

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 646/2008 & CrI MA 2412/2008

Reserved on: 3rd February 2009

Date of decision: 13th March 2009

HITESH NAGPAL

..... Petitioner

Through Mr. Vijay Aggarwal with
Mr. Rakesh Mukhija, Advocate

versus

STATE & ANR.

..... Respondents

Through Mr. Sanjay Lao, APP for State.
None for R-2.

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGMENT

13.03.2009

S. Muralidhar, J.

1. The challenge in this petition under Section 482 read with Section 407 of the Code of Criminal Procedure, 1973 (CrPC) is to the orders dated 23rd October 2007 and 29th January 2008 passed by the learned Metropolitan Magistrate (MM), Delhi in the Criminal Complaint Case titled "*Lord Krishna Bank v. Hitesh Mohan Nagpal*".

2. The Respondent No.2 Lord Krishna Bank, which has since been

amalgamated with Centurion Bank Ltd. and which in turn has been amalgamated with HDFC Bank Ltd., filed five separate criminal complaints against the petitioner in relation to dishonour of several cheques. In C.C. Nos. 458/1, 459/1, 460/1 and 462/1, the complaint was in respect of three dishonoured cheques each whereas C.C. No. 461/1 was in respect of one dishonoured cheque. All these cheques were in the sum of Rs. 3 lakhs each except one cheque No. 911543 (which is one of the cheques mentioned in C.C. No. 459/1) which was for a sum of Rs. 1,20,000/-. The said cheques were dishonoured on the ground of insufficiency of funds. Five separate orders dated 25th October 2005 were passed by the learned MM in these complaints summoning the petitioner for the offences under Section 138 of the Negotiable Instruments Act, 1881 (NI Act).

3. In the first instance two applications were filed by the accused. One under Section 219 CrPC and another under Section 220 CrPC. In the present case, we are concerned with the second application. By the order dated 23rd October 2007, the learned MM rejected the second application pointing out that “the complainant had clubbed three cheques which were dishonoured” and in any event “all the cases are being tried together and no prejudice would be caused to the accused”. The petitioner filed a further application seeking clarification of the aforementioned order. The said application was rejected by the second impugned order dated 29th

January 2008.

4. The arguments of Mr. Vijay Aggarwal, the learned counsel for the petitioner have been heard at great length. According to him, there should be a single trial for the dishonour of all the cheques for only then the punishment, if any, awarded to the petitioner can be directed to run concurrently. According to him, if there are five separate complaints and separate trials, the sentence, if any, in each of those complaints could be directed to run consecutively and this would greatly prejudice the petitioner. He refers to the illustrations under Section 220 CrPC and in particular to the sentence at the end of the illustrations (a) to (h) which states: “The separate charges referred to in illustrations (a) to (h) respectively may be tried at the same time”. Reliance is also placed on the judgment of the Supreme Court in *State of Andhra Pradesh v. Cheemalapati Ganeshwara Rao* 1963 (2) Cri. L.J. 671 and *Adnan Bilal Mulla v. State of Maharashtra* 2006 Cri LJ 564 (Bom); *Ravinder Pal Singh v. State* 1993 JCC 219; *Smarty Machra v. State* 2007 (2) JCC 1570 and *Raja Dayanand v. State* 2004 (3) JCC 1886. Mr. Aggarwal also refers to Section 31 CrPC read with Section 71 IPC which deals with the question of consecutive sentences.

5. Having considered the submissions of the learned counsel for the petitioner, this Court is not persuaded to take a view different from that

taken by the learned MM. There is no dispute that under Section 219 of the CrPC, a person accused of more than one offences of the same kind committed within space of 12 months may be charged with and tried at one trial for not more than three offences. The dishonour of each cheque constitutes a separate offence and not more than three cheques have been clubbed together in one complaint. Therefore, there cannot said to be any non-compliance with Section 219 CrPC. Section 220 (1) CrPC reads as under:

“220(1). Trial for more than one offence.__(1) If, in one series of acts so connected together as to form the same transaction, more offences than one committed by the same person, he may be charged with, and tried at one trial for, every such offence.”

Illustration (d) under Section 220 (1) CrPC reads as under:-

“(d) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code (45 of 1860). A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code (45 of 1860).”

6. Although at the end of the illustrations it has been stated that the separate charges referred to therein “may be tried at the same time”, there is no compulsion that the court must at all times try all the offences

together at one trial. If a harmonious construction is to be made of Sections 219 and 220 CrPC then the legislative intent appears to be that in one complaint case, the accused can be proceeded against for the dishonour of a maximum of three cheques. For offences committed in respect of more than three cheques, a separate complaint has to be registered, and consequently separately tried.

7. In *State of Andhra Pradesh v. Cheemalapati Ganeshwara Rao*, the Supreme Court was dealing with the corresponding provision, i.e. Section 239 of the CrPC of 1898. It was explained that Section 239 was to avoid multiplicity of trials and that “the only limitation which could properly be placed on the trial of several persons for the same kind of or different offences would be that which considerations of justice and fairness would require. No doubt, such a construction would also give rise to the result that whereas so far as the trial of a single accused person is concerned the charges must be limited to three offences committed by him within the space of 12 months from the first to the last of such offences, there would be no such limitation when along with that accused person there are one or more persons who have jointly committed those offences. The reason for this possibly is that the Legislature did not want to differentiate between cases where any number of different offences were committed jointly by a group of persons from cases where any number of offences of the same kind were committed by a group of persons.” The words “same

transaction” occurring in Section 235 of the CrPC 1898 (corresponding to Section 239 of the present CrPC) was further explained by the Supreme Court in the following manner (Cri LJ @ 682):

“Under s. 235(1) what has to be ascertained is whether the offences arise out of acts so connected together as to form the same transaction, but the words "so connected together as to form" are not repeated after the words "same transaction" in s. 239. What has to be ascertained then is whether these words are also to be read in all the clauses of s. 239 which refer to the same transaction. Section 235(1), while providing for the joint trial for more than one offence, indicates that there must be connection between the acts and the transaction. According to this provision there must thus be a connection between a series of acts before they could be regarded as forming the same transaction. **What is meant by "same transaction" is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined.** We have not come across a single decision of any Court which has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of

purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction. The connection between a series of acts seems to us to be an essential ingredient for those acts to constitute the same transaction and, therefore, the mere absence of the words "so connected together as to form" in clause (a), (c) and (d) of s. 239 would make little difference. Now, a transaction may consist of an isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stands out independently, they would not form part of the same transaction but would constitute a different transaction or transactions. Therefore, even if the expression "same transaction" alone had been used in s. 235(1) it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression "same transaction" occurring in cls. (a), (c) and (d) of s. 239 as well as that occurring in s. 235(1) ought to be given the same meaning according to the normal rule of construction of statutes. Looking at the matter in that way, it is pointless to inquire further whether the provisions of s. 239 are subject to those of s. 236(1). The provisions of sub-s. (2) and (3) of s. 235 are enabling provisions and quite plainly can have no overriding effect. But it would be open to the court to resort to those provisions even in the case of a joint trial of several persons permissible under s. 239."

It must be mentioned here that Section 239 of CrPC (1898) corresponds to Section 223 of the present CrPC which indicates which persons could be tried jointly.

8. On a conspectus of the above provisions as explained by the Supreme Court, it appears to this Court that in the instant case although the cheques were issued pursuant to the same agreement, and therefore the “same transaction”, the offence as a result of the dishonour of a cheque is a separate offence. The question here is not whether in respect of these separate offences there can be five separate complaints. In fact it is not in dispute that there has been compliance with Section 219 CrPC. The question is whether in terms of Section 220 CrPC all these offences must be tried at “one trial.”

9. Although the dishonoured cheques may have been issued pursuant to one agreement, the instance of the dishonour of a cheque is a separate offence and not ‘connected’ with the dishonour of the previous or later cheque. It is possible that the first and third cheques are honoured and the second, fourth and fifth are not. The language of Section 220(1) indicates that it is an enabling provision which leaves it to the discretion of the court concerned to charge and try the accused, who has committed more than one offence forming part of the same transaction, at one trial. The word used is “may” and understandably so since the trial court has to also comply with the mandate of Section 219 CrPC whereby a maximum of three such cheques can be combined in one complaint. That requirement would be rendered redundant if Section 220 were to be interpreted to permit the trial of all the offences pertaining to the dishonour of each of

the cheques at one trial which in turn would warrant only one sentence of punishment if the accused is found guilty. It would also completely denude the penal provision of its deterrent effect. In other words, there would be no change in the consequence if the accused is found guilty of one such offence (pertaining to the dishonour of one cheque) or twenty such offences (pertaining to the dishonour of twenty cheques). That can never be the intendment of the legislature in enacting Section 220 CrPC.

10. The decision in *Ravinder Pal Singh* on which considerable reliance has been placed by the learned counsel for the petitioner, does not really help his case at all. It is a short one-paragraph order in a case where instead of furnishing three sureties in respect of three offences committed within one year, the petitioner was permitted to furnish one surety. The decision in *Raja Dayanand* only talks of the same court having to try together the cases for the offences under the Arms Act and IPC. The decision in *Smarty Machra* also does not help the petitioner. There, the petitioners and the accused were charged with having committed the theft of certain articles. The offences were committed in the intervening night on 18th/19th June 1998. Since the offences were committed within a year it is held that the Section 219 CrPC would apply and the petitioners should be charged jointly for the offences under Section 379/411/31 IPC.

11. Consequently, it is held that in the instant case, the five complaints

would have to be tried separately and not at one trial as urged by the learned counsel for the petitioner. It is however possible that all the five complaint cases are heard and tried in one court for the sake of practical convenience. It is premature to speculate about the consequential sentence, if any, and whether they would be directed to run concurrently.

12. For the aforementioned reasons, this Court finds no infirmity in the impugned orders passed by the learned MM. The petition is accordingly dismissed with no orders as to costs. The application also stands dismissed.

S. MURALIDHAR, J.

MARCH 13, 2009

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