

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL APPLICATION NO. 578 OF 2015

- 1] Gatrod Agro Bio-Fuels Private Ltd.,
having its office at :
Plot No.D1 & D2, Supa-Parner MIDC,
Industrial Area, Supa, Tq. Parner,
District Ahmednagar,
A Company registered under the
Companies Act, 1956 bearing
registration No.CIN U 15142 PN 1999
PTC 014013,
 - 2] Mr. Sadanand Chandrabhan Pandey,
age 51 years, occ. M.D.,
R/o Palm Spring Society,
Near Chandan Talkies, JVPD Scheme,
Ville Parle, Mumbai-400 059
(Being the Managing Director of
Applicant No.1 Company),
 - 3] Mr. Vinod N. Mange,
age Adult, Occ. Business,
R/o C Stroke, 705, Sai Asha Complex,
Nilam Nagar,Phase-II, Mulund (W),
Mumbai-400 080
(Being the Managing Director of
Applicant No.1 Company),
 - 4] Mr. Khemaji M. Kataria,
age major, occ. Business,
R/o A/702, Runwal Towers,
L.B.S.Marg, Opp. Beena Nagar,
Mulund (W), Mumbai-400080
(Being the Managing Director of
Applicant No.1 Company),
- ...Applicants

VERSUS

Garg Distilleries Private Ltd.,
Chopda Road, Asali,
Taluka Shirpur, District Dhule,
Through its Manager and
Power of Attorney Holder,
Mr. Mahesh Gowardhandas Agrawal,
Age 50 years, occ. Service,
R/o Shirpur, District Dhule

...Respondent

.....
Shri S.V.Suryawanshi, advocate h/f
Shri C.V.Bhadane, advocate for applicants
Shri N.B.Suryawanshi, advocate for respondent/original complainant.
.....

CORAM : V.M.DESHPANDE, J.

DATED : 20th July, 2015

ORAL JUDGMENT : -

1] Rule. Rule is made returnable forthwith.

2] Heard Shri S.V.Suryawanshi, advocate holding for Shri C.V.Bhadane, learned counsel for the applicants/original accused and Shri N.B.Suryawanshi, learned counsel for respondent/original complainant. With the consent of the learned counsel for the parties, the application is taken up for final hearing.

3] The complaint was filed on behalf of the respondent/complainant against the present applicants under Section 138 of the Negotiable Instruments Act, since the negotiable

instrument issued in favour of the complainant was dishonoured by the banker of the applicants for the reason stated in the memo issued by the banker. A statutory notice, dated 7.5.2011 was issued by the respondent/complainant against the present applicants. Subsequently, complaint was filed.

4] During the pendency of the complaint, an application was moved by the applicants under Section 219(1) of the Code of Criminal Procedure to decide the other criminal cases together with Criminal Case No.933 of 2011.

The said application is at Exh.62. The said application was opposed by original complainant.

5] The learned Judicial Magistrate, First Class, Shirpur on 2.9.2014 rejected the application (Exh.62) necessitating the applicants/accused to approach this court in this proceeding.

6] Learned counsel Shri S.V.Suryawanshi pressed into service the provisions of Section 220 of the Code of Criminal Procedure and submitted that the learned Magistrate has committed wrong in not accepting the prayer made by the applicants.

He also placed reliance on a reported decision of the learned Single Judge of this court in the case of **Rajasthani Trading Co. and anr. Vs Chemos International Limited and anr. [2001 ALL MR (Cri) 630]**.

7] Per contra, Shri N.B.Suryawanshi, learned counsel for the respondent/original complainant would submit that the application filed on behalf of the applicants was devoid of any substance, in as much as, on bare reading of Section 219 of the Code of Criminal Procedure, it is crystal clear that the said provision cannot be pressed into service.

He also submitted that in view of the reported decision of Division Bench of this court in the case of **Rajendra Bapusaheb Choudhari vs State of Maharashtra and anr. [2007 (Supp.) Bom.C.R.738]**, each tender of cheque and its dishonour gives rise to separate cause of action, and therefore, the order impugned cannot be set aside.

He also relied upon another reported decision of learned Single Judge of this court in the case of **Ramjan Mohammad Usuf vs Atul Vijay Madan and anr. [2007 (2) Bom.C.R. (Cri.) 612]** to buttress his point.

8] Admittedly, in the present case, though the present respondent/complainant has filed three other complaints, for every complaint separate notice, as envisaged under the Negotiable Instruments Act, was issued against the present applicants.

9] The reliance placed by the learned counsel for the applicants on the reported decision in the case of **Rajasthan Trading Company** (supra) is misplaced, in as much as in the said case though 27 cheques were dishonoured, however, for 27 cheques one single notice was issued by the complainant against the accused

persons.

In that behalf, it would be useful to reproduce paragraph no.3 of the judgment of Division Bench of this court in the case of **Rajendra Bapusaheb Choudhari** (supra), which reads as under : -

“ 3. First contention of learned Counsel for the petitioner is that the trial Judge committed an error in not combining all the causes of action for holding a single trial. It is not possible for us to accept this contention for a simple reason that a cause of action for the prosecution in respect of dishonour of a cheque arises only if the drawer commits default in making payment within stipulated period, after receipt of the notice required to be given in conformity with proviso (b) of Section 138 of the Act, in respect of each tender and the non-payment of the drawee bank on the ground that the balance amount in the account of the drawer is insufficient to honour his commitment or it exceeds the amount arranged to be paid from that account by an agreement with the drawee bank. Each tender of a cheque and its dishonour gives rise to separate cause of action subject to a condition that separate notices are issued in respect of each of these cheques. The payee is not prevented from combining the causes of action by covering all the instances in a single notice. In such a case all the transactions covered by the notice would be regarded as a single transaction, permitting a single trial. However, in a case where cheques were issued on different dates, presented on different dates and separate notices are issued in respect of each default, the transactions cannot be held to be a single transaction attracting provision of Section 219 of the Code. In support of his contention, learned Counsel has placed reliance on the judgment of this Court reported in 2001 All MR (Cri) 630 in the matter of (Rajasthan Trading Company Vs. Chemos International Ltd.). In that case, in all 27 cheques were issued on different dates but only one notice was issued by the payee. In this view of the matter it was held that single trial in respect of the 27 cheques is permissible. However, it has been categorically observed by the Court that dishonour of each cheque constitutes separate offence which should ordinarily be tried by different trials. Apart from this, it is pertinent to bear in

mind that Section 219 is an enabling provision and does not mandate a single trial. In appropriate case the Court is at liberty to try the offences of the same kind in different trial. While dealing with a similar situation in the matter of (Ranchhod Lal v. State of M.P.), reported in 1964 DGLS 317 : A.I.R. 1965 S.C.1248, Their Lordships of the Apex Court observed in paras 15 and 16 of the report thus :

15. Learned Counsel for the appellant also relied on Section 234, Criminal Procedure Code and urged that three offences of criminal breach of trust could have been tried at one trial as Section 234 provides that 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. This again, is an enabling provision and is an exception, to Section 233, Cr. P.C. If each of the several offences is tried separately, there is nothing illegal about it.

16. Lastly, reference was made, on behalf of the appellant to Section 235, Criminal Procedure Code, and it was urged that all these offences were committed in the course of the same transaction, and, therefore, they should have been tried at one trial. Assuming, without deciding, that these offences could be said to have been committed in the course of the same transaction, the separate trial of the appellant for certain specific offences is not illegal. This section too is an enabling section.

In this view of the matter, we cannot sustain contention of learned Counsel for the petitioner that by holding separate trials the trial Court has committed an illegality. ”

10] In view of the dictum laid down by this court as aforesaid, it is admitted position that issuance of four different notices, may be on the very same day, has given separate cause of action to the complainant in respect of dishonour of each case, in as much as none of the notice was duly complied with by the present applicants

thereby giving rise to separate cause of action.

11] In that view of the matter, the order passed by the learned Magistrate is perfectly legal and justified, and needs no interference. Hence, present Criminal Application is dismissed. Rule is discharged.

(V.M.DESHPANDE, J.)

dbm/crap578.15