IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2015

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THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.3 of 2015
and
M.P.No.1 of 2015

Mohammed Kasim .. Petitioner

Vs

K.Rayappan .. Respondent

Criminal Revision filed under sections 397 and 401 of Criminal Procedure Code to call for the records and set aside the order passed in C.M.P.No.2015/14 in STC.No.2566/10 dated 17.09.2014 on the file of the learned Judicial Magistrate No.1, Gobichettipalayam.

For Petitioner : Mr.N.Manokaran

O R D E R

Criminal Revision Case is preferred against the order passed in C.M.P.No.2015 of 2014 dated 17.09.2014 on the file of the learned Judicial Magistrate No.1, Gobichettipalayam.

2. Material on record discloses that the petitioner has floated, a company in the name and style "Realway Investment and Forex Trading India Limited" and running the same, at D.No.86, Sri Subburam Complex, Kutcherry Medu, Gopichettipalayam. Advertisements have been made in newspapers that if deposits are made as per the schemes, rich dividends would be paid. Believing the same, on 28.03.2009, the respondent deposited Rs.5,00,000/- and thereafter, a further sum of Rs.2,80,000/- was also deposited by way of ICICI Cheques. Thereafter, a sum of Rs.2,20,000/- was paid in cash. In all Rs.10,00,000/- was deposited. Dividends for the first two months alone was paid. Thereafter, despite request, no payment was made.

3. It is the further case of the complainant that on 28.05.2010, in the capacity of an authorised signatory of Realway Enterprises India Private Limited, the 1st petitioner gave a cheque bearing No.002841 for Rs.3,28,000/- drawn on ICICI Bank, West Mambalam Branch, Chennai. The respondent presented the cheque on 01.06.2010 in ICICI Bank, Gopichettipalayam. The Cheque was returned with an endorsement "funds insufficient". Statutory notice

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given was acknowledged and the petitioner requested for two weeks time, and further requested to represent the cheque on 15.06.2010. Cheque represented on the said date was returned. Hence, on the complaint under Section 138 of the Negotiable Instruments Act, read with 190 (1)(a) Cr.P.C, a case in S.T.C.No.2566 of 2010 has been taken on file by the learned Judicial Magistrate No.1, Gopichettipalayam.

4. Complaint further discloses that on 28.12.2010, when the respondent, met the petitioner, an assurance was given that for the deposits made, dividend would be paid. Cheques dated 28.12.2010, bearing No.002818 for Rs.20,00,000/- and another postdated cheque dated 10.02.2011, bearing No.002819 for Rs.10,09,500/-, both drawn on ICICI Bank, West Mambalam Branch, Chennai, were given. Cheque dated 28.12.2010 presented for encashment on 20.01.2011 was returned with an endorsement "funds insufficient". Statutory notice was returned. The petitioner assured payment within two weeks.

5. Assurance was not honoured. Therefore, another complaint under Section 138 of the Negotiable Instruments Act r/w. 190(1)(a) Cr.P.C., STC No.1029/2011, has been preferred and that the same has been taken on file by the learned Judicial Magistrate No.1, Gopichettipalayam.

6. Post dated cheque dated 10.02.2011, was also dishonoured. Statutory notice dated 24.03.2011 was returned. Hence another complaint made was taken on file in S.T.C.No.1166/2011 on the file of the learned Judicial Magistrate No.1, Gopichettipalayam.

7. Pending trial of the abovesaid cases, the petitioner seemed to have filed transfer O.P.No.1589 of 2013 on the file of the Chief Judicial Magistrate, Erode, for transferring all the cases to the same Court. Thereafter, the said petition has been sent to the learned Principal District Sessions Judge, Erode. Subsequently, the petitioner has not pressed Transfer O.P.No.1589 of 2013.

8. After the completion of the complainant's evidence in the abovesaid three cases, pending on the file of the same learned Judicial Magistrate No.1, Gopichettipalayam and after examination of the accused under Section 313(1) Crl.P.C., Crl.M.P.No.2015 of 2014 has been filed in STC No.2566 of 2010 for a prayer to have joint trial in STC No.1029 of 2011 and STC No.1166 of 2011 on the grounds inter alia, that all the three cases arose out of three cheques issued within a period of 12 months and that the criminal cases are within a span of 12 months. The said application has been rejected on the ground that when Transfer O.P.No.1589 of 2013, was not pressed, present application is only to protract the trial, in the above said criminal cases.

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9. By observing that in all the abovesaid criminal cases, the complainant's evidence and prosecution evidence is over and that questioning under Section 313 Cr.P.C., is also completed and the petition filed for joint trial is only to procrastinate the trial, in the criminal cases, by order dated 17.09.2014 in Crl.M.P.No.2015 of 2014, the learned Judicial Magistrate No.1, Gopichettipalayam, Erode District, has dismissed the petition.

10. Inviting the attention of this Court to Section 219 of the Crl.P.C and the details of the three criminal cases tabulated in the memorandum of grounds to this revision case and also placing reliance on the judgment of this Court in Manjula Vs. Colgate Palmolive (India) Limited, rep. by its authorised signatory, T.Harikumar, reported in 2006 (5) CTC 303, Mr.N.Manokaran, learned counsel for the petitioner submitted that the alleged offences are of the same nature, said to have been committed within a span of 12 months from first to the last, and in such circumstances, if a joint trial is held, it would reduce duplication of evidence and help reduction of time. According to the learned counsel, PW1 has been examined, proof affidavit has been filed and that STC No.2566 of 2010 was directed to be posted for cross examination on 05.01.2015. He also submitted that the complainant's evidence is not yet over and that there was no intention to drag on the trial. He also apprehended that the punishment if any imposed on the petitioner, in each case, would cause prejudice. For the above said reasons, he prayed to set aside the order made in Crl.M.P.No.2015 of 2014, dated 17.09.2014 on the file of the learned Judicial Magistrate No.1, Gopichettipalayam, Erode District

11. Heard the learned counsel for the petitioner and perused the materials available on record.

1. For the dishonour of cheque dated 28.05.2010, complaint dated 23.08.2010 has been taken on file in STC No.2566 of 2010
2. STC No.1029 of 2011 has been taken on file, based on the complaint dated 10.03.2011, for dishonour of cheque dated 28.12.2010
3. The last case in STC No.1166 of 2011 is on the complaint dated 24.03.2011 for dishonour of cheque dated 10.02.2011.

All the three cheques are for different amounts.

12. In Manjula's case, the accused therein gave 16 cheques drawn on different dates, to discharge a portion of the liabilities due and payable to the complainant for purchase of various products. Cheques were presented for encashment on 31.10.2001 and that they were returned, for the reason “funds insufficient”. A single statutory notice was issued on 22.11.2001 and in the absence of payment, a single complaint under Section 138 of the Negotiable Instruments Act in C.C.No.1130 of 2001 was preferred before the

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learned VIII Metropolitan Magistrate, George Town, Chennai. Crl.O.P.No.21432 of 2002 has been filed to quash the proceedings in C.C.No.1130 of 2002 on the grounds inter alia that as per Section 219 Cr.P.C., more than three offences of same kind, within a year, cannot be clubbed together, and that therefore, the complaint required to be quashed.

13. By observing that there was divergence of opinion, reference has been made to a Larger Bench. Paragraph Nos.11 to 16 of the reported judgment in Manjula's case are is extracted hereunder:

> 11. In the case on hand, complaint in C.C. No.1130 of 2002 filed before the VIII Metropolitan Magistrate, George Town, Chennai-1, shows that towards discharge of a portion of the liabilities due and payable by the accused to the complainant for the purchase of various products, the accused issued 16 cheques, all drawn on Indian Bank, Halaharvy, Alur Taluk, Kurnool District, Andhra Pradesh, on different dates. The cheques were presented for encashment by the complainant in their Bank M/s.Bank of America, Anna Salai, Chennai-600 002, on 31.10.2001 and the same were returned dishonoured by the bankers M/s Indian Bank, Halaharvy Branch, by their communication dated 07.11.2001 for the reason 'funds insufficient'. The complainant was intimated of the said dishonour by their bankers on 12.11.2001 and 17.11.2001. The complainant had issued a statutory notice to the accused on 22.11.2001. The said notice was duly received by the accused on 26.11.2001. It is the grievance of the complainant that, in spite of receipt of the said notice, till date, the accused has not paid the cheque amount. The details furnished in the complaint shows that the accused issued those cheques on different dates and that all the cheques were dishonoured for the reason 'funds insufficient'. The complainant had issued a single statutory notice to the accused on 22.11.2001 and, in the absence of compliance, the complainant filed C.C. No.1130 of 2002 for appropriate action.
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> 12. The above said 16 cheques were drawn on different dates and they were for different amounts, but, they were presented together for payment and were dishonoured and a single notice was sent by the complainant to the drawer. The general rule is that every distinct offence of which a person is accused, there shall be separate charge and every such charge shall be tried separately. As observed by the Division Bench of the Kerala High Court in 1996 (3) Crimes 283

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(cited supra), Section 219 Cr.P.C. is an exception to the general rule. As stated earlier, even though different cheques were given on different dates, the presentation of all those cheques formed the same transaction. Further, the demand was also made by the complainant on the dishonouring of the cheques by giving one lawyer's notice and not several demands for the payment of the dishonoured cheques. In those circumstances, we are of the view that the petitioner/accused herein may be charged and tried at one trial for several such offences, because, the series of acts are so inter-linked or inter-connected.

13. The very object of Section 219 is to prevent miscarriage of justice by clubbing together a number of offences and making it impossible for the accused to defend them. Sections 219 and 220 Cr.P.C. lay down different and distinct exception to the general rule contemplated under Section 218 Cr.P.C. in framing charges. We are of the view that the number of three offences underlined in Section 219 of the Code cannot control Section 220(1) of the Code.

14. In the instant case, the offences committed by the same person in respect of 16 cheques must certainly be held to be part of the same transaction considering the purpose, the sequence, events, nature of the allegation, proximity of commission, unity of action etc. In such circumstances, it is easy to conclude that the offences under Section 138 of the Act in respect of those cheques can be held to be offences committed in the course of same transaction. Section 219 (1) Cr.P.C. refers to identical offences committed on different dates during a span of 12 months. It permits joinder of those charges provided they are offences of the same kind.

15. In these circumstances, we hold that Section 219(1) Cr.P.C. permits joinder of all charges provided they are offences of the same kind. We are also of the view that the number of transactions and the cheques issued prior to the issuance of the statutory notice under Section 138(b) of the Act could at best be considered as bundle of facts giving rise to a cause of action and that it is not a ground to quash the criminal proceedings against the drawer of the cheques. We further hold that if the offences are of the same kind, the number of transactions between the parties which culminated into issuance of the statutory notice is no ground to urge that under

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Section 219 Cr.P.C., the prosecution laid against the petitioner is not maintainable.

16. In the case on hand, though the act of issuance of 16 cheques was on different dates, in view of the fact that a demand was made by issuing a common notice, the complaint cannot be said to be vitiated. To put it clear, though the giving of cheques by the accused to the complainant may be on different dates, all those acts of giving those cheques were merged together to form the same transaction viz., the presentation of the cheques together was on one particular date. In view of the fact that demand was also made by the complainant on the dishonouring of the cheques by giving one lawyer's notice and not several demands, we are of the view that the accused may be charged and tried at one trial for several such offences because the series of acts are so inter-linked or inter-connected together so as to form the same transaction of dishonouring the cheques, therefore, it cannot be said that the complaint is vitiated."

14. In the above reported case, the question considered by the Hon'ble Division Bench was whether criminal proceedings could be instituted on the basis of a single statutory notice, by which, the accused therein was demanded to pay the total sum against 16 cheques drawn on different dates and for different amounts. While observing that every distinct offence of which any person is accused of, there shall be a separate charge and every such charge shall be tried separately, with an exception to the said rule under Section 219 Cr.P.C., the Hon'ble Division Bench, on the facts of the above case held that, the prosecution is maintainable though, a single statutory notice was given. It was also observed that Section 219 (1) refers to identical offences committed on different dates, during the space of 12 months and also permits joinder of those charges provided, they are offences of the same kind.

15. In the case hand, for each cheque, a separate notice has been issued. Separate complaint has been preferred and taken on file in STC Nos.2566/10, 1029 and 1166/2011, respectively. In Manjula's case, when a single complaint was preferred in respect of 16 dishonoured cheques, the Hon'ble Division Bench held that Section 219 Cr.P.C., permits joinder of all charges and further observed that the proceedings instituted cannot be quashed on the plea raised. The Bench further held that, "...in view of the fact that demand was also made by the complainant on the dishonouring of the cheques by giving one lawyer's notice and not several demands, we

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are of the view that the accused may be charged and tried at one trial for several such offences because the series of acts are so inter-linked or inter-connected together so as to form the same transaction of dishonouring the cheques, therefore, it cannot be said that the complaint is vitiated".

16. As observed earlier, in the case on hand, demands are separate and cases have been taken on file, in respect of the dishonour of cheques issued. Unlike the reported case, it is not a single complaint. Had there been a single complaint, in respect of the three cheques issued and dishonoured, there could be a case for joinder of the charges. For every distinct offence of which a person is accused of, there could be a separate charge and every such charge shall be tried separately and only the exception to the above normal rule, as observed in the reported case was that there was a single complaint. The contention of the learned counsel for the petitioner that there would be a likelihood of imposing different punishments, in each Summary Trial case and thus the petitioner would be greatly prejudiced, cannot be countenanced. Complaints have been taken on file in the year 2010 and 2011 respectively. As rightly observed by the lower Court, Criminal Miscellaneous Petition filed in the year 2014, is nothing but an attempt to protract the trial. All three cases are pending on the file of the same Court. Hence, the learned Judicial Magistrate No.1, Gobichettipalayam, is directed to post STC Nos.2566/10, 1029 and 1166/2011, on the same hearing date and proceed further in accordance with law.

17. In the result, sustaining the impugned order, the Criminal Revision case is disposed of. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (Records)

/true copy/

Sub Asst. Registrar

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To

1. The Judicial Magistrate No.1,
Gobichettipalayam.

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2. do thro the Chief Judicial Magistrate
Erode

1 cc to Mr.N. Manoharan, Advocate, SR. 2307

Crl.R.C.No.3 of 2015

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