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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: March 26, 2015

+ (i) <u>CRL.M.C. 3410/2014</u>

M/S MODELAMA EXPORTS LTD ..... Petitioner
Through: Mr. Rajat Wadhwa, Mr. Amritansh Batheja, Mr. Milan Malhotra and Mr. Kunal, Advocates

versus

TRIMURTI EXPORTS & ORS .....Respondent
Through: Mr. Virender Goswami, Ms. Soni Singh, Ms. Swati Goswami and Mr. Shubham Agarwal, Advocates

+ (ii) <u>CRL.M.C. 3380/2014</u>

M/S MODELAMA EXPORTS LTD ..... Petitioner
Through: Mr. Rajat Wadhwa, Mr. Amritansh Batheja, Mr. Milan Malhotra and Mr. Kunal, Advocates

versus

BALCHANDRA S BAKHLE ..... Respondent
Through: Mr. Virender Goswami, Ms. Soni Singh, Ms. Swati Goswami and Mr. Shubham Agarwal, Advocates

+ (iii) <u>CRL.M.C. 3388/2014</u>

M/S MODELAMA EXPORTS LTD ..... Petitioner

Through: Mr. Rajat Wadhwa, Mr. Amritansh Batheja, Mr. Milan Malhotra and Mr. Kunal, Advocates

versus

DEVENDRA N KAMAT ..... Respondent

Through: Mr. Virender Goswami, Ms. Soni Singh, Ms. Swati Goswami and Mr. Shubham Agarwal, Advocates

+ (iv) <u>CRL.M.C. 3409/2014</u>

M/S MODELAMA EXPORTS LTD ..... Petitioner

Through: Mr. Rajat Wadhwa, Mr. Amritansh Batheja, Mr. Milan Malhotra and Mr. Kunal, Advocates

versus

RASHID KHAN ..... Respondent

Through: Mr. Virender Goswami, Ms. Soni Singh, Ms. Swati Goswami and Mr. Shubham Agarwal, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

<u>JUDGMENT</u>

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In the above captioned first petition [CRL.M.C.3410/2014], respondent No.1-Firm and its three partners are accused in a complaint under Section 138 of *the Negotiable Instruments Act, 1881* pertaining to dishonouring of nine cheques, out of which one cheque is issued by respondent-*Rashid Khan* whereas remaining 8 cheques have been signed by respondent-*Devendra N. Kamat.* As regards other remaining three petitions, respondents-*Balchandra S. Bakhle [in CRL.M.C.3380/2014]* and *Devendra N. Kamat [in CRL.M.C.3388/2014]* have issued three cheques each and respondent-*Rashid Khan [in CRL.M.C.3409/2014]* has issued four cheques in respect of one transaction.

Vide order of 5th May, 2014 petitioner's application for joint trial is declined by trial court while observing that the accused in the four complaint cases under Section 138 of *the Negotiable Instruments Act, 1881* are different and cheques in question are signed by different accused persons.

With the consent of learned counsel for the parties, the above captioned four petitions were heard together and are being disposed of by this common judgment.

At the hearing, learned counsel for petitioner-complainant had placed reliance upon Apex Court's decision in *State Bank of India v. Ranjan Chemicals Ltd. and Another* (2007) 1 SCC 97 to submit that a joint trial can be ordered by the court if it appears that the facts are common and right to relief is claimed in respect of series of similar transactions. It was submitted by learned counsel for petitioner that the cheques, which are subject matter of four complaints in these petitions, were issued in respect of one transaction and instead of petitioner being cross-examined four times, it would be appropriate if the joint trial is held so that a composite and effective cross-examination is conducted as petitioner is the complainant in all the four complaints in question. Thus, quashing of impugned order is sought in these four petitions.

In support of above submissions, reliance has been placed upon decisions in *Indian Bank Association and Others v. Union of India and*

Others 2014 (5) SCALE 323, *Gulshan Kumar Ahuja v. Veena Sharma* 107 (2003) DLT 725.

Learned counsel for respondents had supported the impugned order and had submitted that Section 219 of Cr.P.C. is not attracted to the facts of this case as it is confined to three offences whereas in the instant case, there are four complaints and the parties are not common and so, there cannot be a joint trial in these complaint cases. Learned counsel for respondents further submitted that respondents-*Balchandra S. Bakhle [in CRL.M.C.3380/2014], Devendra N. Kamat [in CRL.M.C.3388/2014]* and *Rashid Khan [in CRL.M.C.3409/2014]* have issued cheques in their individual capacity from their own account as guarantee in a single transaction and not as partners of respondent-Firm-*M/s.Trimurti Exports*. However, learned counsel for respondents had admitted that the cheques in question have been issued in a span of one year.

To seek dismissal of these four petitions, reliance was placed by learned counsel for respondents upon decision in *Kershi Pirozsha Bhagvagar v. State of Gujarat & Anr.* 2007 SCC Online Guj. 268 and decision of a co-ordinate Bench of this Court in CRL.M.C.646/2008 titled *Hitesh Nagpal v. State & Anr.* rendered on 13th March, 2009.

During the course of hearing, learned counsel for petitioner had submitted that as per petitioner's complaint, nine cheques were issued by respondent-accused Firm i.e. *M/s.Trimurti Exports* whereas nine cheques were issued by respondents-accused persons *Rashid Khan, Balchandra S. Bakhle* and *Devendra N. Kamat* as the guarantee in respect of single transaction, both on behalf of respondent-accused Firm and by the partners in their personal capacity.

Upon hearing and on perusal of the impugned order and the decisions cited, I find that the chief-examination of petitioner-complainant in the four complaint cases in question except for the details regarding the dishonouring of cheque, etc. is almost identical. It is a matter of record that in CRL.M.C.3410/2014, nine cheques have been issued i.e. one cheque by respondent-*Rashid Khan* and remaining 8 cheques by respondent-*Devendra N. Kamat,* who are respondents in CRL.M.C. 3409/2014 and CRL.M.C.3388/2014. Infact the parties in these complaints are actually the same and the transaction is the same, which took place during a span of one year.

In *Gulshan Kumar Ahuja v. Veena Sharma* 107 (2003) DLT 725, it has been held that there is no prohibition in *the Code of Criminal Procedure* or *the Negotiable Instruments Act, 1881* against joint trial for two similar offences under Section 138 of *the Negotiable Instruments Act, 1881*. Rather, on parity of reasoning, joint trial of similar offences must be ordered for an effective decision. Dishonouring of the cheques in question is within a span of one year. Trial court has adopted a hyper technical approach by observing that the accused persons are not common in these complaint cases, which pertain to dishonouring of nine cheques. The remaining ten cheques, which are subject matter of the connected complaint cases under Section 138 of *the Negotiable Instruments Act, 1881,* pertain to one transaction. Trial court has erred in relying upon Gujarat High Court's decision in *Kershi Pirozsha Bhagvagar (supra)* as the said decision is of no avail to the case of respondents herein.

Issuance of cheques in question as a personal guarantee for the liability to the tune of cheque amount would be of no consequence at this juncture, for the reason that this would be the subject matter of consideration at trial and is not required to be pre-judged at this stage. To consider now, would be premature.

Considering the singular nature of transaction, it is deemed appropriate that there ought to be joint trial as it would be in the interest of the parties and for effective trial of these complaint cases. The cross-examination of petitioner-complainant would be overlapping.

On the aspect of feasibility of holding a joint trial, pertinent observations of the Apex Court in *SBI v. Ranjan Chemicals Ltd.,* (2007) 1 SCC 97 are as under: -

> *"A joint trial is ordered when a court finds that the ordering of such a trial, would avoid separate overlapping evidence being taken in the two causes put in suit and it will be more convenient to try them together in the interests of the parties and in the interests of an effective trial of the causes. This power inheres in the court as an inherent power. It is not possible to accept the argument that every time the court transfers a suit to another court or orders a joint trial, it has to have the consent of the parties. A court has the power in an appropriate case to transfer a suit for being tried with another if the circumstances warranted and justified it. In the light of our conclusion that the claim of the Company in the suit could be considered to be a claim for set-off and a counterclaim within the meaning of Section 19 of the Act, the only question is whether in the interests of justice, convenience of parties and avoidance of multiplicity of proceedings, the suit should be transferred to the Debt Recovery Tribunal for being tried jointly with the application filed by the Bank as a cross-suit. Obviously, the proceedings before the Debt Recovery Tribunal could not be*

transferred to the civil court since that is a proceeding before a tribunal specially constituted by the Act and the same has to be tried only in the manner provided by that Act and by the Tribunal created by that Act. Therefore, the only other alternative would be to transfer the suit to the Tribunal in case that is found warranted or justified."

Reliance placed upon decision in *Hitesh Nagpal (supra),* is of no avail to the case in hand as complainant himself is coming forward for joint trial. This distinguishes the decision in *Hitesh Nagpal (supra)* from the facts of this case.

In the considered opinion of this Court, the impugned order erroneously declines petitioner's applications for joint trial and is hereby quashed. Trial court is directed to ensure that joint trial in these four complaint cases is conducted, as it is necessary for an effective adjudication.

The above captioned four petitions are accordingly disposed of while not commenting upon merits of this case lest it may prejudice either side before trial court.

(SUNIL GAUR)
JUDGE

MARCH 26, 2015
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