

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Transfer Petition No. 6/2021

Salman Khan

-----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Punam Chand Bishnoi S/o Sh. Bhepa Ram Bishnoi, B/c Bishnoi, R/o Bagro Ki Dhani, Kankani, P.s. Luni, Dist. Jodhpur.
3. Saif Ali Khan S/o Mansur Ali Khan, R/o Belscoat Bunglow No. 5, Lokhand Wala Complex, Andheri West, Mumbai (Maharashtra).
4. Neelam D/o Shishir Kothari, B/c Hindu, R/o 8Th Floor, Laxmi Niwas, 16Th Road, Khar West, Bandra, Mumbai (Maharashtra).
5. Tabbsum @ Tabu D/o Jamal Hashmi, B/c Musalman, R/o Flat No. 2, Anukul Apartment, Varsova, Mumbai (Maharashtra).
6. Sonali D/o Ashok Bendre, B/c Hindu, R/o E-401, Madhuvan Apartment, Yari Road, Varsova, Andheri, Mumbai (Maharashtra).
7. Dushyant Singh S/o Karan Singh, B/c Rajput, Akhey Niwas, Air Force Road, Jodhpur.

-----Respondents

For Petitioner(s)

सतमेवमसौ
: Mr. Anand Desai
Mr. Hasti Mal Saraswat
Ms. Rekha Sankhla
Mr. Parag Khandhar
Ms. Chandrima Mitra

For Respondent(s)

: Mr. Anil Joshi GA cum AAG a/w
Mr. Gaurav Singh
Mr. Manish Shishodia Sr. Advocate a/w
Mr. Jaideep Singh Saluja
Mr. Kishore Kumar Vyas on VC

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Order

21/03/2022

1. In wake of instant surge in COVID-19 cases and spread of its highly infectious Omicron variant, abundant caution is being maintained, while hearing the matters in Court, for the safety of all concerned.

2. Brief facts of this case, as noticed by this Court, are that in the year 1998, number of FIRs were lodged in connection with an incident of deer hunting, involving stringent laws like Wild Life (Protection) Act, 1972 (hereinafter referred to as 'the Act of 1972') and the Arms Act, 1959 (hereinafter referred to as 'the Act of 1959') etc.

3. The present controversy arises out of an F.I.R., bearing F.I.R. No.93(26)/1998 dated 02.10.1998 registered with the Forest Department against Salman Khan alongwith Saif Ali Khan, Neelam, Tabbum @ Tabu, Sonali and Dushyant Singh, who, in pursuance of a complaint, were accused before the learned Chief Judicial Magistrate, Jodhpur District, Jodhpur under the provisions of Wild Life (Protection) Act, 1972; subsequent thereto, cognizance was taken and evidence was recorded, followed by framing of charges on 20.02.2006.

4. Eventually however, after due trial, vide judgment dated 05.04.2018 passed by the learned Chief Judicial Magistrate, Jodhpur District, Jodhpur in criminal case No.66/2011 (State Vs. Salman Khan & Ors.), the accused – Salman Khan (present petitioner) was convicted under Section 9/51 of the Act of 1972, and a sentence of five years imprisonment was awarded to him along with a fine of Rs.10,000/- and, in the event of default of payment of fine, he was ordered to undergo an additional three months of imprisonment. Vide the said judgment, the remaining

accused persons, i.e. respondents no. 3 to 7, namely, Saif Ali Khan, Neelam, Tabbu, Sonali Bendre and Dushyant Singh were acquitted of all charges levelled against them.

5. The present petitioner thereafter filed an appeal against the aforementioned judgment dated 05.04.2018, which was registered as Criminal Appeal no.18/2018 before the learned Sessions Judge, Jodhpur, which is under adjudication. However, the sentence was suspended during the pendency of the appeal. In the meanwhile, the said judgment was challenged by the State, being aggrieved of the acquittal of the respondents no. 3 to 7 herein, by preferring a Criminal Leave to Appeal before this Hon'ble Court bearing No. 311/2018 (State of Raj. Vs. Saif Ali Khan & Ors.), which is pending before this Court.

6. It is also brought to the notice of this Court that against the acquittal of the respondents No.3 to 7, the complainant/respondent No.2 herein, also preferred an appeal, which is pending before the learned District and Sessions Judge, Jodhpur District.

7. Thus, these are the three offshoots of the litigation arising out of a single judgment, i.e. the aforementioned judgment dated 05.04.2018, namely, (i) an appeal by the complainant; (ii) appeal by the present petitioner and; (iii) a leave to appeal by the State, as already mentioned above.

8. In the present petition, the petitioner has made the following prayers regarding invocation of powers under Section 407 of the Cr.P.C. read with Section 482 of the Cr.P.C. and Section 27 of the Rajasthan High Court Ordinance, 1949, seeking transfer of the litigation pending against the common impugned judgment dated 05.04.2018 at one place:-

"(i) Three Criminal Appeals, being Appeal nos. 18/2018 & Criminal Appeal filed by Complainant Punamchand relating to alleged offence under Wild Life (Protection) Act, and Criminal Appeal No.22/2017 relating to alleged offence under Arms Act, all pending before the District and Sessions Judge, Jodhpur District may please be transferred to this Hon'ble Court, Jodhpur, for consideration thereof with pending Criminal Leave to Appeal no.311/2018 - State of Raj. V/s Saif Ali Khan & ors.

(ii) Any other appropriate order or direction which may be deemed just and proper in the facts and circumstances of the case may kindly be passed in favour of the Petitioner"

9. Mr. Anand Desai alongwith Mr. Hasti Mal Saraswat, learned counsel appearing on behalf of the petitioner submits that this Court while taking into consideration the analogy provided under Sections 402 & 407 of the Cr.P.C. has ample powers to transfer the multiple litigation ongoing before different Courts, to a single Court, so as to enable a common and effective adjudication thereof, in view of the fact that the complete litigation arises out of the same impugned judgment.

10. Learned counsel for the petitioner drew the attention of this Court to the impugned judgment, and submits that the learned trial court has arrived at a conclusion, after taking into consideration the relevant facts and circumstances of the entire incident, involving cumulative action and consolidated chain of events.

11. Learned counsel for the petitioner also submits that the facts of the case are intertwined, for all the accused persons and thus, the challenge to the impugned judgment before different forums

can cause serious prejudice to the case of the petitioner or the other parties too.

11.1 Learned counsel further submits that on almost similar pedestal, this Hon'ble Court, in a criminal misc. transfer petition (No.23/2011 - Salman Khan Vs. State of Rajasthan, decided on 04.11.2011), filed on behalf of the present petitioner, has dealt with the similar set of cases seeking transfer of Criminal Appeal No.31/2006 from the Court of learned Sessions Judge, Jodhpur to the Hon'ble High Court, as the petitioner was convicted for the offence under Section 51 of the Act of 1972 and had been sentenced to undergo one year's simple imprisonment alongwith a fine of Rs.5,000/- by the Court of learned Chief Judicial Magistrate, Jodhpur vide judgment dated 17.02.2006.

11.2 Learned counsel also submits that vide the said judgment, the learned Chief Judicial Magistrate had acquitted the petitioner of the offence under Sections 143, 144, 148, 201 read with Section 149 of IPC and Section 27 of the Act of 1959.

11.3 Learned counsel further submits that the petitioner, against his conviction in that case, had preferred the aforementioned appeal, which is pending before the Court of learned Sessions Judge, Jodhpur, whereas at the same time, the State of Rajasthan preferred two criminal appeals, one bearing Criminal Appeal No.685/2006 and the other against the acquittal of the co-accused persons from all the charges levelled against them and the acquittal of the present petitioner from the offences under Sections 143, 144, 148, 201 read with Section 149 IPC and Section 27 of the Act of 1959 and second being criminal Appeal no.267/2007 seeking enhancement of the sentence awarded to the petitioner for the offences under Section 51 of the Act of 1972.

12. Learned counsel for the petitioner further submits that the present petition has been preferred with the same analogy, as again, in this case the petitioner stood convicted and the respondents No.3 to 7 stood acquitted; the said conviction and acquittal both are the subject matter of the aforementioned appeals, which seek, amongst others, enhancement of the sentence.

The relevant portion of the judgment dated 04.11.2011 reads as follows:-

"7. Arguing on behalf of the petitioner, learned Sr. Counsel Mr. Udai Lalit has submitted that in this case, the provisions of Section 407(2) Cr.P.C. apply and, as such, the transfer petition cannot be thrown out on the ground that the same is not supported by the affidavit. Despite that, it has been submitted that on the preliminary objection being taken, the affidavits as required under Section 407(3) Cr.P.C. have been filed on record and that the non filing of the affidavit along with the petition was simply an irregularity, which can be cured even subsequently.

8. It has further been submitted that by virtue of Section 402 Cr.P.C. and Rule 113 of the High Court Rules, the different appeals arising out of the same judgment have to be heard and decided together by the same court. It has been submitted that in the event of the three different appeals arising out of a common judgment being heard and decided by different courts, a situation of great anomaly is likely to be arise inasmuch as there is every likelihood of the different courts passing different kinds of judgments in the matter and leading to absurd situations, as such, the propriety and the ends of justice require that the appeals should be heard and decided together by the same court. It has been further submitted that since the appeals against acquittal which are pending before the High Court cannot be heard by the learned Sessions Court, therefore, there remains no option but to direct the transfer of the appeal filed by the petitioner challenging his conviction before the Sessions Court to the Hon'ble High Court so that all the three appeals can be heard and decided together. It has been submitted that the requirement of filing of affidavits has been made for the cases wherein transfer is sought under Section 407(1) Cr.P.C. and the stringent requirement of an affidavit in support of the transfer petition is logical in

cases, wherein, the transfer is sought on the basis of allegations made against the Presiding Officer of the Court hearing the case or where there is disputed question of fact viz. the convenience of the parties etc. It has been submitted that by virtue of Section 27 of the Rajasthan High Court Ordinance, 1949, the High Court has powers to direct the transfer of any criminal case or appeal to any other court of equal or superior jurisdiction and for invoking the exercise of powers under Section 27 of the Rajasthan High Court Ordinance, 1949, there is no requirement of filing of any affidavit. It has further been submitted that a pure question of law and propriety has been raised in this matter, therefore, even if affidavit is not filed in support of the transfer petition, then also, the transfer petition can be entertained.

9. It has been submitted that by virtue of Section 407(2) Cr.P.C, this Court has powers to act for transfer of the case on the report of the lower court or on its own initiative on the application of the party interested and in these circumstances, no affidavit would be required. He submits that when the powers under Section 407(2) Cr.P.C. are invoked, then, the requirement of filing of an affidavit does not apply to such a transfer application.

10. Finally, it has been submitted that for seeking the ends of justice, the appeal of the petitioner should be transferred/ called to the Hon'ble High Court and be heard together with the aforesaid two appeals being Criminal Appeals Nos. 685/2006 and 267/2007. It has been submitted by Shri Udai Lalit, Sr. Advocate that by way of seeking transfer of the appeal to this Court, the petitioner stands at a disadvantage because in the event of his appeal being rejected by the Sessions Court, where it is pending at present, the petitioner would have a remedy of filing a revision before this Court, which the petitioner himself giving up and, as such, the State cannot have any objection to the transfer sought. The petitioner himself stands to loose the right to avail one forum of challenge in the event the appeal filed by the petitioner being decided against him by this Court instead of the sessions court.

11. Per contra, Mr. R.J. Jangid, learned Sr. Advocate and AAG has submitted that in this case, the transfer petitioner has to be rejected on the sole preliminary objection that the same has been filed without being supported by an affidavit. He submits that the subsequent filing of the affidavits cannot rectify the illegality and, as such, once illegality goes to the root of the matter, then, this Court has no option but to reject the transfer petition.

12. Reliance has been placed on the cases of *Pal Singh and Another vs. Central Bureau of Investigation and Others*, reported in (2005) 12 SCC 329, *Manindra Kumar vs. The State of Rajasthan & Anr.*, reported in MANU/RH/0096/1990MANU/RH/0096/1990 : 1992 CRI. L.J. 1392 and *Vijay Pal and Another vs. State of Haryana and Another*, reported in MANU/SC/0681/1998MANU/SC/0681/1998 : (1999) 9 SCC 67 = RLW 1999(2) SC 250.

13. It has been submitted on behalf of the State that the questions involved in the three appeals are entirely different and, as such, there is no difficulty in directing the learned Sessions Judge to proceed with the appeal filed by the petitioner and the decisions of the appeals filed by the State pending before this Court would then cover the issues which the Sessions Court decides. It has been thus submitted that the transfer petition deserves to be rejected.

14. Before proceeding to decide the petition on merits, the preliminary objection raised is being dealt with first. In the opinion of this Court, the preliminary objection of the State of Rajasthan regarding the petition being not maintainable on the ground of non filing of the affidavit cannot be accepted for a moment. In the case of *Pal Singh (supra)*, the Hon'ble Apex Court was dealing with the situation wherein, the High Court had directed for making an inter state transfer. The Hon'ble Apex Court has held that the High Court has no power to pass such a direction. In that case, the Hon'ble Apex Court was not considering the question as to whether the transfer petition should be considered without an affidavit being filed. In the case of *Vijay Pal (supra)*, the Hon'ble Apex Court was considering the case wherein the application for transfer was entertained by the Hon'ble Judge of the Punjab and Haryana High Court while being on tour. The Hon'ble Apex Court considered the situation wherein the Hon'ble Judge of the Punjab and Haryana High Court directed transfer of a case on an application made by the a party while he was camping at Gohana in connection with the inspection of the court. At that time, the complainant party of the case filed an application that they are being threatened by the accused and, thereupon, the learned Judge passed the direction of transfer without the file being received by the registry of the High Court and without same being supported by any affidavit. It is in this context that the transfer order was reversed by the Hon'ble Apex Court. In the present case, such is not a situation. The transfer petition was filed in the registry and the transfer is not sought on the basis of any

allegation against any of the parties to the case or against Presiding Officer hearing the case.

15. *In the case of Manindra Kumar (supra) which has been relied upon by Shri R.L. Jangid, Senior Advocate, the application which was filed for transfer of the case was based on certain allegations made against the Presiding Officer and it is in that background that this Court held that the filing of the affidavit in support of the transfer application was a mandatory requirement as per Section 407(3) Cr.P.C.*

16. *That apart on the preliminary objection being taken, the two affidavits have already been filed and taken on record in support of the petition for transfer. Now it cannot be said that the transfer petition is not supported by affidavit.*

17. *Thus, this Court is of the opinion that the objections which have been taken on behalf of the State do not restrain this Court for a moment from entertaining the present transfer petition on the technical objection regarding the maintainability of the transfer petition. That apart, the provisions of Section 407(2) Cr.P.C. reads as under:-*

407. *Power of High Court to transfer cases and appeals;(1). (2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative.*

18. *Thus, when the High Court is exercising the powers under Section 407(2) Cr.P.C. to direct the transfer of the case on its own initiative then in that situation, there would be no requirement of an affidavit being filed. The requirement of the affidavit is only in the cases covered by Section 407(1) Cr.P.C.*

19. *Certain provisions of the Code of Criminal Procedure also have a bearing on the controversy involved in the matter.*

20. *This Court while hearing of the appeal for enhancement has the powers to set aside the conviction as well. The provisions of Section 386 Cr.P.C. are relevant in this regard. Section 386(a) & (c) Cr.P.C. reads as under: -*

386. *Powers of the Appellate Court.-After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears and in case of an appeal under Section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-*

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the

case may be, or find him guilty and pass sentence on him according to law;

(c) in an appeal for enhancement of sentence -(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same.

21. Thus, from the perusal of these provisions, it becomes apparent that in the appeal filed by the State of Rajasthan challenging the acquittal of the petitioner in the same case from certain offences and the other appeal seeking enhancement of the sentence awarded to the petitioner, this Court is competent to reverse the conviction of the petitioner and acquit him. The conviction of the petitioner is the finding, which is under challenge in the appeal pending before the learned Sessions Judge and simultaneously while deciding the appeal of the State, this court has also powers by virtue of Section 386(a) & (c) Cr.P.C. to reverse the conviction of the petitioner.

22. Thus, there is every possibility and even likelihood of a situation of great anomaly arising in the matter because while the learned Sessions Judge while hearing the appeal filed by the petitioner against the conviction might uphold his conviction and at the same time, this Court while hearing the appeals being Criminal Appeals Nos. 685/2006 and 267/2007 pending before this Court may acquit the petitioner in the same case. A question of great difficulty would arise as to what would be the effect of the upholding of the sentence of the petitioner by the learned Sessions Judge, Jodhpur. Likewise, the situation can also arise, wherein, the learned Sessions Judge while hearing the petitioner's appeal may reduce the sentence awarded to him and this Court while hearing the appeal for enhancement of the sentence may decide that the sentence awarded to the petitioner should be enhanced. Thus, these are the situations which in all likelihood can arise in the matter if the appeals are heard and decided separately. The provision of Section 402 Cr.P.C. is such a provision, which has been enacted in the statute book for the purpose of avoiding such a situation. The provision of Section 402 Cr.P.C. reads as under:-

402. Power of High Court to withdraw or transfer revision cases.

(1) Whenever one or more persons convicted at the same trial makes or make application to a High Court

for revision and any other person convicted at the same trial makes an application to the Sessions Judge for revision, the High Court shall decide, having regard to the general convenience of the parties and the importance of the question involved. Which of the two Courts should finally dispose of the applications for revision and when the High Court decides that all the application for revision should be disposed of by itself, the High Court shall direct that the applications for revision pending before the Sessions Judge be transferred to itself and where the High Court decides that it is not necessary for it to dispose of the applications for revision, it shall direct that the applications for revision made to it be transferred to the Sessions Judge.

(2) Whenever any application for revision is transferred to the High Court, that Court shall deal with the same as if it were an application duly made before itself.

(3) Whenever any application for revision is transferred to the Sessions Judge, that Judge shall deal with the same as if it were an application duly made before himself.

(4) Where an application for revision is transferred by the High Court to the Sessions Judge, no further application for revision shall lie to the High Court or to any other Court at the instance of the person or persons whose applications for revision have been disposed of by the Sessions Judge.

23. This Court has no hesitation in arising at a conclusion that though the provision of Section 402 Cr.P.C. only refers to the revisional jurisdiction but the same analogy has to be applied to the appeals as well. When the situation of different appeals against the same judgment or in the same matter arises for consideration and then by virtue of Section 402 Cr.P.C, it has to be directed that all the different appeals arising out of the same judgment should be heard and decided together.

24. Rule 113 of the Rajasthan High Court Rules is also a relevant provision in this regard, which reads as under:-

Rule 113. Connecting cases.-No application shall be required for connecting cases arising out of the same decree, judgment or order and such cases shall be connected whether there be any application or not.

When any other cases are sought to be connected a properly stamped application shall be presented to the Registrar after giving notice to the advocates for all the other parties to such cases. The signature of an Advocate on such application shall be sufficient indication that notice has been given to him. Any party desiring to contest the application may file an objection

within ten days. Where no objection has been filed, the Registrar may pass orders on the application. Where an objection has been filed, the application shall be listed before the Court for orders.

25. By the application of this Rule, no application is required for directing the connecting of cases arising out of different decree, judgment or order and such cases shall be connected whether there be any application or not. Such a direction for connection can be made even simply by giving notice to the party contesting the issue.

26. Therefore, this Court is of the opinion that the propriety and the ends of justice require that the ends of justice require that the three appeals referred to above which have been filed in the matter against the very same judgment are required to be heard and decided together by the same court. *Since, the powers under Section 386 Cr.P.C, cannot be exercised by the learned Sessions Judge in this case, therefore, there is no option but to direct that the appeal filed by the petitioner against his conviction being Criminal Appeal No. 31/2006 pending in the Court of learned Sessions Judge, Jodhpur be transferred to the High Court and to be heard along with Criminal Appeals Nos. 685/2006 and 267/2007. Consequently, this misc. transfer petition succeeds and it is hereby directed that the Criminal Appeal No. 31/2006 pending in the Court of learned Sessions Judge, Jodhpur shall be transferred to the High Court forthwith and the same shall be tagged and heard along with Criminal Appeals Nos. 685/2006 and 267/2007."*

13. Mr. Anil Joshi, learned Government Advocate-cum-Additional Advocate General submits that the State has preferred the Criminal Leave to Appeal and the same shall be pursued strictly in accordance with law. Learned GA-cum-AAG further submits that the appeal preferred by the present petitioner shall also be contested by the State strictly in accordance with law. Learned GA-cum-AAG also submits that in all fairness, the order passed by this Hon'ble Court in another, almost similar, matter pertaining to the same accused, the transfer petition has been allowed; in that matter, the conviction of the petitioner was challenged and the

acquittal of other co-accused was also challenged along with certain other aspects is governing the field.

14. Mr. Manish Shishodia, learned Senior Counsel assisted by Mr. Jaideep Singh Saluja appearing on behalf of respondent No.5 submits that though the appeal against conviction is not directly affecting the present respondent, but that, it would certainly have an impact, because it would give strength to the criminal leave to appeal, filed by the State, which is pending before this Hon'ble Court. If a regular criminal appeal is connected with a criminal leave to appeal, the criminal leave to appeal shall gain unwarranted credence. As per learned Senior Counsel, in that event, the scope of interference in a criminal leave to appeal, which, as per law is very limited, owing to the fact that the same stands on a lesser pedestal than a regular criminal appeal, shall be unnecessarily expanded, to the prejudice of the respondent no. 5.

15. Learned Senior Counsel for the respondent relied upon the judgment rendered by Hon'ble Apex Court in **Ramesh and Ors. Vs. State of Haryana reported in (2017) 1 SCC 529**, relevant portion of which reads as under:-

"We have duly appreciated the submissions advanced by counsel for the parties on both sides. No doubt, the High Court was dealing with the appeal against the judgment of the trial court which had acquitted the appellants herein. The scope of interference in an appeal against acquittal is undoubtedly narrower than the scope of appeal against conviction. Section 378 of the Code of Criminal Procedure, 1973 confers upon the State a right to prefer an appeal to the High Court against the order of acquittal. At the same time, subsection (3) thereof mandates that such an appeal is not to be entertained except with the leave of the High Court. Thus, before an appeal is entertained on merits, leave of the High Court is to be obtained which means that normally judgment of acquittal of the trial court is

attached a definite value which is not to be ignored by the High Court. In other words, presumption of innocence in favour of an accused gets further fortified or reinforced by an order of acquittal. At the same time, while exercising its appellate power, the High Court is empowered to reappraise, review and reconsider the evidence before it. However, this exercise is to be undertaken in order to come to an independent conclusion and unless there are substantial and compelling reasons or very strong reasons to differ from the findings of acquittal recorded by the trial court, the High Court, as an appellate court in an appeal against the acquittal, is not supposed to substitute its findings in case the findings recorded by the trial court are equally plausible. The scope of interference by the appellate court in an order of acquittal is beautifully summed up in the case of **Sanwat Singh v. State of Rajasthan 1961 SCR (3) 120** in the following words:

"The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup's case afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as,

- (i) "substantial and compelling reasons",
- (ii) "good and sufficiently cogent reasons", and
- (iii) "strong reasons" are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified."

This legal position is reiterated in **Govindaraju @ Govinda v. State by Srirampuram Police Station and Anr. (2012) 4 SCC 722** and another and the following passage therefrom needs to be extracted:

"12. The legislature in its wisdom, unlike an appeal by an accused in the case of conviction, introduced the

concept of leave to appeal in terms of Section 378 CrPC. This is an indication that appeal from acquittal is placed on a somewhat different footing than a normal appeal. But once leave is granted, then there is hardly any difference between a normal appeal and an appeal against acquittal. The concept of leave to appeal under Section 378 CrPC has been introduced as an additional stage between the order of acquittal and consideration of the judgment by the appellate court on merits as in the case of a regular appeal. Sub-section (3) of Section 378 clearly provides that no appeal to the High Court under sub-section (1) or (2) shall be entertained except with the leave of the High Court. This legislative intent of attaching a definite value to the judgment of acquittal cannot be ignored by the courts."

16. Learned Senior Counsel for the respondent no. 5 further submits that Section 402 of the Cr.P.C. is pertaining to the revision cases and focus of the legislature is upon the right of the persons convicted.

17. Heard learned counsel for the parties as well as perused the record of the case, along with the judgments cited and the provisions referred, at Bar.

18. This Court finds itself in agreement with the earlier view taken by this Hon'ble Court while rendering the judgment of ***Salman Khan Vs. State of Rajasthan (S.B. Criminal Misc. Transfer Petition No.23/2011)*** whereby this Hon'ble Court had laid down the law that though the provision of Sections 402 & 407 of the Cr.P.C. only refers to the revisional jurisdiction but the same analogy has to be applied in criminal appeals.

18.1 This Hon'ble Court has laid down that when the situation of different appeals against the same judgment or in the same matter arises for consideration, then by virtue of Sections 402 & 407 of Cr.P.C, it has to be directed that all the different appeals arising out of the same judgment should be heard and decided together.

18.2. Thus, in adherence to the precedent law, as laid down by this Hon'ble Court and as already analyzed above, this Court is of the firm opinion that any offshoot litigation arising out of a single and common judgment, which may incongruously impact the respective parties, is bound to prejudice some of them, if different forums are adjudicating the same.

19. Thus, in the interest of justice, it will always be safe to presume that a common order/judgment has to be adjudicated from all angles at the same level.

20. This Court is conscious of the provision of law contained in Section 407 Cr.P.C relevant portion of which reads as follows: -

407. Power of High Court to transfer cases and appeals.

(1) Whenever it is made to appear to the High Court-

(a) ...

(b) ...

(c) **that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,**

it may order -

(i) ...

(ii) ...

(iii) ...

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative: Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub- section (1) shall be made by motion, which shall, except when the applicant is

the Advocate- General of the State, be supported by affidavit or affirmation.

20.1 This Court observes that the present petitioner has, in support of this transfer petition, also submitted an affidavit, as mandated under sub-section (3) of Section 407 Cr.P.C.

21. This Court is also conscious of the fact that the consolidated incident, i.e. the offences allegedly committed, relating to deer – hunting, by the accused persons, i.e. the present petitioner, and respondents No. 3 to 7 as claimed by the prosecution, and despite different acts having been attributed to each of them, it would be unfair to all the concerned parties, to have different and possibly divergent opinions from various courts.

21.1 It is only in these types of cases where it becomes justified to invoke the exclusive jurisdiction of the High Court to transfer the matter from one Court to another, in view of the provisions of Sections 402 and Section 407 of the Cr.P.C., as the Court adjudicating can have a comprehensive picture of the facts while making the necessary determination in regard thereto. The broader four corners of the litigation, including the version of the prosecution are intertwined, and thus, this Court, in the interest of justice, and for the general convenience of all the concerned parties, deems it just and proper to allow the present transfer petition.

22. Resultantly, the present petition is allowed, and accordingly, it is directed that criminal appeal No.18/2018 filed by complainant-Punamchand relating to alleged offence under Wild Life (Protection) Act, 1972 and Criminal Appeal No.22/2017 relating to alleged offence under Arms Act, 1956, both pending before the District and Sessions Judge, Jodhpur District shall be transferred to

this Hon'ble High Court, to be heard alongwith the Criminal Leave to Appeal No.311/2018 (State of Raj. Vs. Saif Ali Khan & Ors.). However, it is made clear that the persons who have been acquitted, i.e. respondents no. 3 to 7, shall not be prejudiced by this order and shall stand protected to the extent of the mandate of the precedent law laid down by the Hon'ble Apex Court in the matter of **Ramesh (supra)**, relevant portion of which has been quoted hereinabove and harped upon by the learned Senior Counsel for the respondent.

(DR.PUSHPENDRA SINGH BHATI),J.

110-Sudheer/Jitender/-



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