

In the High Court of Punjab and Haryana at Chandigarh

1.

CRM-M No. 29369 of 2019
Date of Decision: 18.12.2019
- Sharav Exports and another

.....Petitioners
- Versus
- Capital First Limited

.....Respondent
2.

CRM-M No. 29413 of 2019
- Sharav Exports and another

.....Petitioners
- Versus
- Capital First Limited

.....Respondent
3.

CRM-M No. 29387 of 2019
- Sharav Exports and another

.....Petitioners
- Versus
- Capital First Limited

.....Respondent
4.

CRM-M No. 29443 of 2019
- Sharav Exports and another

.....Petitioners
- Versus
- Capital First Limited

.....Respondent
5.

CRM-M No. 29459 of 2019
- Sharav Exports and another

.....Petitioners
- Versus
- Capital First Limited

.....Respondent

6.

CRM-M No. 29463 of 2019

Sharav Exports and another

.....Petitioners

Versus

Capital First Limited

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Vikas Bali, Advocate
for the petitioners.

HARNARESH SINGH GILL, J. (ORAL)

This order shall dispose of above mentioned six petitions as the same have arisen out of a common order.

These petitions have been filed challenging order dated 1.6.2019 passed learned Judicial Magistrate Ist Class, Ludhiana vide which the applications filed by the petitioner under Sections 219(1) and 220 Cr.P.C. for joinder of charges in identical offences as act of the same kind/series under Section 25 of the Payment and Settlement Systems Act, 2007 read with Section 138 of Negotiable Instruments Act, 1881 pending through different complaints, were dismissed.

Learned counsel for the petitioners has fairly stated that it was mentioned that the complaints were pending but the details of the complaints were not mentioned in the said applications. Learned counsel has relied upon the judgment of Delhi High Court in ***Sharma Contracts (India) Pvt. Ltd. versus State and another 2012(1) MadWN (Cri) 105*** wherein it has been held as under:-

“11. Learned counsel further submits that the cheques in question were issued on different dates for the different transactions, therefore, each transaction is independent and if

there is any default, each would have a different offence. Therefore, filing of one complaint against dishonour of 14 cheques is barred by Section 219 of Criminal Procedural Code, 1860 as referred to above.

12. On the other hand, learned counsel for respondent No.2 has submitted that all the cheques were given on different dates however were of the same transaction. Out of the total cheques 25 in number, only 14 were dishonoured, however remaining honoured.

13. Ld. Counsel has relied upon the case of this Court in [Lalit Fabrics Private Limited v. Linkers Associates Limited](#) 1995 Law Suit (Del) 874, wherein it is held that all the cheques were of different dates and on presentations, the said cheques were dishonoured from time to time for the reasons of "Insufficient Funds", cannot be said to lose its right to initiate criminal complaint merely on the ground that notice related to more than one cheque, such interpretation of Section 219 Criminal Procedural Code, 1860 would be contrary to the very spirit of of [Section 138](#) of Negotiable Instruments Act, therefore, the Court was of the opinion that notice in respect of more than one cheques disentitles the payee to initiate action under Action 138 of [Negotiable Instruments Act](#).

14. Learned counsel has further relied upon a case decided by the Andhra Pradesh High Court in [B. Venkat Narendra Prasad and Anr v. State of A.P. III](#) (2003) BC 319 wherein it was held as under"

"17. The facts of the case would go to show that the accused had a running ledger account with the 2nd respondent and the purchases and payments made by them were debited and credited in the account books which were maintained in the regular course of business. Thus, the accused-company had a single ledger account with the 2nd respondent in respect of all transactions made by the accused-company. Therefore, there is nothing wrong in filing a single complaint in respect of dishonour of several

cheques. The contention of the learned Counsel for the petitioners on this aspect is thus devoid of merit."

Notice in this case is not being issued as this would further delay the trial.

During the pendency of the present complaint, the accused had moved the applications under Sections 219(1) and 220 Cr.P.C. for clubbing of the petitions filed against them being there identical offence alleged on different dates during a span of 12 months.

Learned Judicial Magistrate Ist Class, Ludhiana vide order dated 1.6.2019, dismissed the applications on the ground that the petitioner/accused was not aware of the fact that how many complaints were pending before the said Court, whereas after perusal of the total pendency of the Court, it was brought to the notice of the Court that the accused had already filed six similar applications in the six different complaints and all the complaints were pending but the said fact was not mentioned by the petitioner-accused in the applications.

It would be relevant to reproduce Sections 219 and 220 Cr.P.C. which read as 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.

(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: 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).”

Keeping in view the above, the order dated 1.6.2019 passed by

is given liberty to file an application to the satisfaction of the learned Magistrate within one week from the date of receipt of certified copy of this order subject to payment of consolidation costs of Rs. 60,000/- to be paid to the complainant-respondent.

All the six petitions stand allowed.

(HARNARESH SINGH GILL)
JUDGE

December 18, 2019
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No