case;
- a)** The second trial would be allowed to its normal conclusion,
  - b)** The parties would have the advantage of utilizing the material placed on the record of the earlier trial by way of cross

examination of relevant witnesses as permitted by law i.e. **by Public prosecutor under Art. 150 and by the defence during cross examination.**

**B.Z Kaikaus (J)**

- A.** The two proceedings be consolidated and there be a single hearing that the whole of evidence be produced before the Sessions Court and then a decision recorded because;
- a) Per Section 270 Cr.P.C every trial before a court of Sessions is to be conducted by a Public Prosecutor,
  - b) He is the person who is to lay before the court both the stories and produce all the evidence relating to both the stories and then leave the court to find out the truth.
  - c) He should not take up himself the correctness of a particular story.
  - d) There is no bar in Cr.P.C as to a joint trial.

**ATA JILANI CASE (1980 P.Cr.L.J 901)**

**Ratio decidendi**

- A.** Where the prosecution story is the same but only the number of the accused connected with the commission of the offences differ.
- a) Both such cases be consolidated and tried together.
  - b) One of two cases would be taken up first in which, the larger set of accused is named.
  - c) Such witnesses who are not examined in the case firstly taken up but whose names appear in the other case be examined as court witnesses U/S 540-A Cr.P.C
- B.** Basically there is no “consolidation” but figuratively the expression is used to indicate that both cases being connected

with the same version which ever case is tried first, whether the same succeeds or fails, the other will not be taken up later.

**MANZOOR AKBAR TURK CASE (2008 M.L.D 728)**

**Ratio decidendi**

- A.** If the court of sessions has taken cognizance on the basis of the complaint and report of the police officer;
- a) It is required to process both the cases in accordance with the provisions of Sec. 193 Cr.P.C read with Section 204 ibid
  - b) Till this stage, both the case will be dealt with independently i.e. accused summoned in the complaint case or in the challan case would be dealt with separately, supplied copies of the required documents U/S 265-C(1) & 265-C(2) Cr.P.C as the case may be.
  - c) Before framing the charge, the trial judge will pass a speaking order regarding the procedure to be adopted by him;
    - I. If the private complaint and the police case are to be tried in consolidated manner,
    - II. If the private complaint and the police case are to be tried independently,
- B. If the set of accused are different in complaint case and challan case, the principle of Noor Elahi's case is to be followed i.e.**
- a) The trial judge will proceed with the complaint case first, frame the formal charge, record evidence of the complaint case as PWs, thereafter, he will summon the witnesses of challan case, if not already examined as Court Witnesses and provide the complainant and the accused an opportunity to cross examine them.

- b) Thereafter, he will record the statements of the accused and defence witnesses (if any), completing the process of summoning up U/S 265-G Cr.P.C
- c) Then he will announce the judgment in the complaint case
- d) In case of conviction of the accused in the complaint case,
  - I. The prosecutor would be given an opportunity to withdraw the police report case.
  - II. If the prosecution is withdrawn the matter would end.
  - III. Otherwise, the court shall proceed with the police case, frame the charge, examine the witnesses of the prosecution and then record the evidence of the witnesses of the complaint case as CWs by providing opportunities to the prosecution and the accused to cross examine the witnesses, record statements of the accused and DWs (if any) and summoning up the case announce the final judgment.
- C. If the accused in the complaint case and FIR are the same,
  - a) Then the trial court would consolidate both the case,
  - b) Hold the proceedings in the complaint or case initiated in police report, frame the charge, examine all the witnesses mentioned in the complaint and the police case, examine the accused, record defence evidence (if any) and announce **one judgment in both cases.**
  - c) In such eventuality the complaint case and police report case would be considered to be one case from the stage of order of consolidation of trial.

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