

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.9.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Petition No. 979 of 2015
and
MP.No.1 of 2015

S.Rajendran

.. Petitioner

Versus

R.Subbarayan

.. Respondent

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. filed against the order dated 20.11.2014 passed in CMP.No.4986 of 2014 in C.C.No.10 of 2014 on the file of the Judicial Magistrate, Kangeyam.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.S.N.Manoharan

O R D E R

The revision petitioner is the accused in C.C. No. 10 of 2014 filed by the respondent herein under Section 138 of the Negotiable Instruments Act read with 142 of the Negotiable Instrument Act, 1881 before the learned Judicial Magistrate, Kangeyam. The respondent also filed C.C.Nos. 372 of 2013, 9 of 2014 and 155 of 2014 before the very same Court under Section 138 of the Negotiable Instruments Act. According to the petitioner, the allegations against him in C.C. No. 10 of 2014 is that he borrowed Rs.2,00,000/- from the respondent, issued post dated cheque for the said sum and on presentation the cheque was dishonoured on 27.11.2013. According to the respondent, inspite of issuance of a statutory notice, the petitioner did not pay the amount and hence, C.C. No. 10 of 2014 was filed. In so far as C.C. No. 372 of 2013 is concerned, the averments contained therein is that the petitioner issued a cheque for Rs.2,00,000/- and when it was presented, it was dishonoured on 11.6.2013, hence, the case in C.C. No. 372 of 2013 came to be filed. Similarly, C.C.No.9 of 2014 was filed by the respondent contending that the petitioner issued a cheque for Rs.2,00,000/- and when it was presented, it was dishonoured on 27.11.2013. C.C.No.155 of 2014 was also filed by the petitioner contending that the petitioner issued a cheque for Rs.2,00,000/- and when it was presented, it was dishonoured on 04.3.2014. In the aforesaid circumstances, the petitioner has filed C.M.P.No.4986 of 2014 under Section 219 of Cr.P.C. to try the cases jointly since the offences committed in these cases are similar in nature. But, the Court below erroneously dismissed the C.M.P.No.4986 of 2014 against which the present Criminal revision case is filed.

2. The learned counsel for the petitioner submitted that the complaint has been given by four different persons against the petitioner. Since all the cases are similar in nature, they have to be tried together. The learned counsel for the petitioner further submitted that cheque was not filled up by the petitioner and it was given for some other purpose but the same was misused by the respondent. Therefore, the learned counsel pray for allowing this revision.

3. The learned counsel for the respondent would contend that there are four different transactions with four different persons and hence, the Court below has rightly held that all the cases cannot be tried together. The learned counsel for the respondent further submitted that even in this revision, the petitioner has not impleaded those persons. In support of this contention, the learned counsel also relied on the decision of this Court in MOHAMMED KASIM V. RAYAPPAN (2015 (1) MWN (Cr.) DCC 95 (Mad.)). The learned counsel for the respondent also submitted that in some cases, trial has already began and in some other cases, trial is yet to commence.

4. I heard the counsel for the petitioner as well as the counsel for the respondent.

5. It appears that the disputed cheques are given at different stages to different persons. As per Section 219 Cr.P.C., the Court can try three offences of same kind together if forming part of same transaction within one year. But in the present case, the transaction in three cases do not form same transaction. Therefore, as rightly held by the trial Court, in all the three cases, complainants, transactions, documents are entirely different one and hence, the same cannot be tried together. In this context, it is useful to refer the decision of this Court in MOHAMMED KASIM V. RAYAPPAN (2015 (1) MWN (Cr.) DCC 95 (Mad.)), wherein, this Court, following the earlier decision of the division bench has held as follows:-

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 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.

6. Though the petitioner states that all the cases are identical, the same cannot be accepted as in these cases, the parties to the disputes are different and the transactions are also took place in different stages. Further, it is seen that in some cases, trial has already began and in some other cases, trial is yet to commence. Therefore, the trial court is right in dismissing the petition filed by the petitioner under Section 219 Cr.PC..

7. In the light of the above, I do not find any reasons to interfere with the order passed by the court below. Accordingly, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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TO

1. The Judicial Magistrate, Kangeyam.

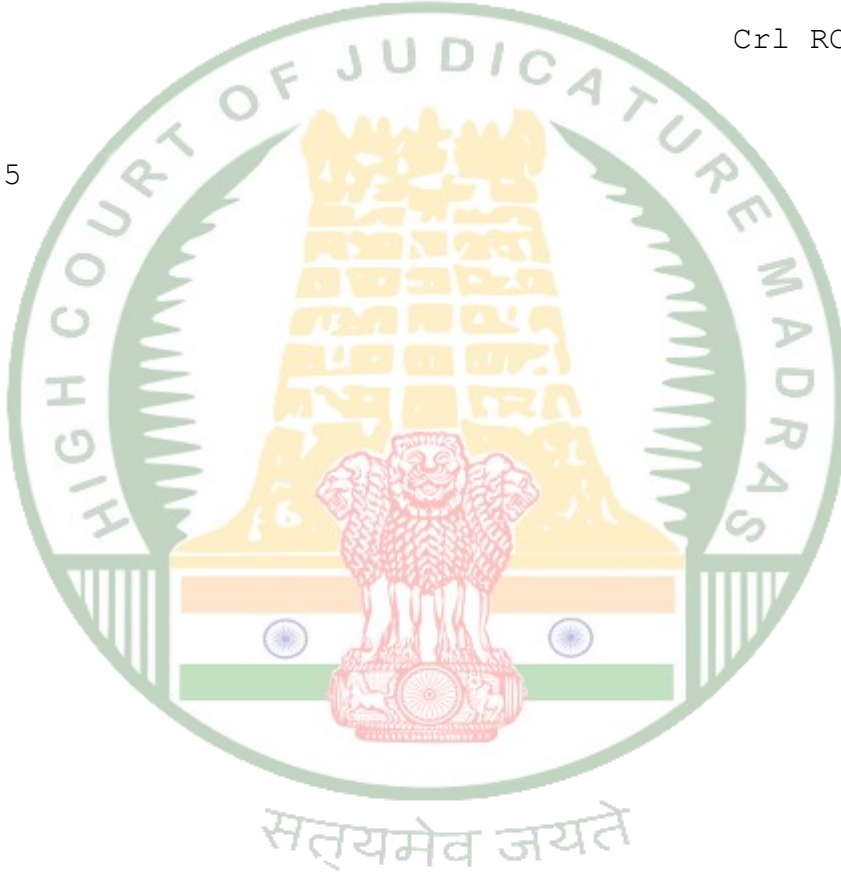
2.-do- Thro'Chief Judicial Magistrate, Karur.

+ 1 cc to Mr.R. Nalliyappan, Advocate Sr.52912

+ 1 cc to Mr.N. Manoharan, Advocate SR.52985

Cr1 RC No. 979 of 2015

KU(CO)
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