IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-1184 of 2014

DATE OF DECISION: 28.01.2015

Ashutosh Humnabadkar, Director ....Petitioners
M/s Digihome Solutions (P) Ltd. and another

Versus

Continental Device India Ltd. and Anr. ....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspaper may be allowed to see judgment?**
2. **To be referred to reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

Present:- Mr. Rakesh Bhatia, Advocate
for the petitioners.

Mr. APS Deol, Senior Advocate with
Mr. D.S. Matya, Advocate
for the respondents.

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DAYA CHAUDHARY, J.

The present petition under Section 482 Cr.P.C. has been filed by the petitioners for quashing of order dated 19.12.2013 (Annexure P-4) passed by JMIC, Chandigarh in complaint case No. 4643 of 2012 filed under Section 138 of Negotiable Instruments Act (hereinafter referred to as 'the Act'), whereby, an application filed by the petitioners under Section 219 read with Section 220 Cr.P.C. (hereinafter referred to as 'the Code') for clubbing of eight connected complaints, has been dismissed.

Briefly, the facts of the case are that the respondents have filed eight complaints against the petitioners and during the pendency of said complaints, an application was moved by the petitioners under Section 219 read with Section 220 of the Code for clubbing of all the complaints for trial as the same are between the same parties and no prejudice would be caused to the respondents. It was also the ground in the application that all the cheques were drawn at Bank of India, Pune as well as Solan Branch. Reply to the application was filed by the respondents and after hearing counsel for the parties, the application was dismissed on 19.12.2013, which is subject matter of challenge in the present petition.

Learned counsel for the petitioners contends that all the eight complaints are between the same parties and the offence is also the same, which has been committed within a period of 12 months from the first to the last offence. Learned counsel further contends that offence was committed between 4.2.2012 and 11.5.2012 but instead of filing joint complaint relating to all the cheques in dispute, separate complaints were filed. Learned counsel also contends that if all the complaints are tried together, it will not only be convenient for the parties but will save the precious time of the Court as well and would also result in speedy dispensation of justice in view of Article 21 of the Constitution of India. Learned counsel has also relied upon Division Bench judgment of Madras High Court in the case of **Manjula Vs. M/s Colgate Palmolive (India) Ltd.** 2007 (1) RCR (Criminal) 174, in support of his contentions.

Learned senior counsel for the respondents submits that as per provisions of Section 219 of the Code, only three complaints arising within a period of 12 months can be clubbed together. He has relied upon judgment of Hon'ble the Apex Court in the case of **K.R. Indira Vs. Dr. G. Adinarayana** (2003) 8 SCC 300, of this Court in **Sh. Charashni Kumar Talwani Vs. M/s Malhotra Poultries** 2014 (1) AICLR 617, of Madras High Court in **Manjula's case (supra)** and of Kerala High Court in **Swarnalatha**

Vs. Chandramohan 1996 (3) Crimes 283, in support of his contentions.

Heard the arguments advanced by learned counsel for the petitioners as well as respondents and have also perused the impugned order passed in the application.

The application for clubbing of the cases has been dismissed only on the ground that complaint containing three cheques drawn by the accused over a period of 12 months can be clubbed together and beyond that period and number of complaints, no more complaints could be clubbed together.

The filing of the complaints and moving of an application under Sections 219 and 220 of the Code has not been disputed. There are total eight complaints filed by the respondents and the details of the same are reproduced as under:-

Sr. No.	Particular of complaint No.	Cheques No.	Date	Amount	Date of dishonour/ Memo
1.	Continental Vs. Digihome 4643	062952 062969	21.8.2011 10.9.2012	17,89,578/- 17,89,578/-	04.02.2012 -do-
2.	-do- complaint 4642	196226 196227 196228	14.11.2011 10.9.2011 29.11.2011	4,00,000/- 4,00,000/- 5,00,000/-	-do- -do- -do-
3.	-do- complaint 4812	196151 196152 196153	19.1.2012 26.01.2012 02.02.2012	4,00,000/- 4,00,000/- 5,00,000/-	-do- -do- -do-
4.	-do- complaint 4814	196222 196223 196225	30.10.2011 30.10.2011 14.11.2011	4,00,000/- -do- -do-	04.02.2012
5.	-do- complaint 10846	196157 196158	01.03.2012 08.03.2012	6,00,000/- 6,00,000/-	11.05.2012 -do-
6.	-do- complaint 10847	196154 196155 196156		6,00,000/- 6,00,000/-	11.05.2012 -do-
7.	-do- complaint 10848	196159 196160	15.03.2012 22.03.2012	6,00,000/- 6,00,000/-	11.05.2012 -do-

Sr. No.	Particular of complaint No.	Cheques No.	Date	Amount	Date of dishonour/ Memo
8.	-do-	196229	29.11.2011	5,00,000/-	11.05.2012
	complaint 4811	196149	15.01.2012	3,69,015/-	
		196150	12.01.2012	4,00,000/-	-do-

On perusal of aforesaid chart reproduced above, it is apparent that all the cheques were drawn at Bank of India at Pune and Solan Branch. As per impugned order, three complaints have been clubbed together as the cheques were issued within a period of 12 months. The application qua to remaining complaints has been dismissed on the ground that same cannot be clubbed as the cheques were issued beyond a period of 12 months. As per provisions of Sections 219 and 220 of the Code more than three complaints cannot be clubbed. Sections 219 and 220 of the Code are reproduced here under:-

> "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.
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> (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 law:
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> Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) 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.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub- section (2) of section 212 or in sub- section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860).

The argument of the learned counsel for the petitioners is that the dispute is between the same parties, which relates to same transaction and no prejudice is going to be caused to the other party in case all the complaints are clubbed together. The argument of learned senior counsel for the respondents is that as per provisions of Section 219 Cr.P.C., only three complaints arising within a period of 12 months can be clubbed together and beyond that period and number of complaints, no more complaints could be clubbed together.

The short controversy for decision in the present case is that in case of dishonour of 8 cheques between the same parties, all complaints can be tried together or not.

On perusal of details of cheques reproduced above, it is clear that complaints mentioned at Sr. Nos. 1 to 4 arise out of the cheques dishonoured on 4.2.2012, whereas, complaints at Sr. Nos. 5 to 8 arise out of cheques dishonoured on 11.5.2012. Admittedly, the offence was committed on two dates i.e. 4.2.2012 and 11.5.2012 but different complaints were filed within a period of eleven months. The cheques are of different dates and amount but the date of dishonouring of the cheques is within a period of 11 months.

The object of Section 219 Cr.P.C. is to prevent miscarriage of justice by clubbing together a number of offences for making it possible for the accused to defend them. Sections 219 and 220 of the Code lay down different and distinct exception to the general rule as contemplated under Section 218 of the Code in framing of charges. Section 219 (1) of the Code permits joinder of all charges provided that the offences are of the same kind. In the case in hand, although eight complaints have been filed relating to 21 cheques of different dates but the same were dishonoured on two dates i.e. 4.2.2012 and 11.5.2012.

As per provisions of Section 218 Cr.P.C. for every distinct offence, separate charge is to be framed and is to be tried separately. Section 218 Cr.P.C. is reproduced as under:-

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

Now the issue for consideration in the present case is whether a single cause of action has arisen in respect of all the cheques and dishonour of eight cheques constitute a single transaction or not. It is also to be seen whether the alleged offences have been committed in the course of same transaction or not. The issue to be decided is whether to conduct separate trial in all the cases will be an illegality and would result in serious prejudice to the accused or not. The question that is to be determined herein is as to whether dishonour of cheque on each occasion of its presentation gives rise to a fresh cause of action within the meaning of Section 142 (b) of the Act. The Apex Court has held that clause (b) of Section 142 gives a restrictive meaning and, therefore, no successive cause of action would arise, as and when the cheque is represented. The word 'charge' is not defined in the Code. In Section 242 Cr.P.C. the word 'accused' is used in connection with the particulars of the offence being stated to the accused person, it is used in the same sense as the word 'charged' in the ordinary parlance. The concluding words of the section appear to contemplate that in a summons trial, there is a charge of an offence, which is not necessary to be mentioned in writing in accordance with the provisions of Sections 221,222 and 223 of the Code. The Full Bench of Madra High Court in the case of **Emperor Vs. San Dun,** Vol. 2 Criminal Law Journal 739 has held that Section 233 of the Code is applied to trial in summon cases under chapter XX of the Code. Section 218 of the Code speaks of distinct offence and Section 219 of the Code speaks of the offences of the same kind. However, Section 220 of the Code speaks of more offences than one committed in the course of same transaction. The expression 'distinct offence' has been interpreted by Hon'ble the Apex Court in the case of **Banwarilal Vs. Union of India** AIR 1963 Supreme Court 1620, wherein, it has been held as under:-

> "The expression 'every distinct offence' must have a different content from the expression 'every offence' or 'each offence'. A separate charge is required for every distinct offence and not necessarily for each separate offence.
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> The question is, what is meant by 'every distinct offence' ? 'Distinct' means 'not identical'. It stresses characteristics that distinguish 'two things not being the same'. Two offences would be distinct if they be not in any way inter-related. If it is inter-related, there would be no distinctness and it would depend on the circumstances of the case in which the offences were committed whether there be separate charges for those offences or not."

The expression 'offences of the same kind' has been mentioned in Section 219 of the Code itself under sub-section (2) thereof. If the offences are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any special or local law, they are the offences of the same kind.

The expression 'same transaction' has not been defined under Section 220, sub-section (2) thereof. In the case of **C.N. Krishna Murthy Vs. Abdul Subban** AIR 1956 Mysore 128, it has been held as under:-

> "The expression 'the same transaction' very wisely, is not defined in the Code. In the very nature of things it is incapable of definition.....In order that a series of acts be regarded as same transaction they must be connected together in some way as for instance by proximity of time, unity of place, unity or community of purpose or design and continuity of action. Proximity of time and unity of place are not essential though they furnish good evidence of what unites several acts. The main test must really be continuity of action by which is meant the following up of some initial act through its consequences and incidents until the series of acts or group of connected come to an end either by attainment of the object or by being put an end to or abandoned. If any of these things happens and the whole process is begun over again, it is not the same transaction but a new one in spite of the fact that the same general purpose may continue. The *vinculum juris* which interlinks a series of acts so intimately as to form the same transaction is different in each case...Mere doing the same thing or similar things continuously or reapeatdly does not amount to a same transaction. There is a clear distinction

between a same transaction and a similar transaction."

Similarly in **N.M. Narayana Setty Vs. Court of Munsif**, AIR 1966 Mysore 243 it has been held as under:-

"The principal test laid down is unity of purpose or design and the continuity of action. The series of acts committed must be connected together in one way or the other."

In Sohoni's Code of Civil Procedure 19th Edition, Vol. 3, at Page 2582 a passage has been mentioned, which may be extracted hereunder thus :

"The words "same transaction" connote that the acts are so related to one another in point of purpose, or as cause and effect, or as principal and ancillary that they constitute one transaction or continuous action. This continuity of action is not in the sense that one act follows the other without any connection, but in the sense of intimate connection between the different acts. There must be a community of purpose and a concert. Accused persons committing offences of the same kind but separately, may not be regarded as having committed those offences in the course of the same transaction."

In ***State of Andhra Pradesh v. Cheemalapati Ganeswara Rao and another, AIR 1963 Supreme Court 1850,*** Hon'ble the Apex Court in para 27 has held as under:

"According to this provision there must thus be a connection between a series of acts before they could be regarded as forming the same transaction. What is meant by "same transaction" is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any Court, which has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is however not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction. The connection between a series of acts seems to us to be an essential ingredient for those acts to constitute the same transaction......Now a transaction may consist of an isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently they would not form part of the same transaction but would constitute a different transaction or transactions."

Following Cheemalapati Ganeswara Rao's case (supra), Hon'ble the Apex Court in the case of ***Balbir v. State of Haryana, 2000(1) SCC 285*** in para 12 held thus :

"For several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same of different offences "committed in the course of the same transaction".

Hon'ble the Apex Court in the case of **V.N. Kamdar and another Vs. Municipal Corporation of Delhi** 1973 SCC (Crl.) 783 has held as under:-

"The formal rule under the Criminal Procedure Code is to try each accused separately when the offence committed by him is distinct and separate. The provisions of Sections 233 to 239 would indicate that joint trial is the exception. In ***State of Andhra Pradesh v. Cheemalpati Ganeswara Rao and another [AIR 1963 SC 1850]***, this Court said that separate trial is the normal rule and joint trial is an exception when the accused have committed separate offences."

Moreover, there is no provision in the Code or in the Act against joint trial of all the offences under Section 138 of the Act. No reason appears to be justified in case joint trial of all the offences is done in all the complaints as it has been held by Madras High Court in case of **K. Govindraj (supra)** that accused may be tried at one trial if different cheques were issued in one year and were dishonoured on the same date.

Learned counsel for the respondents is not in a position to show as to how and in what manner any prejudice is going to be caused in case all the complaints are tried together. Moreover, it will not only facilitate the speedy trial but will save the precious time of the Courts in speedy dispensation of justice which is hallmark of obligation created by virtue of Articles 39A, 21 and 14 of Constitution of India.

Accordingly in view of continuity of action and common purpose, the provisions of Section 219 of the Code will not be a bar to such recourse. As such, I am of the considered view that all the complaints can be tried together in one trial for several such offences because of series of acts which are inter linked or inter connected. The very object of Section 219 of the Code 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 of the Code lay down different and distinct exceptions to the General Rule contemplated under Section 218 of the Code in framing charges. Number of three offences underlined in Section 219 of the Code cannot control Section 220 (1) of the Code. In the case in hand, the offences committed by the same person in respect of eight cheques must certainly be held to be part of the same transaction considering the purpose, the sequence, events, nature of allegations, proximity of commission, unity of action etc. Offence under Section 138 of the Act in respect of eight cheques can be held to be offences committed in the course of same transaction. Section 219 (1) of the Code refers to identical offences committed on different dates during a span of twelve months. It permits joinder of those charges provided they are offences of the same kind.

In the present case total eight cheques were dishonoured on two dates and only three complaints have been clubbed together keeping in view the provisions of Section 219 of the Code. The offence in all the complaint cases relate to Section 138 of the Act and between the same parties and cause of action arose on the date of dishonouring of the cheques. Moreover, this is a procedural law and complainant is not going to be prejudiced in any manner as it will not only avoid multiplicity of the cases but would result into speedy trial.

Keeping in view the facts as well as law position explained above, there is merit in the contentions raised by learned counsel for the petitioner and accordingly impugned order dated 19.12.2013 (Annexure P-4) is set aside and the trial Court is directed to try all the complaints in one trial.

January 28, 2015 **(DAYA CHAUDHARY)**
pooja **JUDGE**