

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.08.2020

PRONOUNCED ON : 04.09.2020

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.4916 of 2018 & Crl.M.P.No.2441 of 2018

S.Sivaraman

Petitioner

vs.

State represented by
The Inspector of Police
District Crime Branch
Salem City

Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to direct the Judicial Magistrate Court No.IV, Salem, to frame a single charge for the commission of offences under Sections 409, 468 and 471 IPC in C.C.No.34 of 2009 by clubbing 22 cases viz., C.C.Nos.34 to 55 of 2009 pending trial on the file of the Judicial Magistrate Court No.IV, Salem.

For petitioner Mr.S.Jayakumar

For respondent Mrs.P. Kritika Kamal
Government Advocate
(Crl.Side)

O R D E R

This case was taken up through video conferencing.

2. This criminal original petition has been preferred seeking a direction to the Judicial Magistrate Court No.IV, Salem, to frame a single charge for the commission of offences under Sections 409, 468 and 471 IPC in C.C.No.34 of 2009 by clubbing 22 cases viz., C.C.Nos.34 to 55 of 2009 pending trial on the file of the said Court.

3. On a complaint lodged by the Branch Manager, State Bank of India, Attayampatti Branch, the police registered a

case in Crime No.68 of 2005 on 01.08.2005 for the offences under Sections 468, 471 and 477-A IPC against Sivaraman, the petitioner herein, and after completing the investigation, filed 22 final reports viz., C.C.Nos.34 to 55 of 2009 before the Judicial Magistrate Court No.IV, Salem, for the offences under Sections 409, 467 and 471 IPC.

4. The nub of the allegation against the petitioner is that, while he was working as Single Window Operator (Cash) in the State Bank of India, Attayampatti Branch, from 09.07.2004 to 20.04.2005, he had forged the signature of some account holders, withdrawn monies from their accounts and misappropriated them. The total amount of misappropriation was worked out at Rs.9,70,000/-. It appears that 22 final reports were filed on the premise that the provisions of Section 219 Cr.P.C. will stand attracted in this case, limiting each final report to three transactions.

5. Complaining that undue prejudice would be caused to the petitioner, if 66 (22x3) charges are framed against him, this petition has been filed invoking Section 482 Cr.P.C., seeking framing of a single charge as laid down in Section 212 (2) Cr.P.C. by clubbing the 22 cases.

6. Heard Mr.S.Jayakumar, learned counsel for the petitioner and Mrs.K. Kritika Kamal, learned Government Advocate (Crl.Side) appearing for the respondent/State.

7. Mrs. Kritika Kamal submitted that the 22 cases viz., C.C.Nos.34 to 55 of 2009 have been transferred from the file of the Judicial Magistrate Court No.IV, Salem, to the file of the Judicial Magistrate Court No.VI, Salem and they have been re-numbered as C.C.Nos.185 to 203, 205, 206 and 209 of 2018.

8. This Court perused the memorandum of evidence appended to the final reports and found that out of eleven witnesses cited in each final report, ten witnesses are common in all the cases and the name of only one witness viz., the bank customer, who was cheated, alone differs.

9. The moot question is, will Section 212 (2) Cr.P.C. apply to this case.

10. This Court pored over the records and prepared the following table for easy understanding of the indictment against the petitioner in each case.

S.N o.	C.C.No.	Witness Name	Date of withdrawal	Misappropria ted amount
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1	185/2018	A. Palanisamy/LW-4 (SB A/c. No. 01190005251, S.B.I., Attayampatti Branch, Salem)	18.02.2005	Rs. 5,000/-
		Perumal /LW5 (SB A/c.No. 01190005301, S.B.I., Attayampatti Branch, Salem)	16.02.2005	Rs.25,000/-
		Latha/LW-6 (SB A/c. No. 01190021359, S.B.I., Attayampatti Branch, Salem)	17.02.2005	Rs. 8,000/-
				Rs.38,000/- =====
2	186/2018	A. Palanisamy/LW-4 (SB A/c. No. 01190005251, S.B.I., Attayampatti Branch, Salem)	09.03.2005	Rs.10,000/-
		Perumal /LW5 (SB A/c.No. 01190005301, S.B.I., Attayampatti Branch, Salem)	09.03.2005	Rs.10,000/-
		Latha/LW-6 (SB A/c. No. 01190021359, S.B.I., Attayampatti Branch, Salem)	09.03.2005	Rs.10,000/-
				Rs.30,000/- =====
3	187/2018	Ramasamy/Not cited as a witness	18.04.2005	Rs.10,000/-
		(SB A/c. No.01190012816, S.B.I., Attayampatti Branch Salem)	20.04.2005	Rs.10,000/-
		Marimuthu/not cited as a witness	19.04.2005	Rs.10,000/-
		(SB A/c. No. 01190018043 S.B.I., Attayampatti Branch Salem)		Rs.30,000/- =====

4	188/2018	A. Palanisamy/LW-4 (SB A/c. No. 01190005251, S.B.I., Attayampatti Branch, Salem)	16.03.2005	Rs.10,000/-
		Latha/LW-5 (SB A/c. No. 01190021359, S.B.I., Attayampatti Branch, Salem)	12.03.2005	Rs.10,000/-
		Sownthirammal (Not listed as Witness)	16.03.2005	Rs.10,000/-
		(SB A/c. No. 01190022988 S.B.I., Attayampatti Branch Salem)		Rs.30,000/- =====
5	189/2018	Madalaimuthu/LW4 (SB A/c.No. 01190006575 S.B.I., Attayampatti Branch Salem)	11.03.2005	Rs.10,000/-
		Sowrimuthu/Not listed as witness	12.03.2005	Rs.10,000/-
		A. Palanisamy/LW-5 (SB A/c. No. 01190005251, S.B.I., Attayampatti Branch, Salem)	11.03.2005	Rs.10,000/-
		Sownthirammal (Not listed as Witness)		Rs.30,000/- =====
6	190/2018	A. Ramachandran/ LW4	03.02.2005	Rs.20,000/-
		(SB A/c.No. 01190013648 S.B.I., Attayampatti Branch, Salem)	04.02.2005	Rs.20,000/-
			07.02.2005	Rs.25,000/-
				Rs.65,000/- =====

7	191/2018	Madalaimuthu/LW4 (SB A/c.No. 01190015581 S.B.I., Attayampatti Branch Salem) Perumal /LW5 (SB A/c.No. 01190005301, S.B.I., Attayampatti Branch, Salem)	05.04.2005 07.04.2005 11.04.2005	Rs.10,000/- Rs.10,000/- Rs.10,000/- Rs.30,000/- =====
8	192/2018	A. Ramachandran/ LW4 (SB A/c.No.01190013648 S.B.I., Attayampatti Branch, Salem)	11.01.2005 13.01.2005 18.01.2005	Rs.50,000/- Rs.50,000/- Rs.50,000/- Rs.1,50,000/- -
9	193/2018	A. Palanisamy/LW-4 (SB A/c. No. 01190005251, S.B.I., Attayampatti Branch, Salem) Perumal /LW5 (SB A/c.No. 01190005301, S.B.I., Attayampatti Branch, Salem) Latha/LW-6 (SB A/c. No. 01190021359, S.B.I., Attayampatti Branch, Salem)	28.02.2005 01.03.2005 26.02.2005	Rs.10,000/- Rs.15,000/- Rs.20,000/- Rs.45,000/- =====
10	194/2018	T. Perumal /LW4 (SB A/c.No. 01190005301, S.B.I., Attayampatti Branch, Salem) Latha/LW-5 (SB A/c. No. 01190021359, S.B.I., Attayampatti Branch, Salem)	19.02.2005 26.02.2005 21.02.2005	Rs.25,000/- Rs.10,000/- Rs.10,000/- Rs.45,000/- =====

11	195/2018	A. Palanisamy/LW-4 (SB A/c. No. 01190005251, S.B.I., Attayampatti Branch, Salem) Perumal /LW5 (SB A/c.No. 01190005301, S.B.I., Attayampatti Branch, Salem) Latha/LW-6 (SB A/c. No. 01190021359, S.B.I., Attayampatti Branch, Salem)	28.03.2005 26.03.2005 28.03.2005	Rs.10,000/- Rs.10,000/- Rs.10,000/- Rs.30,000/- =====
12	196/2018	A. Ramachandran/ LW4 (SB A/c.No.01190013648 S.B.I., Attayampatti Branch, Salem)	20.01.2005 31.01.2005 01.02.2005	Rs.25,000/- Rs.25,000/- Rs.10,000/- Rs.60,000/-
13	197/2018	A. Ramachandran/ LW4 (SB A/c.No. 01190013648 S.B.I., Attayampatti Branch, Salem) A. Palanisamy/LW-5 (SB A/c. No. 01190005251, S.B.I., Attayampatti Branch, Salem)	09.02.2005 12.02.2005 14.02.2005	Rs.50,000/- Rs.25,000/- Rs.10,000/- Rs.85,000/- =====
14	198/2018	Madalaimuthu/LW4 (SB A/c.No. 01190015581 S.B.I., Attayampatti Branch Salem)	20.04.2005	Rs.10,000/-

15	199/2018	Madalaimuthu/LW4 (SB A/c.No. 01190015581 S.B.I., Attayampatti Branch Salem)	30.03.2005	Rs.10,000/-
		A. Ramachandran/ LW5 (SB A/c.No. 01190013648 S.B.I., Attayampatti Branch, Salem)	30.03.2005	Rs.10,000/-
		Perumal /LW6 (SB A/c.No. 01190005301, S.B.I., Attayampatti Branch, Salem)	29.03.2005	Rs.10,000/-
				Rs.30,000/- =====
16	200/2018	A. Ramachandran/ LW4 (SB A/c.No.01190013648 S.B.I., Attayampatti Branch, Salem)	04.04.2005	Rs.10,000/-
		Perumal /LW5 (SB A/c.No. 01190005301, S.B.I., Attayampatti Branch, Salem)	31.03.2005	Rs.10,000/-
			05.04.2005	Rs.10,000/-
				Rs.30,000/- =====
17	201/2018	A. Palanisamy/LW-4 (SB A/c. No. 01190005251, S.B.I., Attayampatti Branch, Salem)	03.03.2005	Rs.10,000/-
		Latha/LW-5 (SB A/c. No. 01190021359, S.B.I., Attayampatti Branch, Salem)	03.03.2005	Rs.10,000/-
		Sownthirammal (Not listed as Witness)	04.03.2005	Rs.15,000/-
		(SB A/c. No. 01190022988 S.B.I., Attayampatti Branch Salem)		Rs.35,000/- =====

18	202/2018	Kanchana/LW4 (SB A/c. No. 01190018251 S.B.I., Attayampatti Branch, Salem)	06.01.2005 08.01.2005 10.01.2005	Rs.10,000/- Rs.10,000/- Rs.30,000/- Rs.50,000/- =====
19	203/2018	Madalaimuthu/LW4 (SB A/c.No. 01190015581 S.B.I., Attayampatti Br. Salem) Kandhayee (not cited as a witness) (SB A/c. No. 01190021085 S.B.I., Attayampatti Branch, Salem)	11.04.2005 13.04.2005 16.04.2005	Rs.10,000/- Rs.10,000/- Rs.10,000/- Rs.30,000/- =====
20	205/2018	A. Palanisamy/LW-4 (SB A/c. No. 01190005251, S.B.I., Attayampatti Branch, Salem) Perumal /LW5 (SB A/c.No. 01190005301, S.B.I., Attayampatti Branch, Salem) Latha/LW-6 (SB A/c. No. 01190021359, S.B.I., Attayampatti Branch, Salem)	16.02.2005 14.02.2005 15.02.2005	Rs.10,000/- Rs.50,000/- Rs.12,000/- Rs.72,000/- =====

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21	206/2018	Madalaimuthu/LW4 and Sowrimuthu (SB A/c.No. 01190006575 S.B.I., Attayampatti Branch Salem) Sowrimuthu/Not listed as witness and Madalaimuthu (SB A/c.No. 01190006575 S.B.I., Attayampatti Branch Salem) Sownthirammal (Not listed as Witness) (SB A/c. No. 01190022988 S.B.I., Attayampatti Branch Salem)	05.03.200 5 08.03.200 5 08.03.200 5	Rs.25,000/- Rs.10,000/- Rs.10,000/- Rs.45,000/- =====
22	209/2018	A. Ramachandran/ LW4 (SB A/c.No. 01190013648 S.B.I., Attayampatti Branch, Salem) A. Palanisamy/LW-5 (SB A/c. No. 01190005251, S.B.I., Attayampatti Branch, Salem) Latha/LW-6 (SB A/c. No. 01190021359, S.B.I., Attayampatti Branch, Salem)	26.03.200 5 21.03.200 5 19.03.200 5	Rs.10,000/- Rs.10,000/- Rs.10,000/- Rs.30,000/- =====

11. Mrs. Kritika Kamal, learned Government Advocate (Crl. Side), placing reliance on the judgment of the Supreme Court in Ranchhod Lal vs. State of Madhya Pradesh¹, submitted that the petitioner's prayer to have a single trial is not maintainable.

¹ AIR 1965 SC 1248

12. Per contra, Mr. Jayakumar, learned counsel for the petitioner, placed reliance on the judgment of the Supreme Court in State of Jharkhand vs. Lalu Prasad Yadav² and the judgment of this Court in Subbiah Konar vs. State³ to justify the prayer.

13. To appreciate the rival contentions, it may be necessary to reduce to simple terms, the gravamen of the allegations against the petitioner by referring to some specific indictments against him.

14. For example, let us take the allegations in C.C. No.185 of 2018, wherein, it is alleged that the petitioner had withdrawn Rs.5,000/- from the account of Palanichamy on 18.02.2005; Rs.25,000/- from the account of Perumal on 16.02.2005; and Rs.8,000/- from the account of Latha on 17.02.2005, by forging their signatures. Thus, this is not a case of simple misappropriation of money, but, in order to misappropriate the money, it is alleged that the petitioner had forged the records and along with Section 409 IPC, he is charged under Sections 467 and 471 IPC.

15. Before deciding as to whether Section 212 (2) Cr.P.C. would apply to this case, it may be relevant to extract the said provision and also other related provisions in the Code.

"212. Particulars as to time, place and person:

(Section 222 in old Cr.P.C.)

(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other moveable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates,

² (2017) 8 SCC 1

³ 2019 - 2 - L.W.(Cr.) 531

and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219;

Provided that the time included between the first and last of such dates shall not exceed one year.

Section 218. Separate charges for distinct offences:

(Section 233 in old Cr.P.C.):

(1) For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately:

Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.

(2) Nothing in sub-section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223.

Section 219. Three offences of same kind within a year may be charged together (Section 234 in old Cr.P.C.):

(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:

(Section 235 in old Cr.P.C.)

(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)."

16. In the opinion of this Court, there are three judgments of the Supreme Court which clearly expatiate on the law relating to framing of charges and they are as under:

- i. Banwarilal Jhunjunwala and others and V.A. Thomson vs. Union of India and another⁴ decided on 21.11.1962
- ii. State of Andhra Pradesh vs. Cheemalapati Ganeswara Rao and another⁵ decided on 23.04.1963
- iii. Ranchhod Lal vs. State of Madhya Pradesh (supra) decided on 27.11.1964

⁴ AIR 1963 SC 1620

⁵ AIR 1963 SC 1850

17. It is pertinent to mention here that Justice Raghubar Dayal had authored Banwarilal Jhunjunwala (supra) and Ranchhod Lal (supra), but, was a member of the Bench in Cheemalapati Ganeswara Rao (supra).

18. From a thorough analysis of the aforesaid judgments, the following principles can be deduced:

- i. Section 220 Cr.P.C. will apply only to the case of a single accused who commits more than one offence in the course of the same transaction and therefore, he can be charged in one trial for all the offences so committed by him.
- ii. The rule is, for every distinct offence, there shall be a separate charge and every such charge shall be tried separately (Section 218 Cr.P.C.).
- iii. Section 219 Cr.P.C. will apply only for sole accused cases and not to cases where there are more than one accused. That apart, even in respect of sole accused, each offence of the same kind exceeding three in number, committed within a span of one year, should be a stand alone offence. In other words, Section 219 Cr.P.C. will have no application where each offence of the same kind exceeding 3 in number is committed in the course of the same transaction within a period of one year.
- iv. Section 212(2) Cr.P.C. carves out an exception for the offence of criminal breach of trust and dishonest misappropriation.
- v. Section 220(2) Cr.P.C. provides for framing of charge of forgery and falsification of accounts along with the charge for criminal breach of trust and misappropriation.

19. Reverting to the case at hand, the Investigating Officer has treated each of the misappropriations as a stand alone offence and has clubbed three misappropriations in each final report as laid down in Section 219 Cr.P.C. and has filed 22 final reports. This cannot be totally faulted, per se, in view of the authoritative pronouncement of the Supreme Court in Ranchhod Lal (supra), wherein, the following passages clinch the issue:

"13. Learned counsel for the appellant has not urged that there is any illegality in the sentences awarded to the appellant in the various Sessions cases or in not making them

run concurrently with the sentence awarded in the first Sessions Trial No. 35 of 1961. He has, however, urged that the various acts of criminal breach of trust which formed the basis of the convictions took place within a period of a few months, from November 19, 1955 to February 23, 1956 and that therefore the appellant should have been charged for committing criminal breach of trust with respect to the total amount he had misappropriated, in view of Section 222 CrPC (New 212) and that if he had been so charged, the charge for misappropriating the total amount would have been the charge for one offence and the appellant would have been tried on such one charge at one trial and, on conviction, would have been awarded only one sentence which would not have ordinarily exceeded 4 years' rigorous imprisonment.

14. Section 222 CrPC (New 212) reads:

"(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of Section 234:

Provided that the time included between the first and last of such dates shall not exceed one year."

Sub-section (2) is an exception to meet a certain contingency and is not the normal rule with respect to framing of a charge in cases of criminal breach of trust. The normal rule is that there should be a charge for each distinct offence, as provided in Section 233 (New 218) of the Code. Section 222 (New 212) mentions what the contents of the charge should be. It is only when it may not be possible to specify exactly particular items with respect to which criminal breach of trust took place or the exact date on which the individual items were misappropriated or in some similar contingency, that the Court is authorised to lump up the various items with respect to which criminal breach of trust was committed and to mention the total amount misappropriated within a year in the

charge. When so done, the charge is deemed to be the charge of one offence. If several distinct items with respect to which criminal breach of trust has been committed are not so lumped together, no illegality is committed in the trial of those offences. In fact, a separate trial with respect to each distinct offence of criminal breach of trust with respect to an individual item is the correct mode of proceeding with the trial of an offence of criminal breach of trust.

15. Learned counsel for the appellant also relied on Section 234 CrPC (New 219) and urged that three offences of criminal breach of trust could have been tried at one trial as Section 234 (New 219) provides that 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. This again, is an enabling provision and is an exception to Section 233 (New 218) CrPC. If each of the several offences is tried separately, there is nothing illegal about it. It may also be mentioned that the total number of items charged in the four cases exceeded three."

(Emphasis supplied. This Court has cited the corresponding provision in the new Code in the above passages for easy reference.)

20. Mr. Jayakumar placed strong reliance on the judgment of the Supreme Court in *Lalu Prasad Yadav* (supra), wherein, the Supreme Court has considered *Cheemalapati Ganeswara Rao* (supra) and held in paragraph no.34 as under:

"34. When several offences are alleged to have been committed by several accused persons, this Court has laid down that normal rule is of separate trials."

21. Further expatiating, Mr. Jayakumar contended that the normal rule of separate trials will apply only to several offences committed by several persons, whereas, in this case, there is only one accused who has allegedly committed several offences and therefore, the said rule will not apply. Paragraph no.34 of the judgment in *Lalu Prasad Yadav* (supra) cannot be interpreted in such a manner in the light of the authoritative statement of law by the Supreme Court in *Ranchhod Lal* (supra), wherein, it has been held clearly that

the normal rule is that there should be a charge for each distinct offence as provided in Section 233 Cr.P.C. (new Section 218) and that Section 222 Cr.P.C. (new Section 212) will apply only when it may not be possible to specify exactly particular items with respect to which criminal breach of trust took place or the exact date on which the individual items were misappropriated or in some similar contingency.

22. In this case, the aforesaid tabular column in paragraph no.10 clearly shows the exact amounts and the dates on which they were withdrawn from the accounts of each victim and as such, there is no confusion at all. Hence, there is no scope for lumping up the various items into a single charge, as contended by Mr. Jayakumar.

23. Similarly, in Subbiah Konar (supra), this Court was dealing only with misappropriation and there was no charge of forgery as in the case at hand. Further, in that case, the victims had paid various amounts to the accused and some victims were not even able to say how much they had paid to the accused. Therefore, in those circumstances, the trial Court was perfectly legitimate in lumping up the various items into a single charge of misappropriation.

24. Be that as it may, this Court called for the charges framed by the trial Court and found the same to be totally unsatisfactory. The trial Court has framed the charges in all the 22 cases in a single stroke and has questioned the petitioner. That apart, this Court finds that, not all the items of misappropriation were stand alone offences. There are totally 10 victims in this case, viz., (1)Palanichamy, (2) Perumal, (3)Latha, (4)Ramasamy, (5)Marimuthu, (6) Sownthirammal, (7)Madalaimuthu, (8)Ramachandran, (9)Kanchana and (10)Kandhaayee. The misappropriations from the account of each victim on various dates would fall within the meaning of the expression "same transaction" as broadly set out in paragraph 27 of Cheemalapati Ganeswara Rao (supra), the relevant portion of which reads as under:

"27. . . .What is meant by "same transaction" is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any

Court which has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a, strong circumstance to indicate that those acts form part of the same transaction."

A bank clerk watching the account of a victim, profiling him and illegally withdrawing monies from his account on various dates, is tantamount to same transaction within the meaning of Section 220 Cr.P.C. since there exist unity of purpose and design, and proximity of place and time. Therefore, the misappropriations on various dates from the account of a victim are not stand alone offences to be brought within the net of Section 219 Cr.P.C., but are offences committed in the course of the same transaction, though they are same kind of offences and numbering more than three within a span of 12 months. For example, it can be legitimately stated that the misappropriation from the account of Palanichamy on 12.02.2005 (Rs.25,000), 14.02.2005 (Rs.10,000), 16.02.2005 (Rs.10,000), 18.02.2005 (Rs.5,000), 28.02.2005 (Rs.10,000), 03.03.2005 (Rs.10,000), 09.03.2005 (Rs.10,000), 12.03.2005 (Rs.10,000), 16.03.2005 (Rs.10,000), 21.03.2005 (Rs.10,000) and 28.03.2005 (Rs.10,000) were all committed in the course of the same transaction and therefore, it will be lawful to try them together in a single trial.

25. Similar is the case with regard to the other victims also. Ergo, instead of trying the petitioner in 22 cases, it will be perfectly legitimate to try him in ten cases. At the risk of repetition, it is made clear that though in each case, there will be more than three instances of misappropriation within one year, yet, the bar under Section 219 Cr.P.C. will not apply, as those offences were committed in the course of the same transaction as laid down in Section 220 Cr.P.C. vide Cheemalapati Ganeswara Rao (supra).

26. If the trials in the 22 cases proceed as they are, there will be utter chaos and confusion, because, the common witnesses will have to be examined 22 times and the victims will have to be examined more than once. For example, Palanichamy, one of the victims, has been cited as a witness

in C.C. Nos.185, 186, 188, 189, 193, 195, 197, 201, 205 and 209 of 2018 and so, he will have to be examined ten times. Similar is the case of the other victims also, whom the Court will have to examine more than once. This will not only cause manifest prejudice to the petitioner but will also tire out the prosecution, besides eating out the time of the Court.

27. Mrs. Kritika Kamal submitted that the trial Court has commenced the trial by examining one witness as P.W.1, for which, Mr. Jayakumar submitted that if the method propounded by this Court is adopted, the petitioner will not complain of prejudice and that the deposition of P.W.1 so far recorded, can be treated as evidence in the ten cases. He further submitted that common witnesses need not be examined in each of the ten cases separately and instead, their depositions can be recorded commonly for all the ten cases, the petitioner permitted to cross-examine them commonly and ten print outs of the deposition (chief, cross and re-examination) so recorded be placed in each case. This submission of Mr. Jayakumar merits acceptance.

28. In view of the above, the charges framed by the trial Court are set aside and the following directions are issued:

i. The 22 cases in C.C.Nos.185 to 203, 205, 206 and 209 of 2018 shall be re-numbered as C.C. Nos.185 to 194 of 2018 (10 cases) and C.C.Nos.195 to 203, 205, 206 and 209 of 2018 shall be struck off from the file of the Judicial Magistrate Court No.VI, Salem;

ii. The case of each victim shall be assigned one calendar case number as follows:

Name of victim	C.C. No. to be assigned	No. of counts of misappropriation with forgery
Palanichamy	185 of 2018	11
Perumal	186 of 2018	9
Latha	187 of 2018	9
Ramasamy	188 of 2018	1
Marimuthu	189 of 2018	1

Name of victim	C.C. No. to be assigned	No. of counts of misappropriation with forgery
Sownthirammal	190 of 2018	4
Madalaimuthu	191 of 2018	6
Ramachandran	192 of 2018	7
Kanchana	193 of 2018	1
Kandhaayee	194 of 2018	1

- iii. For each C.C. number, the charge relating to each count of misappropriation and forgery with the date and amount shall be specified.
- iv. It is seen that some victims like Ramasamy, Marimuthu, Sownthirammal, et al have not been cited as witnesses in the memo of evidence, presumably because they had either died or their whereabouts not known. Even if a victim is dead or his whereabouts not known, the offence will not die and the prosecution can prove the offence with collateral evidence. Therefore, charges in respect of those victims, who have either died or whose whereabouts are not known, also should be framed and the petitioner questioned. If any name has been inadvertently left out, the prosecution can file an application under Section 311 Cr.P.C. to examine him.
- v. It is further seen that the incident in this case had taken place in the year 2005 and we are in 2020 and the trial has not proceeded substantially at all on account of the various petitions that were filed by the petitioner from time to time. Therefore, the trial Court shall complete the process of framing of charges within one month from the date of receipt of a copy of this order.
- vi. The depositions of the common witnesses (chief, cross and re-examination) may be recorded for all the ten cases and ten print outs of the depositions taken, signatures of the witnesses obtained in each print out separately and one print out placed in each case. Changes, if any, of exhibit numbers may be made in the depositions by the Magistrate.

- vii. The petitioner shall cross-examine the witnesses on the day they are examined in-chief, as held by the Supreme Court in Vinodh Kumar Vs State of Punjab⁶.
- viii. If the petitioner adopts any dilatory tactics, it is open to the trial Court to insist upon his presence and remand him in custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh⁷.
- ix. If the petitioner absconds, a fresh FIR can be registered against him under Section 229-A IPC.
- x. The trial shall be completed within six months from the date of framing of charges.
- xi. Since there are bound to be some documents which will be common for all the ten cases, the original of such documents shall be exhibited in C.C.No.185 of 2018 and the photocopies certified by the Magistrate can be filed as exhibits in the other calendar cases.
- xii. It is possible that there may be some clerical errors in the dates and amounts set out in the tabular column in paragraph no.10 (supra) and hence, the trial Court shall properly scrutinise the records without blindly following what has been stated in paragraph no.10 (supra) and ensure that the correct dates and amounts find place in the charges. The Assistant Public Prosecutor and the Investigating Officer shall assist the Court in framing the charges.

This criminal original petition stands disposed of accordingly. Connected CrI.M.P. stands closed.

सत्यमेव जयते

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nsd/cad

⁶ 2015 [1] MJ [CrI] 288

⁷ JT 2001 (4) SC 319

To:

1.The Judicial Magistrate No.IV

Salem

2. The Inspector of Police

District Crime Branch

Salem City

3. The Public Prosecutor

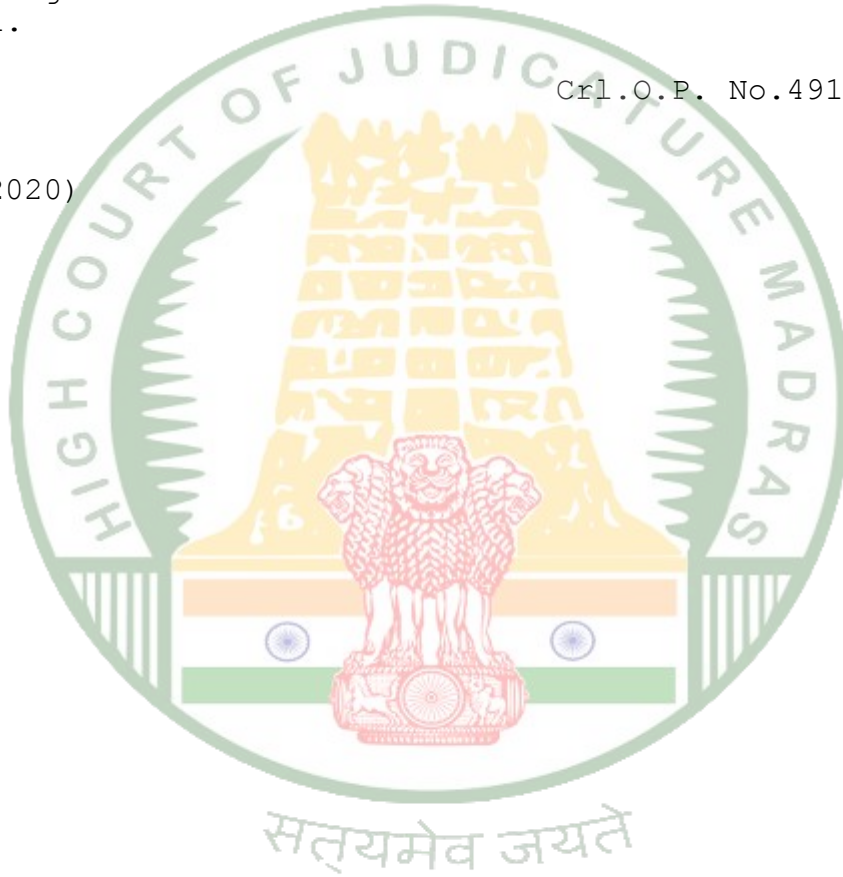
Madras High Court

Chennai.

CrI.O.P. No.4916 of 2018

NRL (CO)

CB(03/11/2020)



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