



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision:16.01.2024

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CRL.M.C. 317/2024 & CRL.M.A. 1205/2024

SMT. SANTOSH DEVI

..... Petitioner

Through: Mr. Avinash Kumar, Mr. Amarjeet,
Mr. Nitish Kumar & Mr. Tarun Bhati,
Advocates.

versus

THE STATE (NCT OF DELHI) & ORS.

..... Respondents

Through: Mr. Nilesh Kumar, Mr. Nimesh
Kumar & Mr. Sunil Kumar,
Advocates for respondent Nos. 2 and
3.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition filed under Section 482, Cr.P.C., the petitioner seeks clubbing of Complaint Case Nos. 9213/2019 and 9214/2019 both titled as 'Smt. Santosh Devi vs M/s Synergy Earth Movers' pending before the Court of learned MM, North West, Delhi.

2. Briefly, the facts as available from the complaint/material placed on record are that the petitioner has alleged that respondent No.2 is a proprietorship firm and that respondent No.3 is the director/proprietor of the said firm, looking after its day-to-day affairs. It is further alleged that respondent No.3 had approached the petitioner through an offer letter for providing machinery for a project on Yamuna Expressway, and the same



came to be accepted by the petitioner. As per the offer letter, payment would be made by respondent Nos.2 and 3, on the basis of the bills raised by the petitioner. In response to the bills raised by the petitioner, following 3 cheques were issued:-

- a. Cheque No.365721 dated 20.08.2009 amounting to Rs.1,40,000/-. SBI Bank, Branch- Dankaur;
- b. Cheque No.365727 dated 13.10.2009 amounting to Rs.1,00,000/-. SBI Bank, Branch- Dankaur; and
- c. Cheque No.365728 dated 20.09.2009 amounting to Rs.1,00,000/-. SBI Bank, Branch- Dankaur

3. When the said cheques were presented for encashment, they were dishonoured with the remark '*insufficient funds*' vide return memo dated 06.03.2010. Legal notice was issued on 18.03.2010 thereby asking respondent Nos.2 and 3 to make the payment of Rs.3,40,000/-. However respondent Nos.2 and 3 failed to make the said payment.

4. Upon such failure, the petitioner filed complaints under section 138, NI Act bearing No. 243/2010 and 244/2010 before the learned ACJM, Gautam Buddh Nagar, U.P. The court summoned respondent No.3 being the director of respondent No.2 company in the said complaint case. Subsequently, respondent Nos. 2 and 3 approached the Allahabad High Court under Section 482 Cr.P.C. for settling the matter through mediation. The matter was resultantly referred to mediation however, the same eventually failed.

5. Subsequently, applications for transfer of the said complaints from District Court, Gautam Buddh Nagar, U.P. to District Court, Rohini, Delhi



came to be filed under the N.I. (Amendment Ordinance) Act, 2015 and the same were allowed vide order dated 06.02.2019. The said transferred complaints were received in the court of the learned MM, Rohini and were registered as Complaint Case Nos. 9213/2019 and 9214/2019.

6. Learned counsel for the petitioner states that since the present complaints arise out of the same transaction and relate to three cheques which were issued in the discharge of certain liability arising from a common nexus as well as the fact that the parties are the same, it would be apt if the same are clubbed together and considered by the trial court. It is further submitted that the clubbing of the said cases is further necessitated owing to the fact that the petitioner inadvertently annexed cheque No.365721 in Complaint Case No.9213/2019 instead of cheques bearing Nos. 365727 and 365728 and similarly, in Complaint Case No.9214/2019, the petitioner has annexed the cheques bearing Nos. 365727 and 365728 instead of cheque No.365721, while filing the complaints in the year 2010.

7. Before advertng to the aspect of clubbing of the present matter, it is important to note here that vide judgement of even date passed in CRL.M.C. 6853/2023 and 6863/2023, this Court has quashed the abovementioned complaint cases (and consequently the summoning order issued in them) against respondent No.3 namely *Jitendra Bhati*.

8. However, with regard to respondent No.2 i.e., M/s Synergy Earth Movers, it can be observed that the subject cheques were issued on behalf of the said firm in order to satisfy the liability arising out of the bills raised by the petitioner. The said bills arise from the work undertaken in terms of the offer letter provided on behalf of the said respondent.

9. While the NI Act does not contain any express provision for the



clubbing of complaint cases arising from distinct cheques, it would be apposite to refer to Sections 219 and 220 of the Cr.P.C. which read as under:-

“219. Three offences of the 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:
xxx”***

“Section 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.

xxx”

10. Reference in this regard can be also made to the observations of the Supreme Court in Re: Expeditious Trial of Cases under Section 138, NI Act 1881¹, wherein it was observed:-

“xxx

SECTIONS 219 AND 220 OF THE CODE

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

¹ Order dated 16.04.2021



*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 Amici 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 Amici 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 Amici 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.*

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15. Offences that are committed as part of the same transaction can be tried jointly as per Section 220 of the Code. 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. There is no ambiguity in Section 220 in accordance with which several cheques issued as a part of the same transaction can be the subject matter of one trial.

xxx”

11. Considering the aforesaid, it is deemed apposite that the complaint cases are taken to their logical conclusion w.r.t respondent No.2. As far as the request of clubbing on behalf of the petitioner is considered, this Court is of the considered opinion that owing to the fact that the aforementioned complaint cases relate to three cheques, all issued within a span of two months in order to satisfy certain liability arising from a common offer letter/transaction, it would be appropriate if the same are clubbed and considered together. Apart from the fact that the petitioner has inadvertently annexed the incorrect cheques with the corresponding complaint cases, the clubbing is also necessitated by the fact that such clubbing would help in ensuring that judicial time is preserved as the court would not be required to hear and consider the same evidence and arguments twice as also ensuring that the parties to the case are able to effectively prepare and address the arguments.

12. In view of the above, the present petition is allowed. As mentioned above, complaint case Nos.9213/2019 and 9214/2019 already stands quashed against respondent No.3 vide order of even date in CRL.M.C. 6853/2023 and 6863/2023. However, with regard to respondent No.2, the complaint cases stand clubbed and be tried together.

13. Pending application is disposed of as infructuous.



2024:DHC:1106



14. Copy of this order be communicated to the concerned trial court for information and compliance.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 16, 2024
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