

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: July 28, 2011

+ **CRL.M.C.No.3723/2010**

M/S INDIAN SULPHACID INDUSTRIES LTD. PETITIONER

Through:Mr.Kanwal Chaudhary, Advocate

Versus

M/S EMMSONS INTERNATIONAL LTD. RESPONDENT

Through:Mr.O.P.Arya, Advocate.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.(ORAL)

1. This is a petition under Section 482 of the Code of Criminal Procedure (Cr.P.C.) seeking quashing of complaint No.4043/01 filed under Section 138 of the Negotiable Instruments Act 1881 (for short 'N.I. Act') titled 'M/s Emmsons International Limited Vs. M/s Indian Sulphacid Industries Ltd. and others' .

2. Briefly stated, the facts relevant for the disposal of this petition are that M/s Emmsons International Limited filed a complaint under Section 138 read with Section 142 N.I. Act against the petitioner company and others claiming that petitioner company purchased sulphur from the respondent company on regular basis. During the period with effect from

20th June, 1998 to 30th November, 1998, sulphur worth ₹42,86,250/- was supplied by the complainant to the respondent company. Respondent company was having a running account against those supplies and in discharge of their liability against those supplies, respondent company had made part payment of ₹32,44,750/- as against the liability of ₹42,86,250/-. Thus, on 17th March, 1999, a sum of ₹10,41,500/- was due from the petitioner company. It is also claimed in the complaint that, in order to discharge aforesaid liability, the petitioner company sent 11 cheques all dated 24th March, 1999 to the respondent company vide a covering letter dated 24th March, 1999. 10 of those cheques were for ₹1,00,000/- each and 11th cheque was for ₹41,500/-. Four of those cheques bearing No.888235 to 888238 for ₹1,00,000/- each were presented for encashment through the respondent company's banker. Those cheques were dishonoured with the observation "payment stopped by the drawer". On the receipt of dishonour memo, the petitioner sent separate demand notices under Section 138 N.I. Act to the respondents for respective cheques. The respondents, however, failed to make the payment of those cheques within requisite period of 15 days. This led to filing of a single complaint under Section 138 N.I. in respect of dishonour of the above referred four cheques.

3. Learned Metropolitan Magistrate, after conducting preliminary enquiry, found a prima facie case against the respondent company and others. He, accordingly issued summons to them for 18th July, 2007.

4. Learned counsel for the petitioner submits that perusal of the complaint would show that it is an admitted position that the respondent had issued four separate demand notices under Section 138 N.I. Act in respect of the dishonour of four cheques which are subject-matter of the complaint. Thus, alleged failure of the petitioner to comply with respective demand notices give rise to a separate cause of action. Learned counsel for the petitioner has drawn my attention to Sections 218 and 219 of the Cr.P.C. and submitted that Section 218(1) Cr.P.C. provides that for every distinct offence, there shall be a separate charge and for every charge, there shall be a separate trial. Learned counsel submits that exception to this rule is Section 219 Cr.P.C. which provides that if a person is accused of having committed more offences of same kind within a span of 12 months from first to last, maximum of three such offences can be tried jointly. It is submitted that in the instant case, learned M.M. has taken cognizance of a complaint which seeks to join four offences in the same trial, which is in violation of the scheme of Section 219(1) Cr.P.C. Thus, learned counsel for the petitioner has urged for quashing of the complaint.

5. In order to properly appreciate the contention of learned counsel for the petitioner, it would be useful to have a look on Chapter XVII Part B Cr.P.C. dealing with joinder of charges, particularly Sections 218, 219 and 220(1) of the Cr.P.C. which are re-produced thus:-

218. Separate charges for distinct offences.

(1) For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately:

Provided that where the accused person, by an application in writing, so desires and the Magistrate is of 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.

(2) Nothing in sub- section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223.

219. Three offences of same kind within year may be charged together.

(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local laws:

Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1 860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

220. 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 are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

6. On reading of aforesaid provisions of law, it is evident that general rule for trial is that for every distinct offence, there shall be a separate charge and for every charge, there shall be a separate trial. Sections 219 & 220 are exception to Section 218(1) Cr.P.C. Section 219(1) provides that when a person is accused of more offences than one of same kind committed within a period of 12 months, he may be charged with and tried together for more than one such offences not exceeding three at one trial. Petitioner is trying to take benefit of this provision. Section 220(1) of the Cr.P.C. provides that if in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at one trial for, every such offence.

7. In the instant case, perusal of paras 4 and 5 of the complaint would show that as per the averments in the complaint, all the four cheques in question were allegedly handed over by the petitioner company to the accused against a running credit account on the same date. Those four cheques were presented for encashment to the bank on the same date and those were received back dishonoured with the remarks "payment stopped by the drawer". From this, it is evident that all the four cheques, which are subject-matter of the complaint were given by the petitioner company to the respondent against the amount outstanding as per running account. Since the cheques dishonoured are part of the same transaction and were issued against the running credit account, in my considered view, Section 220(1) of the Cr.P.C. is attracted in this case. As such, the order of learned M.M. summoning the petitioner and other co-

accused to appear and stand trial cannot be faulted, particularly when the evidence pertaining to the offence resulting from dishonour of those cheques is entirely common. No other plea has been pressed by the petitioner.

8. In view of the discussion above, petition is dismissed.

(AJIT BHARIHOKE)
JUDGE

JULY 28, 2011
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