

\$~23

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

+ CRL.M.C. 169/2018 & Crl. M.A. no. 722/2018

AMRIT JANGID & ORS

..... Petitioners

Through

Mr. Mohan Babu Agarwal, Mr.
Chetanya Siddharth and Ms. Celeste
Agarwal, Advs.

Versus

ASHWANI ARORA & ANR

..... Respondents

Through

None

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

%

15.01.2018

Respondents filed complaint under Section 138 of the Negotiable Instruments Act, 1881 (“NI Act”, for short) against the petitioners before the trial court. After recording pre-summoning evidence, trial court issued summons under Section 138 of the NI Act against the petitioners. Aggrieved by the summoning, petitioners have preferred this petition. It is contended that one composite complaint was filed in respect of the five dishonoured cheques; three cheques were dishonoured vide return memo dated 15th May, 2017 and two cheques were dishonoured on 7th June, 2017.

There dishonoured cheques give rise to five separate offences. Not more than three cheques could have been included in one complaint, in view of the Section 219 of the Cr.P.C. Accordingly, the complaint case in respect of five cheques was not maintainable and Magistrate ought not have summoned the petitioners in the complaint.

Arguments are fallacious and are liable to be rejected. In *Ambica Plastopack P. Ltd. vs. State* MANU/DE/5072/2013, similar argument was canvassed, but was rejected by a Bench of coordinate jurisdiction. It was held that cause of action for filing a complaint under Section 138 of the NI Act is service of notice under Section 138 of the NI Act and not the dishonour of the cheque. It was held that complainant had issued one notice of dishonour to petitioner in respect of the four dishonoured cheques, therefore, Section 219 Cr.P.C. was not applicable. Learned Single Judge placed reliance on *Trichandoor Muruhan Spinning Mill Pvt. vs. Madanlal Ramkumar Cotton & General Merchants*, MANU/KA/0045/2001, *Rajendra B. Choudhari vs. State of Maharashtra*, MANU/MH/1094/2006, *Dyes & Chemicals Pvt. Ltd. vs. Aiyswarya Chemicals*, MANU/TN/0082/1993 and *Majula vs. Colgate Palmolive (India) Limited*, MANU/TN/2780/2006 to take such a view.

In this case also, one single notice was issued. Petitioners did not pay the amounts involved in the dishonoured cheques within the prescribed period, despite service of notice, therefore, complaint has been filed.

For the foregoing reasons, petition is dismissed with costs of ₹25,000/- to be deposited by the petitioners before the trial court. Upon deposit of costs the same be paid to complainant. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

JANUARY 15, 2018

r.bararia