

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.02.2022

Pronounced on : 27.05.2022

CORAM : JUSTICE N.SESHASAYEE

CrI.R.C.Nos.822 to 824 of 2021
& CrI.MP.Nos.11994 to 11999 of 2021

C.Sundaram Petitioner in all Criminal Revisions
Accused-13 in C.C.No.34/2013
Accused- 6 in C.C.No.36/2013
Accused-11 in C.C.No.35/2013

Vs.

Respondents in Cr1.R.C.No.822 of 2021 :

1.State

Rep. by Deputy Superintendent of Police
EOW-II, Salem
(Ref.: Crime No.24/2012)

.... Respondent / Respondent / Complainant

- 2.P.Kandasamy
- 3.T.Manikandan
- 4.C.Kumar
- 5.P.Palanisamy
- 6.P.Subramani
- 7.C.Rajendran
- 8.G.Thukka Gounder
- 9.P.Kumar
- 10.G.Kandasamy
- 11.V.Elumalai
- 12.T.Nagarathinam
- 13.P.Prakash
- 14.R.Sivaraj
- 15.P.Duraisamy

.... Respondents

[R2 to R15 implied as per order dated 20.01.2022 in
CrI.MP.Nos.484, 483 and 486 of 2022 in
CrI.RC.Nos.822 to 824 of 2022]

Respondents in CrI.R.C.No.823 of 2021 :

1.State

Rep. by Deputy Superintendent of Police

EOW-II, Salem

(Ref.: Crime No.26/2012)

.... Respondent / Respondent / Complainant

2.C.Kumar

3.P.Kandasamy

4.P.Prakash

5.P.Duraisamy

.... Respondents

[R2 to R5 impleaded as per order dated 20.01.2022 in

CrI.MP.Nos.484, 483 and 486 of 2022 in

CrI.RC.Nos.822 to 824 of 2022]

Respondents in CrI.R.C.No.824 of 2021 :

1.State

Rep. by Deputy Superintendent of Police

EOW-II, Salem

(Ref.: Crime No.25/2012)

.... Respondent / Respondent / Complainant

2.P.Duraisamy

3.P.Kandasamy

4.T.Manikandan

5.V.Elumalai

6.C.Kumar

7.P.Palanisamy

8.P.Subramani

9.G.Thukka Gounder

10.P.Kumar

11.G.Kandasamy

12.T.Nagarathinam

13.P.Prakash

14.R.Sivaraj

15.C.Rajendran

.... Respondents

[R2 to R15 impleaded as per order dated 20.01.2022 in

CrI.MP.Nos.484, 483 and 486 of 2022 in

CrI.RC.Nos.822 to 824 of 2022]

COMMON PRAYER: Criminal Revisions filed under Section 397 r/w. 401 of Cr.P.C., praying to call for the records in unnumbered C.M.P. in C.C.No.34/2013, C.C.No.36/2013 & C.C.No.35/2013

respectively on the file of learned Special Judge, Special Court under TNPID Act, Coimbatore, and to set aside the order dated 28th October 2021, and to direct the learned Special Judge, Special Court under TNPID Act, Coimbatore to try C.C.No.34/2013, C.C.No.36/2013 & C.C.No.35/2013 in one trial.

For Petitioner : Mr.R.Baskar

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate [Crl Side]
for R1

COMMON ORDER

The revision petitioner herein is arrayed as an accused in three different cases along with few other persons. He has now come forward with three separate revisions challenging the orders passed by the TNPID Court, Coimbatore in three unnumbered Crl.MPs in C.C.No.34/2013, C.C.No.36/2013 & C.C.No.35/2013, all dated 28.10.2021.

2.1 A certain M/s.Jenith Herbals (A1), stated to be an unregistered firm (in law it should be considered as an association of persons) and its affairs are under the control of one Jagadeesan (A2). The allegation is that many have made deposits in M/s.Jenith Herbals, for mobilising which, Jagadeesan had engaged several canvassing-agents. Ultimately, when the depositors wanted their money back, Jagadeesan could not make any payments.

2.2 This led to three sets of depositors preferring three independent complaints before the respondent, based on which three separate cases in Crime Nos.24/2012, 25/2012 and 26/2012 came to be registered. The respondent-Investigating Agency concluded its investigation in all the three cases and filed its separate final reports, which the TNPID Court, Coimbatore, had taken cognizance of and are now pending in its record as C.C.No.34/2013, C.C.No.35/2013 and C.C.No.36/2013.

2.3 While not all the accused persons in C.C.34 of 2013 are not the accused persons in C.C.35 of 2013 and C.C.36 of 2013, the accused persons in the last two cases are accused in C.C.34 of 2013. This will be evident from the following two tables:

Table - I

Crime No.	C.C.No.	Total no. of accused persons	Rank of the Revision Petitioner
24 of 2012	34 of 2013	18	A13
25 of 2012	35 of 2013	18	A16
26 of 2012	36 of 2013	7	A6

Table - II

Name of the Accused	Rank in C.C.No.34/2013	Rank in C.C.No.35/2013	Rank in C.C.No.36/2013
Jenith Herbals	A-1	A-1	A-1
B.Jegadeesan	A-2	A-2	A-2
P.Kandasamy	A-3	A-4	A-5
T.Manikandan	A-4	A-5	.....
C.Kumar	A-5	A-7	A-4
P.Palanisamy	A-6	A-8	.....
P.Subramani	A-7	A-9	.....
C.Rajendren	A-8	A-18	.....
G.Tukkagoundar	A-9	A-10	.....
P.Kumar	A-10	A-11	.....
G.Kandasamy	A-11	A-12	.....
V.Elumalai	A-12	A-6	.....
C.Sundaram	A-13	A-16	A-6
T.Nagarathinam	A-14	A-13	.....
P.Prakash	A-15	A-14	A-3
R.Sivaraj	A-16	A-15	.....
P.Duraisamy	A-17	A-3	A-7
P.K.Doss @ Kirubai Doss	A-18	A-17	.....

2.4 In all the cases, the trial court has framed charges against all the accused persons under Sections 120(B), 107, 406& 420 IPC and an offence under Section 5 of TNPID Act.

3. A2-Jagadeesan has since absconded, consequent to which, the case against A1 and A2 split up, and the split-up cases are pending in C.C.No.10/2021, C.C.No.11/2021 and C.C.No.12/2021.

4. What becomes instantly evident is that three successive FIRs were registered against the same financial institution for the same offence said to have been committed within the same period of 10 months prior to 26.05.2012, and / or prior to 26.05.2012 & 29.05.2012. To start with, the investigating agency only needed to have registered only one case, and should have treated the defacto complainants in the other two cases as victim-witnesses. For reasons best to known to it, it did not choose to do it, and investigated them and laid separate final reports. The trial court too had framed charges separately in all the three cases.

5. It is in this circumstances, the petitioner herein has come forward with three separate applications under Section 219 Cr.P.C., for framing a single charge, since the offences are alleged to have been committed by the same set of accused within a period of one year. He is an accused person in all the three cases. For details Table -I in paragraph 2.3 above. These applications were not even taken on record by the Court, and yet it proceeded to dismiss the applications. They are now in challenge.

6. When the matter came up before this Court earlier on 20.01.2021, this Court has recorded that barring one accused, all the accused persons have given their consent for a single trial in all the three cases.

7. The learned counsel for the revision petitioner submitted that Section 219 Cr.P.C., enables consolidation of three cases of similar nature happened within a year, and sanctions framing of a single charge. He submitted that the trial Court has ordered simultaneous trial, which would imply that the defence that would be disclosed in one case, may injure the right of the accused in other cases. This apart, it would compel the petitioner or the other accused persons who have consented for joint trial to face three separate trials, which would be a procedural harassment, more so, when the official witnesses would be the same. He relied on the authorities of the Hon'ble Supreme Court in Nasib Singh Vs. State of Punjab and another [2021 SCC Online 924] ; State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and another [(1964) 3 SCR 297: AIR 1963 SC 1850 : (1963) 2 Cri LJ 671]; The State of Bomba (Now Maharashtra) Vs. Umarsaheb Buransahed Inamdar and others [1962 Supp (2) SCR 711: AIR 1962 SC 1153 : (1962) 2 Cri LJ 259]; Banwarilal Jhunjhunwala and Others Vs. Union of India and another [1963 Supp (2) SCR 338 : AIR 1963 SC 1620 : (1963) 2 Cri

LJ 529]; Kadiiri Kunhahammad Vs. State of Madras [AIR 1960 SC 661 : 1960 Cri LJ 1013] and also the authorities of the Full Bench of this Court in Seraje Narayana Bhatta & others Vs. The King [1948 MWN (Cri) 113]; the ratio of the Division Bench of this Court in K.Thoosimuthu and others Vs. State of Tamil Nadu [2019 SCC Online Mad 8575 : (2019) 3 MWN (Cri) 465 (DB) : (2019) 2 LW (Cri) 655]; and also the authorities of this Court in Sivaraman Vs. State [(2020) 4 MLJ 64 : 2020-2-LW (CrI) 385]; Subbiah Konar Vs. State (Order in CrI.R.C.No.273 of 2014 dated 18.09.2019); Viswapriya (India) Limited Vs. Government of Tamil Nadu [2015 (4) CTC 705]; Dhurvasalu Naidu Vs. State [1980 SCC Online Mad 93 : 1980 Cri LJ 911 : 1980 LW (Cri) 241]; State Vs. Dhanam & others [2016 SCC Online Mad 31459 : (2017) 1 LW (Cri) 517]; P.Rangiah Chetty Vs. Union of India [1975 SCC Online Mad 395 : 1976 LW (Cri) 32]; M.Somasundaram Vs. State [1982 SCC Online Mad 424 : 1983 LW (Cri) 101], and the authority of the Privy Council in Babulal Choukhani and another Vs. The King Emperor [1938 SCC Online PC 10 : (1938) 1 Mad LJ 647 (PC); ILR (1938) 2 Cal 295 : 1938 MWN 505].

8. A status report has been filed by the Investigating Agency. Heard the learned Govt. Advocate. This Court also obtained a status report from the Special Court under TNPID Act, Coimbatore, and it would disclose the current status of the cases before it:

C.C.No.34 of 2013	C.C.No.35 of 2013	C.C.No.36 of 2013
There are 421 witnesses. Defaulted amount is Rs.21,86,65,000/- in respect of 397 depositors.	There are 13 witnesses. Defaulted amount is Rs.9,70,000/- in respect of 2 depositors	There are 12 witnesses. Defaulted amount is Rs.13,20,000/- in respect of 1 depositor.
On 20.11.2021, PW1 to PW3 were examined partly in chief, but for want of original documents, chief examination was stopped. PW4 to PW6 were examined in chief, but the defence counsels did not cross examine them. Ex.P1 to Ex.P15 were exhibited.	On 20.11.2021, PW1 was examined in chief and exhibited Ex.P1, but the defence counsels did not cross examine them.	On 20.11.2021, PW1 to PW4 were examined in chief and exhibited Ex.P1 to Ex.P13, but the defence counsels did not cross examine them.

9. The revision petitioner seeks consolidation of charges and a single trial under Sec. 219 Cr.P.C, but this provisions permits joinder of charges involving only a single accused, and it provides that when a person is accused of more offences than one of the same kind committed with a space of twelve months from the first to the last of such offences. In such cases, the accused may be charged with and tried in one trial for any number of such offences not exceeding three.

10. The relevant provision that may be applicable to the present set of cases involving multiple accused persons is Sec. 223(d) Cr.PC, which, unlike 219 Cr.P.C is not fettered by any numerical limitation on the number of persons or offences that can be charged against the accused in one trial. Section 223(d) Cr.P.C. runs thus:

"223. What persons may be charged jointly. The following persons may be charged and tried together, namely:-

(a).....

(b).....

(c).....

(d) persons accused of different offences committed in the course of the same transaction"

It should not be forgotten that all the accused persons face the same charges for offences of same nature pertaining to the same financial institution and within the same period which is less than a year.

11. The jurisdictional fact for applying Sec.223(d) is the existence of an allegation indicating the commission of offences committed in the course of the same transaction. The expression "same transaction" occurring in Section 239 of the 1898 Code (in parimateria with Section 223(d) of the 1973 Code) came up for consideration before the Supreme Court in State of A.P. v. Cheemalapati Ganeswara Rao, [AIR 1963 SC 1850]. In an oft quoted passage, Mudholkar, J has set out the applicable test in the following way:

"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. The connection between a series of acts seems to us to be an essential ingredient for those acts to constitute the same transaction and, therefore, the mere absence of the words "so connected together as to form" in clauses (a), (c) and (d) of Section 239 would make little difference. Now a transaction may consist of an isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently they would not form part of the same transaction but would constitute a different transaction or transactions."

In *Balbir v. State of Haryana* [(2000) 1 SCC 285], the Hon'ble Supreme Court through K.T.Thomas, J., pointed out that the expression 'in the course of the same transaction' was not akin to saying 'in respect of the same subject-matter'. The Court concluded that for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences 'committed in the course of the same transaction'. The Court would then be justified in ordering a joint trial. In its recent decision in *Nasib Singh v. State of Punjab* [(2022) 2 SCC 89], the Supreme Court has pointed out that the discretion to order a joint trial has to be decided at the beginning of the trial and not on the basis of the result of the trial.

12. On a careful appreciation of the facts of the case, and approaching the issue at hand in the light of law as settled by the Hon'ble Supreme Court, this Court considers that all the three cases involved in C.C.No. 34 of 2013, C.C.No.35 of 2013 and C.C.No.36 of 2013 must be consolidated for framing charges and only a single trial must be held. The reasons are :

- (a) The prime accused is A1, whose affairs are headed by A2 in all the cases. Indeed, it is a financial institution and has alleged to have defaulted in repaying the depositors the money that they had deposited. The status report of the Special Court under TNPID Act, Coimbatore, as extracted in paragraph 8 above shows that the total number of depositors involved in C.C.No.34 of 2013 are 397 depositors; 2 depositors in C.C.No.35 of 2013; and one depositor in C.C.No.36 of 2013 . In all, there are exactly 400 depositors, for who, three trials are contemplated. It would be an atrocious waste of public money and judicial time to have three trials.
- (b) The period during which the offence is said to have been committed is same in all three cases.
- (c) All the accused faces trial for offences under Sections 120(B), 107, 406 & 420 IPC and an offence under Section 5 of TNPID Act.
- (d) Separate trial, apart from waste of public money and judicial time, also constitutes an harassment of the accused persons.

13. When an accused person invokes any provision of law, the minimum respect the Court ought to give the accused person is to take the application on file, more so in matters where he has got a statutory right to seek a prayer.

14.1 The orders of the learned Special Judge, Special Court under TNPID Act, Coimbatore, in all the three unnumbered CMPs dated 28.10.2021, dismissing the prayer of the revision petitioner for framing a single charge, and to hold a single trial, is hereby set aside, and all the three revision petitions are accordingly allowed. The connected miscellaneous petitions are closed. The learned trial Judge is advised that in all the three cases, he should number the applications, take it on file, and then dispose them on merits.

14.2 Since the charges framed in all the three cases are identical as concerning all the accused persons in all the three cases, this Court now directs the trial Court to hold a single trial. It is further directed that the trial Court retains the evidence of P.W.1 to P.W.6 in C.C.No.34 of 2013.

It is directed to treat the chief-examination P.W.1 in C.C.No.35 of 2013 as P.W.7; and that of P.W.1 to P.W.4 in C.C.No.36 of 2013 as P.W.8 to P.W.11, and the exhibits are also accordingly required to be re-numbered. The trial Court is now required to bestow its best attention to ensure that the trial of the case are concluded at the very earliest.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

The Special Judge
Special Court under TNPID Act
Coimbatore.

+2cc to Mr.R.Baskar, Advocate SR.No.31890
+2cc to Mr.R.Baskar, Advocate SR.No.31893

CrI.R.C.Nos.822 to 824 of 2021

SKM(CO)
GN(08/06/2022)