

Neha
2023.12.12 18:10
I attest to the accuracy and
integrity of this order/judgment

taken on record. Registry is directed to tag the same at an appropriate place in the file.

All the above mentioned four petitions shall be disposed of together vide this common order. For the sake of brevity, the facts are taken from CRM-M-41782-2023.

The respondent No.1-complainant is in the business of manufacturing and trading of nut bolts of tractor motor parts and trolley parts under the name and style of M/s Singhania Fasteners. The petitioner and the respondents No.2 & 3 used to purchase goods from respondent No.1 from time to time on credit basis against proper invoices. It is further alleged that the petitioner has issued a cheque bearing No.971150 dated 28.06.2013 for Rs.25,000/-. On presentation, the said cheque was dishonoured with remarks 'account closed/no such account.' Thereafter, legal notice dated 27.07.2013 was served but the petitioner failed to reply causing the respondent No.1 to file the instant criminal complaint.

Learned counsel for the petitioner *inter alia* contends that the cheques in dispute on the basis of which four separate complaints have been filed were issued qua the same transaction within a span of 12 months.

The provision of Sections 219 and 220 of Cr.P.C. are reproduced 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).

Having heard learned counsel for the parties and after perusing the records, this Court is of the view that in terms of Sections 219 and 220 of Cr.P.C. the evidence in one case can be read in other complaints as well. The cheques in all four complaints pertain to the same transaction between the same parties as is evident from the records and all these cheques have been issued within a span of 12 months.

Reliance has been placed upon the judgment of the Hon'ble Supreme Court in **In Re: Expeditious Trial of cases under Section 138 of N.I. Act, 1881, Writ petition (Crl.) No.2 of 2020, decided on 16.04.2021**, which held as under:-

'13. Section 219 of the Code provides that when a person is accused of more offences than one, of the same kind, committed within a space of 12 months, he may be tried at one trial for a maximum of three such offences. If more than one offence is committed by the same person in one series of acts so committed together as to form the same transaction, he may be charged with and tried at one trial, according to Section 220. In his preliminary report, the learned Amicus Curiae suggested that a legislative amendment is required to Section 219 of the Code to avoid multiplicity of proceedings where cheques have been issued for one purpose. In so far as Section 220 of the Code is concerned, the learned Amicus Curiae submitted that same/similar offences as part of the same transaction in one series of acts may be the subject matter of one trial. It was argued by the learned Amicus Curiae that Section 220 (1) of the Code is not controlled by Section 219 and even if the offences are more than three in respect of the same transaction, there can be a joint trial. Reliance was placed on a judgment of this Court in Balbir v.

State of Haryana & Anr. to contend that all offences alleged to have been committed by the accused as a part of the same transaction can be tried together in one trial, even if those offences may have been committed as a part of a larger conspiracy. '

The Hon'ble Supreme Court in **Shyam Pal Versus Dayawati Be-soya & another, 2016 (4) R.C.R. (Criminal) 790**, held as under:-

'(13) Though this provision has fallen for scrutiny of this Court umpteen times, we can profitably refer to one of the recent pronouncements in V.K. Bansal Vs. State of Haryana and Another 2013 (3) RCR (Civil) 1052:2013 (3) RCR (Criminal) 983: 2013 (4) Recent Apex Judgments (R.A.J.) 680: (2013) 7 SCC 211 where it was held that though it is manifest from Section 427 (1), that the Court has the power and discretion to issue a direction that a subsequent sentence shall run concurrently with the previous sentences, the very nature of the power so conferred, predicates that the discretion, would have to be exercised along judicial lines or not in a mechanical or pedantic manner. It was underlined that there is no cut and dried formula for the Court to follow, in the exercise of such power and that the justifiability or otherwise of the same, would depend on the nature of the offence or offences committed and the attendant facts and circumstances. It was however postulated, that the legal position favours the exercise of the discretion to the benefit of the prisoners in cases where the prosecution is based on a single transaction, no matter even if different complaints in relation thereto might have been filed. The caveat as well was that such a concession cannot be extended to transactions which are distinctly different, separate and independent of each other and amongst others where the parties are not the same.'

No prejudice is going to be caused to either of the parties as the complainant would be subjected to cross examination in one complaint which would be read in the other complaints as well. Further, even if the petitioner is convicted in four complaints, the sentences in all probability would run concurrently as transaction was between the same parties.

In view of the above, no useful purpose would be served by permitting the continuance of four separate trials, therefore, it would serve the ends of justice if the trial of all four complaints bearing No. COMA/52437/2013 titled as 'Satish Kumar Singhania Vs. M/s Gurbachan Engineering,' COMA/52436/2013 titled as 'Satish Kumar Singhania Vs. M/s Gurbachan Engineering,' COMA/52438/2023 titled as 'Satish Kumar Singhania Vs. M/s Gurbachan Engineering' and COMA/52439/2023 titled as 'Satish Kumar Singhania Vs. M/s Gurbachan Engineering' are clubbed.

In view the above discussion, the impugned order dated 03.03.2022 (Annexure P-3) is hereby quashed and the above mentioned all four complaints are ordered to be clubbed together.

Disposed of, accordingly.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

11.12.2023

Neha

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