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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.07.2021

PRONOUNCED ON : 23.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Cr1.R.C.No.422 of 2018

M/s.R.K.R.Gold Bullion Private Limited,
represented by its Chairman cum Managing Director,
S.V.Sreenivasan,
IInd Floor,
No.569/2, Raja Street,
Coimbatore - 1.

... Petitioner/1st Respondent

Vs.

1.Muthusamy

... 1st Respondent/Petitioner

2.M/s.Citra Fuels Limited,
Represented by its Chairman/Managing Director,
Mr.John Milton,
Kunnampuram - Building,
Villonni - Post,
Arpookkara,
Kottayam - 686 008.

3.M.Gnanalingam

... Respondents 2 & 3/Respondents 2 & 3

Prayer: This Criminal Revision Case has been filed under Section 397 read with Section 401 of Cr.P.C., to set aside the order dated 09.11.2017, made in Tr.C.M.P.No.848 of 2015 on the file of the Chief Judicial Magistrate Court, Coimbatore.

For Petitioner : Mr.K.S.Karthik Raja
For R1 : Mr.C.R.Prasannan
For R2 & R3 : No appearance

JUDGMENT

(The case has been heard through Video Conference)

This Criminal Revision Case is filed by the revision petitioner/complainant in C.C.No.41 of 2015, on the file of the Fast Track Court, Coimbatore, against the respondents herein for the offence under Section 138 of Negotiable Instruments Act.



2.The revision petitioner herein has filed a case in C.C.No.41 of 2015, on the file of the Fast Track Court, Coimbatore, against the first respondent herein. While the first respondent herein has filed a case in C.C.No.289 of 2015, before the learned Judicial Magistrate No.V, Coimbatore, against the respondents 2 and 3 herein and another, for the dishonour of cheque No.015019, for an amount of Rs.94,00,000/-.

3.During the pendency of trial of the respective cases, the first respondent herein/complainant in C.C.No.289 of 2015, has filed a petition in Tr.C.M.P.No.848 of 2015, before the learned Chief Judicial Magistrate Court, Coimbatore, to transfer the said C.C.No.289 of 2015, to the file of the learned Judicial Magistrate, Fast Track Court No.II, Coimbatore, for simultaneous trial along with C.C.No.41 of 2015. The learned Chief Judicial Magistrate has come to the conclusion that the issue arising in the above two cases viz., C.C.No.41 of 2015 and C.C.No. 289 of 2015 are interdependent. Accordingly, ordered for simultaneous trial and hence, the Criminal Revision Case.

4.Heard the respective learned counsels and perused the materials placed on record.

5.The learned counsel for the revision petitioner would contend that there is no necessity for the simultaneous trial since the respondents 2 and 3 herein are no way connected to the cheque issued by the first respondent herein. He would further contend that the finding rendered by the learned Chief Judicial Magistrate, Coimbatore, is not based upon the records.

6.Per contra, the learned counsel for the respondents would contend that the simultaneous trial alone will resolve the issue and that is the reason why the first respondent herein, who is the complainant in C.C.No.289/2015, has sought for transfer and simultaneous trial.

7.The reason assigned in the prayer for simultaneous trial of two cases is that the revision petitioner herein is the buyer; the second respondent herein is the seller; the third respondent herein is a prospective purchaser; while the first respondent herein is an intermediary, who is standing guarantee for the transaction.

8.The learned Chief Judicial Magistrate, Coimbatore, has ordered for simultaneous trial in C.C.No.289 of 2015, on the file of the learned Judicial Magistrate No.V, Coimbatore, along with C.C.No.41 of 2015, on the file of the learned Judicial Magistrate Fast Track Court No.I, Coimbatore. In one case the first respondent herein is the accused and in another case the second respondent herein is the private complainant.



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9. After perusing certain Email communications between the parties and Ex.P9/statement of accounts of the first respondent herein for the period from 01.11.2013 to 31.12.2013, viz., Ex.P9 was marked by way of consent and it also reveals that the amounts transacted with Citra Fuels Ltd and RJR Gold Bullions Private Limited, who are parties in both the cases and from 26.11.2013 to 30.11.2013, which reveals that there may be nexus between the petitioner and the respondents with regard to both the cases and hence, the trial Court has rightly come to the conclusion that both the cases ought to be tried simultaneously for having a better appreciation and fair adjudication.

10(a). The Judgment reported in CDJ 2013 MHC 5598 - [T.Selvakumar Vs. The State represented by the Inspector of Police, Chennai], wherein this Court has held as follows:

"25. Explaining the need to try the counter-cases by one and the same judge and the benefit of it, in SUDHIR Vs. STATE of M.P, [2001 (2) SCC 688], the Hon'ble Supreme Court observed as under:

"8. It is a salutary practice, when two criminal cases relate to the same incident, they are tried and disposed of by the same court by pronouncing judgments on the same day. Such two different versions of the same incident resulting in two criminal cases are compendiously called "case and counter-case" by some High Courts and "cross cases" by some other High Courts."

"The practical reasons for adopting a procedure that such cross-cases shall be tried by the same court, can be summarised thus: (1) It saves off the danger of an accused being convicted before his whole case is before the Court. (2) It deters conflicting judgments being delivered upon similar facts. (3) In reality the case and the counter-case are, to all intents and purposes, different or conflicting versions of one incident."

26. In NATHI LAL V. STATE OF U.P. [1990 SCC 145], as regards trial of counter-cases, the Hon'ble Apex Court advocated the following procedure:

"We think that the fair procedure to adopt in a matter like the present where there are cross-cases, is to direct that the same learned Judge must try both the cross-cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter, he must proceed to hear the cross-case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross-case cannot be



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looked into. Nor can the judge be influenced by whatever is argued in the cross-case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross-case. But both the judgments must be pronounced by the same learned Judge one after the other."

10(b).Further, I had an occasion to consider a similar situation in CrI.O.P.No.2715 of 2014 and M.P.No.1 of 2014, dated 17.08.2017, wherein, it was held as follows:

"On a perusal of the F.I.R in both the cases, this Court finds that this is not a case and case-in-counter. However, incident in both the cases are alleged to have taken place on 20.06.2012 and parties are none other than the husband and wife and their in-laws and therefore, for appreciation of evidence let in by the both the cases, simultaneous trial will alone meet the ends of justice, otherwise over-all view of the case and the inter-linked disputes between the both the parties cannot be elicited and hence, this Court is of the considered view that through a joint trial is not possible, since both the cases are not the case and case-in-counter, however, as the both the cases are pending before the same learned Judicial Magistrate-I, Virudhachalam, this Court is of the considered view that simultaneous trial will meet the ends of justice."(emphasis supplied)

11(a).After perusing of the pleadings and having the arguments, this Court finds that the issue that has to be determined in both the cases is that the inter mediator and the parties are in a clear cut issue, which happens to be related to one another and arising out of the same business transaction.

11(b).When payment has been made by cheque to "A" party, on behalf of "B" party by as a guarantor viz., "C" party, and in respect of that amount "B" Party had issued cheque for the "C" party. The first cheque issued by the "C" party (middle man) become the basis of legally enforceable debt of ["B" party] towards "C" party is just and necessary that to avoid conflicting decision, the simultaneous trial was rightly ordered by the Trial Court. It is needless to say that it is not a joint trial. the transaction between the parties is arising from the business transaction over two different parties and that the first respondent herein, who is the mediator/middle man for purchase of gold from the second and third respondents herein, while the revision petitioner herein is the purchaser of the gold. though the transactions are common and parties to the transaction are common but the cheques were different. In



order to appreciate nature of the transaction between the parties which is appeared to be triangular in contest and interrelated this Court finds that the order passed by the learned Chief Judicial Magistrate, Coimbatore, does not suffer from any illegality or irregularity warranting interference.

12. In this view of the matter, this Criminal Revision Case stands dismissed and the learned Judicial Magistrate, Fast Track Court No.I, Coimbatore, shall to take the case on file as per the order passed by the learned Chief Judicial Magistrate, Coimbatore, in Transfer CMP.No.848 of 2015 and directed to dispose of the case within a period of sixteen weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

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To:

1. The Chief Judicial Magistrate Court, Coimbatore.
2. The Judicial Magistrate, Fast track Court I, Coimbatore.

+1CC to M/s.C.R.Prasanan, Advocate, SR.No. 50016

Cr1.R.C.No.422 of 2018

AK II(CO)
B.VC (06/10/2021)