

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-57676-2022 (O&M)

Date of Decision:- 24.5.2023

Khem Chand Goyal and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Aditya Sanghi, Advocate for the petitioners.

Mr. Gurmeet Singh, AAG, Haryana.

Mr. Yashdeep Nain, Advocate for respondent No. 3.

GURVINDER SINGH GILL, J.

1. The petitioners assail order dated 24.11.2022 (Annexure P-1) passed by learned Sessions Judge, Hisar whereby an application dated 14.11.2022 (Annexure P-2) filed by the petitioners seeking transfer of two complaints under Section 138 of the Negotiable Instruments Act and another trial arising out of FIR No. 129 dated 9.3.2021, Police Station Hisar City, District Hisar under Sections 34, 406, 420 IPC (Annexure P-4) to one Court for simultaneous disposal, has been dismissed.
2. While it is petitioners No. 1 and 2 [Khem Chand Goyal and Rahul Goyal] who are facing trial in respect of FIR No. 129 dated 9.3.2021, Police Station Hisar City, District Hisar, it is petitioners No. 1 and 3 [Khem Chand Goyal and M/s Agarwanshi Trading Company] who are arrayed as accused in complaint i.e. CNR No.HRHS03-002969-2021 (Annexure P-5) and it is

petitioners No. 2 and 4 [Rahul Goyal and M/s Vanya Enterprises] who are arrayed as accused in complaint i.e. CNR No.HRHS03-002970-2021.

3. The petitioners, in their application Annexure P-2 averred that the subject matter as well as the documents and the witnesses are almost one and the same in all the three cases and even the complainant is the same person and as such, all the cases are required to be tried and decided by one and the same Court.
4. The said application was resisted by the complainant Madan Lal Bansal – respondent No. 3, who filed reply whereby he took a stand that the application has been filed simply to delay the conclusion of trial and that the complainant on account of dishonour of cheques and consequential lack of funds was suffering and had already received notices under SARFAESI Act from DRT, Chandigarh. The learned Sessions Judge upon considering the application dismissed the same vide order dated 24.11.2022 (Annexure P-1) upon finding that it is not feasible to transfer the cases under the Negotiable Instruments Act to any other Court as the same has to be dealt with by an exclusive Court and while also observing that the subject matter of FIR was different.
5. The learned counsel for the petitioner has submitted that since the matter is between same parties, although there are two different firms of the petitioners Khem Chand Goyal and Rahul Goyal who are both father and son, it would be in the interest of justice that all the matters are decided together by the same Court so as to avoid any conflicting findings. The learned counsel in order to hammer forth his aforesaid submission places

reliance upon a judgment of this Court i.e. Criminal Misc. No.10457-M of 1999 Meenakshi Gupta versus Smt. Sushma Kedia.

6. On the other hand, the learned counsel representing respondent No. 3 has submitted that in the present case the entire evidence in respect of the two complaints under Section 138 of the Negotiable Instruments Act already stands recorded and the said matters are virtually at the final stage and that the present application is nothing but a ploy to further delay the matter as the recording of evidence in the trial arising out of FIR No. 129 dated 9.3.2021, Police Station Hisar City, District Hisar has not concluded. The learned counsel has further submitted that in any case the clubbing of the cases under Section 138 of the Negotiable Instruments Act with a trial arising out of FIR No. 129 dated 9.3.2021, Police Station Hisar City, District Hisar under Sections 34, 406, 420 IPC is not legally permissible in view of provisions of Section 4 Cr.P.C. and that as such, the application for transfer of the cases, in any case, deserved to be dismissed, as has been rightly dismissed by the Sessions Judge.
7. This Court has considered rival submissions addressed before this Court.
8. While two of the matters are criminal complaints pertaining to dishonour of two cheques issued by two different firms, although the said firms are owned by members of the same family i.e. one firm is owned by Khem Chand Goyal and the other is owned by his son Rahul Goyal, the third case is arising out of FIR No. 129 dated 9.3.2021 registered at Police Station Hisar City, District Hisar under Sections 34, 406, 420 IPC lodged against both Khem Chand Goyal and Rahul Goyal, which is proceeding before another Court. Though, the firms M/s Agarwanshi Trading Company and

M/s Vanya Enterprises may be owned by members of the same family but are different firms and as such, the cheques in question issued by the said firms to the same person cannot be said to be part of same transaction.

9. Still further, the allegations in FIR No. 129 dated 9.3.2021, Police Station Hisar City, District Hisar pertain to an offence of cheating wherein the essence of the offence is the *mens rea* to deprive a person of a valuable property though dishonour of cheque could also constitute an offence under Section 138 of the Negotiable Instruments Act. In other words, the facts would be overlapping. However, in order to attract liability under Section 138 of the Negotiable Instruments Act, *mens rea* is not an ingredient. It, however, also needs to be noticed that while the proceedings in respect of Section 138 of the Negotiable Instruments Act are more or less in the nature of *quasi-criminal* and *quasi-civil* and a summary procedure is provided for trying such offences and the maximum sentence is six months only, the offence under Section 420 IPC could invite a sentence of rigorous imprisonment upto 7 years. The nature of proceedings under Section 138 of the Negotiable Instruments Act being quasi-criminal can be gauged by observations by Hon'ble Supreme Court in Civil Appeal No. 10355 of 2018 – P.Mohanraj and Others versus M/s Shah Brothers Ispat Pvt. Ltd., which are as under :-

“36.It is important to note that the transaction spoken of is a commercial transaction between two parties which involves payment of money for a debt or liability. The explanation to Section 138 makes it clear that such debt or other liability means a legally enforceable debt or other liability. Thus, a debt or other liability barred by the law of limitation would be outside the scope of Section 138. This, coupled with fine that may extend to twice the amount of the cheque that is payable as compensation to the aggrieved party to cover both the amount of the cheque and the interest and costs thereupon, would show that it is really a hybrid provision to enforce

payment under a bounced cheque if it is otherwise enforceable in civil law. Further, though the ingredients of the offence are contained in the first part of Section 138 when the cheque is returned by the bank unpaid for the reasons given in the Section, the proviso gives an opportunity to the drawer of the cheque, stating that the drawer must fail to make payment of the amount within 15 days of the receipt of a notice, again making it clear that the real object of the provision is not to penalise the wrongdoer for an offence that is already made out, but to compensate the victim.

37.Section 140 is also important, in that it shall not be a defence in a prosecution for an offence under Section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that Section, thus making it clear that strict liability will attach, mens rea being no ingredient of the offence.....

43.A perusal of this judgment would show that a civil proceeding is not necessarily a proceeding which begins with the filing of a suit and culminates in execution of a decree. It would include a revenue proceeding as well as a writ petition filed under Article 226 of the Constitution, if the reliefs therein are to enforce rights of a civil nature. Interestingly, criminal proceedings are stated to be proceedings in which the larger interest of the State is concerned. Given these tests, it is clear that a Section 138 proceeding can be said to be a “civil sheep” in a “criminal wolf’s” clothing, as it is the interest of the victim that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases, as has been seen by us in the analysis made hereinabove of Chapter XVII of the Negotiable Instruments Act.

10. It is also apposite to refer to provisions of Section 4 Cr.P.C. which read as follows :-

“4. Trial of offences under the Indian Penal Code and other laws.

- (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.
- (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.”

11. The aforesaid provisions would clearly indicate that offences under Special Act have to be inquired and tried into in accordance with the provisions of the Special Act. Since Exclusive Courts have been established for trying offences under the Negotiable Instruments Act 1881, therefore, it would not be appropriate to either transfer the complaints under Section 138 of the Negotiable Instruments Act from the Exclusive Court to any other Court or to transfer the trial arising out of FIR No. 129 dated 9.3.2021, Police Station Hisar City, District Hisar to the exclusive Court under Section 138 of the Negotiable Instruments Act particularly when it cannot even be said that both the complaints arise out of the same transaction and also while noticing that both the said complaints are virtually at the fag end of the trial.
12. Having regard to the fact that proceeding under Section 138 of the Negotiable Instruments Act are quasi-criminal and are summary in nature and the accused has even to move an application under Section 145(2) of the Negotiable Instruments Act to cross-examine witnesses, it may even be debatable as to whether any finding recorded in proceeding under Section 138 of the Negotiable Instruments Act could in any way be binding in a trial for offence under Section 420 IPC. As far as the judgment - Meenakshi Gupta's case (supra) cited by learned counsel for the petitioner is concerned, this Court finds that in the said case the provisions of Section 4 Cr.P.C. have not been noticed at all. There is no reference either to Section 4 Cr.P.C. nor the case was such where proceedings in respect of complaint were at fag end as in the present case.
13. In view of the discussion made above, this Court does not find any infirmity in the impugned order dated 24.11.2022.

14. The petition is sans merit and is hereby dismissed.

24.5.2023
kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No