

..

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-20568-2016

Date of Decision:- September 20, 2017

Sarabjit Singh and another

....Petitioners

Versus

Punjab Agro Food-grain Corporation Limited

....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Lalit Pathak, Advocate,
for the petitioners.

Mr. Anupam Singla, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present petition under Section 482 of Code of Criminal Procedure [for short, "**the Code**"] is for quashing of order dated 3.5.2016 (Annexure P/5) passed by learned Additional Sessions Judge, Patiala whereby revision petition filed by the petitioner against order dated 17.7.2015, Annexure P/3, passed by learned Judicial Magistrate Ist Class, Patiala whereby application under Section 219 of the Code for clubbing of complaints filed under Section 138 of the Negotiable Instruments Act, 1881 (for short, "**the Act**") was dismissed.

2 Facts relevant for the purpose of decision of the present petition; that a complaint under Section 138 of the Act was filed by respondent herein and during the pendency of the said matter, an

..

application under Section 219 of the Code for clubbing the present complaint as well as Complaint No.1276 dated 9.7.2013 and alternation of charge and framing of fresh one, was filed. The grounds taken in the application (Annexure P/2) were that the complainant had filed two separate complaints though, the alleged occurrence took place within one year and as such, both the complaints could not be tried separately, rather, the same are to be decided in a single trial after clubbing both the complaints and the persons cannot be charged twice according to Section 219 of the Code.

3. Respondent-complainant contested the said application thereby taking the plea that such an application was not maintainable and prayed that same be dismissed.

4. Learned trial Magistrate considered the contentions raised by the parties and passed order dated 17.7.2015 (Annexure P/3) dismissing the application observing that notice of accusation was served on 12.1.2015 and affidavit of CW-1, Vipin Singla was tendered on 21.4.2015 and the case was pending for cross-examination of the complainant and as such, no purpose would be served by clubbing the cases at this stage.

5. Revision petition filed by the petitioner was also dismissed vide order dated 3.5.2016 (Annexure P/5).

6. Learned counsel for the petitioners contended that passing of orders by the Courts below are mis-carriage of justice and the same be set-aside because the provisions of Section 219 of the Code are mandatory in nature and both the Courts below have completely ignored this fact.

7. Learned counsel for the petitioners placed reliance upon the judgment of Hon`ble Division Bench of this Court in **Sh. Charashni**

..

Kumar Talwani Vs. M/s Malhotra Poultries, Naraingarh Road, Barwala, 2014(1) R.C.R. (Criminal) 233 wherein view was taken that in case there is continuous operation of acts leading to the same end, the complaint filed cannot be said to be not maintainable and if the Court passed the order for clubbing of complaints for the purpose of speedy trial of dishonour of so many cheques, the same would be legal.

8 Learned counsel for the respondent, while arguing on this point, contended that admittedly, there is no provision under the Act for clubbing of the proceedings of complaints. More so, in this case, learned Magistrate has observed that notice of accusation had already been served and the case is at the stage of cross-examination of CW-1 and there is no question of clubbing of proceedings as per provisions of Section 219 of the Code and both the Courts below have rightly exercised the discretion lawfully vested in them and the present petition under Section 482 of the Code is not maintainable. To support his argument, reliance has been placed upon the judgment from Hon`ble Gujarat High Court in **Jayeshbhai Jayantibhai Maniar Vs. State of Gujarat and another, 2005(3) R.C.R. (Criminal) 937**, wherein it has been held that prosecution under Section 138 of the Act can be said to be a prosecution under a Special law and a distinct separate offence and, therefore, it falls out as an exception of the scheme envisaged under Section 219 of the Code.

9. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that there is no ambiguity on the point that there is no provision under the Act for clubbing of various complaints of similar offence filed in a year. Separate provision has been made under Section 219 of the Code.

10. In **Popular Dyes and Chemicals (Pvt.) Vs. Alyswarya**

..

Chemicals, **1995 BankJ 345**, Hon`ble Madras High Court held that it is held that Section 219 of the Code contemplates the joinder of charges and only at the stage of framing of charges, the requirements of Section 219 of the Code are to be considered.

12. In the present case, the notice of accusation has already been served and evidence has already been started and the case is fixed for cross-examination of complainant. Joinder of charges is primarily for the purpose of expeditious disposal and not to delay the decision of cases, but in the present set of facts, if the application under Section 219 of the Code is accepted at this stage, when both the cases are at quite different stages, it shall not be in the interest of justice. Keeping in view these factors, learned trial Judge and the Revisional Court have rightly exercised the jurisdiction and there is absolutely no ground to set-aside order dated 3.5.2016 (Annexure P/5) passed by learned Additional Sessions Judge, Patiala and order dated 17.7.2015, Annexure P/3, passed by learned Judicial Magistrate Ist Class, Patiala.

13. In view of the above, there is no merit in the present petition and the same stands dismissed.

September 20, 2017
som

(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned
Reportable

Yes/No
Yes/No