

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1673 OF 2018

Dileep s/o Tukaram Kharat,
Age : About 50 years, Occ. Business,
R/o Gulmohor Colony, CIDCO, N-5
Aurangabad Tq. and Dist. Aurangabad.

... PETITIONER
(Original Complainant)

VERSUS

Om s/o Shridhar Bahekar,
Age : About 32 years, Occ. Business
At Post. Dongarkhandala
Tq. Chikhali Dist. Buldhana.

... RESPONDENT
(Ori. accused)

...

Advocate for Petitioner : Mr. Ajinkya Reddy
Advocate for Respondent : Mr. Y.B. Bolkar

...

CORAM : MANGESH S. PATIL, J.

Reserved on : 13.09.2019

Pronounced on : 25.09.2019

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally.

2. The facts leading to the filing of this Writ Petition may be summarized as under:

The petitioner is the drawee of the four cheques issued by the respondent towards some transaction. All the four cheques were presented for encashment. The first two cheques were dishonoured on 03.02.2016. A notice dated 13.02.2016 was issued. It was received by the respondent on 23.02.2016 and one complaint for dishonour of both the cheques was filed and Summary Criminal Case No.2328/2016 was registered. The last two cheques were presented for encashment on 04.05.2016 and were dishonoured on 05.05.2016. Statutory notice was issued on 16.05.2016 and it was received by the respondent on 19.05.2016. Accordingly Summary Criminal Case No.5178/2016 was lodged.

3. In lieu of his examination-in-chief the petitioner filed two separate affidavits in the two cases. At that stage the respondent filed application (Exh.41) and requested to club both the criminal cases and also requested to try them together. By the order dated 08.01.2018 the learned Magistrate rejected the application. He refused to direct the cases to be clubbed but directed that evidence in both the cases be recorded simultaneously. Being aggrieved by such rejection of the application (Exh.41) the respondent filed Criminal Revision No.26/2018 before the Sessions Court. By the impugned order, the learned Sessions Judge allowed the Revision. Hence this Writ Petition.

4. The learned advocate for the petitioner vehemently submitted that the impugned order suffers from gross illegality and is not tenable in view of the provisions of Section 219 of the Code of Criminal Procedure. Dishonoured of each of the four cheques has resulted in four crimes. Clubbing of both the cases in respect of four such dishonoured cheques would be contrary to the provision of Section 219 of the Code of Criminal Procedure, since only three offences committed during the course of one year relating to one transaction can be tried together. The impugned order results in clubbing all four offences committed during one year and is not sustainable in law. He would refer to the decision of the Supreme Court in **Criminal Appeal No(s).587-590/2010; Vani Agro Enterprises Vs. State of Gujarat and Another** dated 05.09.2019.

5. The learned advocate for the respondent submits that no prejudice is likely to be caused to the petitioner by the impugned order directing both the cases to be clubbed together and directing common evidence to be recorded. In the absence of such prejudice, the petitioner has no right to challenge the order. The learned Additional Sessions Judge has considered all the aspects including the provision of Section 220 of the Code of Criminal Procedure and since all these four offences have been committed during one year as a part of the same transaction, the order directing clubbing of the two cases cannot be

faulted with.

6. I have carefully gone through the papers. There cannot be any dispute that four cheques have been dishonoured. Dishonour of each cheque would result in commission of a separate crime. Thus it is apparent that there are four crimes committed during the period of one year. It cannot be said that all these offences formed one series of act so connected as to form the same transaction within the meaning of Sub-section 1 of Section 220 of the Code of Criminal Procedure. Every cheque bears different date and two of them have been dishonoured on one date. A separate notice was issued which has given rise to a cause of action which arises on expiry of 15 days of receipt of the statutory notice under Section 138 of the Negotiable Instruments Act. Even the complaints have been filed at different times. Therefore, the observations and conclusion of the learned Sessions Judge that these form a part of same transaction is not tenable.

7. Again, one need to also simultaneously bear in mind the provision of Section 219 which puts an embargo on the number of offences which can be tried together if they are committed within the space of 12 months. It is only three such offences committed during a year can be charged together. As is mentioned herein above, when the

dishonoured of four cheques has given rise to four offences, no such joint trial of four offences would be permissible under Section 219 of the Code of Criminal Procedure.

8. In similar fact situation, when four cheques were dishonoured and only one notice was issued by the complainant, the request of the accused to consolidate all the four complaints and to hear them together was rejected by the Supreme Court in the case of Vani Agro (supra). It has held that in view of Section 219 of the Code of Criminal Procedure not more than three cases can be tried together even if they have occurred in one year. The argument that since only one notice was issued four separate trial should not take place and one trial would be sufficient has been met with the observation that there is no provision of consolidation of cases in the Code of Criminal Procedure. It was further found that only relief in the fact situation that could be granted was to direct the Magistrate to fix all the four cases on one date so that it would be convenient to both the parties to attend the hearing. It was further made clear that it would be open for the trial Court to record the evidence in the manner it feels like.

9. This is what precisely has been done by the Magistrate while rejecting the Application (Exh.41). While rejecting the application the learned Magistrate had specifically directed that

instead of clubbing the cases it would be appropriate if the evidence of the parties in both the matters is recorded simultaneously. The learned Additional Sessions Judge has grossly erred in appreciating all the facts and circumstances as well as law.

10. In light of above, the impugned order is not sustainable in law and is liable to be quashed and set aside and the one passed by the Magistrate needs to be restored.

11. The Writ Petition is allowed. The impugned order passed in Criminal Revision No.26/2018 is quashed and set aside and the order passed by the Magistrate on the application (Exh.41) is restored.

12. The Rule is accordingly made absolute.

(MANGESH S. PATIL, J.)

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