CASE NO.:
Appeal (crl.) 759 of 2006

PETITIONER:
State of Karnataka

RESPONDENT:
Annegowda

DATE OF JUDGMENT: 13/07/2006

BENCH:
ASHOK BHAN & MARKANDEY KATJU

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (Crl.) No. 5153 of 2004

BHAN, J.

Leave granted.

State of Karnataka has filed the present appeal against the order of learned Single Judge of the High Court of Karnataka wherein and whereby the High Court while setting aside the judgment and order of the courts below has directed the Trial Court to record evidence in the eleven cases registered against the accused-respondent under Sections 409, 467, 468, 471 (a) of Indian Penal Code pertaining to different periods from 1993 to 2001.

During the first week of October, 1991, Karntaka State Co-operative Apex Bank Limited (for short "the complainant") drew a programme of inspection of branches of the Bank and directed the then Internal Auditor to inspect the accounts of the branches. The Internal Auditor took up inspection of West of Chord Road II stage Branch on 4.10.1991 and submitted three reports which revealed that a total sum of Rs. 5,13,50,629/- was misappropriated by the Bank officials during the period from 1.7.1981 to 4.10.1991. Against accused-respondent Annegowda 11 cases, namely, CC No. 8055/93, CC No. 8165/94, CC No. 8195/2000, CC No. 8196/2000, CC No. 8197/2000, CC No. 8198/2000, CC No. 8097/2001, CC No. 8098/2001, CC No. 8099/2001, CC No. 8100/2001 and CC 8101/001 were registered. In all these cases accused-respondent is the main accused. Evidence in each of these cases is voluminous and necessarily, the trial of each case will be slow.

In CC No. 8055 of 1993, which is now at the stage of arguments, accused Annegowda filed an application under Section 309 Cr.P.C. on 2.8.2002 requesting the Court to defer the recording of his statement under Section 313 Cr.P.C. till all the other 10 cases against him reach the stage of the statement of the accused. Trial Court dismissed the said application, aggrieved against which respondent filed Criminal Revision Petition No. 294 of 2002 before the Revisional Court which was

dismissed on 22.2.2003. Thereafter, Respondent filed a petition under Section 482 Cr.P.C. in the High Court which has been allowed by the learned Single Judge by the impugned order and a direction has been issued to the Trial Court to hold trial and record evidence in all the aforesaid cases simultaneously and dispose of the same simultaneously as far as possible. Submission made on behalf of the respondent that he could not be forced to reveal his defence as it would enable the prosecution to cover up the lacunae in other cases which are pending in trial was accepted. This direction has been issued in the purported exercise of power conferred under Section 242 Cr.P.C. which according to the learned Single Judge gives the jurisdiction to a Court to defer cross examination of the material witnesses until all the material witnesses are examined by the prosecution as part of fair trial.

Counsels for the parties have been heard.

Section 242 finds its place in Chapter XIX "Trial of warrant-cases by Magistrates" of the Code of Criminal Procedure, 1973, which reads:

"242. Evidence for prosecution.- (1) If the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under Section 241 the Magistrate shall fix a date for the examination of witnesses.
(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.
(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution;

Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination."

Section 242 of the Cr.P.C. deals with the recording of evidence of prosecution. Clause (1) of the Section provides that if the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under Section 241 the Magistrate shall fix a date for the examination of witnesses. The Magistrate is authorised under Clause (2) to issue a summons to any of the witnesses directing him to attend or to produce any document or other thing and under Clause (3) on the date fixed the Magistrate is enjoyed upon to take all such evidence as may be

produced in its support by the prosecution. Proviso permits the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination. It does not deal with either the clubbing of cases registered against the accused or simultaneous trial of different cases registered against an accused. On an earlier occasion the respondent had filed an application under Section 312 read with Section 219 Cr.P.C. in this case seeking a direction to club CC No. 8165 of 1994 with this case and to hold a common trial. The said application came to be rejected by the Magistrate on 4.7.1994. Against the said order the respondent filed a Criminal Revision Petition No. 75 of 1995 before the XXIII, Addl. City Civil and Sessions Judge, who heard the matter and dismissed the same by its judgment and order dated 15.7.1995. It was held that there was no reason to club the matter and to hold a common trial. However, a direction was given to expedite the trial of CC No. 8165 of 1994 and if possible dispose it off simultaneously with the present case.

There is no dispute that as many as 11 charge sheets pertaining to different periods have been filed against the respondent. It is only in one case the trial has been completed and has reached the stage of examination of the accused under Section 313 Cr.P.C.. There is no provision in the Code of Criminal Procedure which enables the Court to postpone the examination of the accused under Section 313 Cr.P.C. till the completion of the trial in other cases. Merely because certain other charge sheets have been filed against the same accused for similar offences cannot be a ground to postpone the examination of the accused under Section 313 of Cr.P.C. The apprehension of the respondent-accused that if his statement is recorded under Section 313 Cr.P.C. he would be required to divulge his defence and in that event he would be prejudiced in the trial of other cases filed against him is without any basis and foundation. It may be taken note of that in as many as 25 witnesses have already been examined and the witnesses have already been cross-examined by the advocate for the accused. It is reasonable to infer that during the course of his cross-examination the accused-respondent must have disclosed his defence. The statement on behalf of the accused that he is required to divulge his defence only during his examination under Section 313 Cr.P.C. cannot be accepted. The charges in other cases against the accused may be under the same provisions of Indian Penal Code and may also be similar but documentary or oral evidence may be different which ultimately has to be appreciated and evaluated by the Court separately in each case. It can be taken judicial note and kept in mind that completion of trial in other ten charge sheets may take some more time. The High Court has materially erred in coming to the conclusion that under the provisions of Section 242 Cr.P.C. recording of statement of accused-respondent under Section 313

could be deferred till the trial in other cases involving similar transactions against the accused is completed.

For the reasons stated above, the appeal is allowed. The judgment and order of the learned Single Judge of the High Court of Karnataka is set aside and those of courts below are restored. Trial Court may now proceed in accordance with law.