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HIGH COURT OF UTTARAKHAND AT

NAINITAL

Criminal Misc Application No. 17 of 2025

01 April, 2025

Deepak Agarwal

--Petitioner

Versus

Navdeep Nagalia

--Respondent

Presence:-

Mr. Sagar Kothari, Advocate for the petitioner.

Mr. Neeraj Garg, Advocate for the respondent.

Hon'ble Vivek Bharti Sharma, J. (Oral)

This is the criminal miscellaneous petition filed by the petitioner /accused in Criminal Complaint No.256/2020 (C.G. No.0348/2020) against the judgment and order dated 17.12.2024 passed by 1st Additional Sessions Judge, Rishikesh, District Dehradun in Criminal Revision No.24/2024 '*Deepak Agarwal Vs. Navdeep Nagalia*'.

2. By the impugned judgment dated 17.12.2024 of the Sessions Judge, the revision was dismissed thereby sustaining the order dated 05.07.2024 passed by the Judicial Magistrate, Rishikesh whereby the application of the petitioner /accused filed under Section 220 of the Cr.P.C. to consolidate the trial of criminal complaint no.348/2020, 349/2020, 350/2020, 351/2020 and 352/2020 was rejected. In all these



criminal complaints, the petitioner is the accused and the respondent is the complainant and these complaints are filed to summon, try and punish the petitioner /accused for the offence under Section 138 of the Negotiable Instrument Act, 1881 (*for short "N.I. Act"*).

3. The brief facts of the case are that respondent /complainant filed five complaints, as stated above, for summoning, trying and punishing the petitioner/accused for the offence under Section 138 of N.I. Act for five cheques issued by the petitioner /accused in favour of respondent /complaining arising out of business transactions of purchase of diesel fuel.

4. Learned counsel for the petitioner /accused would submit that all the cheques were issued on the same date, presented before the bank on the same date, dishonored for insufficiency of funds on the same date, the demand notice was also issued on the same date and the cause of action also arose on the same date; that, all these cheques were allegedly issued as part payment for purchase of diesel fuel.

He would further submit that the evidences, documents and the witnesses in all the five complaint cases are same and the examination-in-chief is almost the same with no addition or subtraction; that, the defense of the petitioner /accused is also the same in



all five complaint cases, therefore, application under Section 220 Cr.P.C. was moved to consolidate the trial of every case.

5. Mr. Neerag Garg, learned counsel for the respondent /complainant would concede that the documentary and oral evidences and witnesses are same in all the five complaint cases and the cheques were issued, as alleged in the case, as part payment for sale of diesel fuel to the petitioner /accused. Learned counsel for the respondent /complainant would further submit that, **therefore, the respondent /complainant has given his no objection, as recorded in paragraph no.3 of impugned order dated 04.04.2024 passed by the Judicial Magistrate, Rishikesh in Criminal Complaint No.256/2020 (C.G. No.0348/2020).**

6. Perused the record in the light of the respective submissions of the learned counsel for the parties and considered.

7. As apparent, it is agreed by the parties that the respective dates in all the cases about the presentation of cheques, dishonor of cheques, issuance of notices and filing of complaint cases etc., are the same. However, in the considered view of this Court, cause of action in all the five cases are different. The cause of action in each complaint case allegedly arose



independently, on expiry of the period of respective notice when the payment, as demanded in the notice, was not made by the petitioner /accused, therefore, it cannot be said that the offences in all the five cases arose out of one series of facts so connected together as to form the same transaction by the same person as defined under Section 243 of B.N.S.S.(or *Section 220 of Cr.P.C.*).

8. The main point to appreciate is that in the criminal complaint case for the offence under Section 138 of the N.I. Act, the business transactions, the presentation of cheques or issuance of notices are not giving rise to any criminality, rather, the cause of action arises only on the non-payment of the notice amount before expiry of the notice period. The operation of Section 243 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short "B.N.S.S."*) (*Section 220 of Cr.P.C. as then was*) comes into play in the case where one series of acts give rise to more than one offence and not to the same offence like here in this case.

9. The instances of the applicability of Section 243 of the B.N.S.S. is very beautifully given in the illustrations given to Section 243 itself. Therefore, the single trial by consolidating all the five cases could not have been proceeded as these five complaint cases are



not instance of giving rise to more than one offence in one series of acts. Rather, in these complaint cases, same offence is alleged to have been done out of different series of acts.

10. Though the application by the petitioner /accused was made under Section 220 of the Cr.P.C. (*the criminal procedure as then was, now Section 243 of the B.N.S.S., 2023*), but, in the present facts and circumstances, all these five complaint cases are covered by Section 242 of the B.N.S.S.

Section 242 of the BNSS is extracted as under:

“242. 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 five.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Bharatiya Nyaya Sanhita, 2023 or of any special or local law”.

11. It means that when a person is accused of more offences than one of the same kind committed within a space of twelve months from first to last of such offence then he may be tried at one trial. However, there is a condition that this number should not exceed five.

Section 242(2) of the BNSS further says that the offences are of the same kind when they are



punishable with the same amount of punishment under the same Section of the BNS or any special law.

It would be pertinent to note that prior to the enactment of the B.N.S.S., 2023, Section 219 of the Cr.P.C. was holding the field. Previously, as per Section 219 of the Cr.P.C. the number of such cases could not have exceeded three, but under Section 242 of the B.N.S.S. if the number of the same cases is upto five, then the accused may be charged with and tried at one trial for all these offences if more offences than one of the same kind are committed within a space of twelve months from first to last.

12. It is pertinent to note that impugned order by learned Judicial Magistrate was passed on 05.07.2024 and B.N.S.S., 2023 had come into force on 1st day of July, 2024 by Notification No.S.O.848(E) dated 23.02.2024. It seems that the learned Judicial Magistrate was either oblivious of this fact or this position of law was not placed before the Trial Court.

13. In view of the above, this Court is of the view that it will be in the interest of justice that all these criminal complaint cases be tried in a single trial as the same kind of offence is stated to have been committed by the accused person within the period of twelve months from the first to the last offence. Trial of all



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these five cases in a single trial shall be in the interest of both the parties as the oral and documentary evidences and witnesses are the same. Therefore, the impugned order dated 17.12.2024 and order dated 05.07.2024 are liable to be set aside and the same are hereby set aside.

14. It is directed that criminal complaint no.348/2020, 349/2020, 350/2020, 351/2020 and 352/2020 be tried together being five offences of the same kind within twelve months from first offence to last and Criminal Complaint Case No.256/2020 (C.G. No.0348/2020) title '*Navdeep Nagalia Vs. Deepak Agarwal*' shall be the leading case.

15. A copy of this order be sent to all the Courts of the State for compliance and to the Director, Uttarakhand Judicial and Legal Academy, Bhowali Nainital to see that these observations with directions should be brought in the knowledge of the judges who come there for their refresher courses and induction training. The District Judges of all districts shall also discuss these observations and directions in the monthly meeting.

(Vivek Bharti Sharma, J.)

01.04.2025

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