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

+ CRL.M.C. 7804/2023

MIS SAMRAT HEAVENS INFRA DEVELOPERS PVT. LTD &
ORS. Petitioners

Through: Mr. Pramod Kr. Dubey, Sr. Advocate
with Mr. Siddharth Narang, Ms.
Gitika Sharma, Mr. Ayush Sachan,
Mr. Vaibhav Kapur and Ms.
Chaitanya Singh, Advocates.

versus

SATINDER KUMAR GUPTA Respondent

Through: Mr. Deepank Yadav, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **20.05.2024**

CRL.M.A. 15339/2024 (early hearing by the respondent)

1. By way of present application, the respondent seeks early hearing of the petition.
2. With the consent of the parties, the petition is taken up for consideration today itself.

CRL.M.C.7804/2023

1. By way of present petition filed under Section 482 Cr.P.C., the petitioners seek setting aside of the order dated 11.01.2023 and 23.08.2023 passed by learned MM and learned ASJ respectively, whereby petitioners' request seeking clubbing of 10 different complaint cases arising out of Section 138 of the NI Act was rejected.



2. The facts necessary for adjudication of the present petition are that petitioners/accused approached the respondent seeking financial assistance, pursuant to which amounts of Rs. 1,25,00,000/- and Rs.75,00,000/- were advanced as loans upon an agreed interest rate. Subsequently, on 01.04.2017, the petitioners executed an irrevocable undertaking/acknowledgement w.r.t. such loans and also issued nine post-dated cheques (PDCs) towards the interest amount.

Further, in discharge of their loan liability, the petitioners issued two cheques for amount of Rs.1,25,00,000/- dated 11.12.2017 and Rs.75,00,000/- and 13.12.2017 respectively. Upon presentment, the aforesaid cheques were dishonoured, resulting in the respondent filing a complaint case against the petitioners. Similarly, eight out of the nine PDCs issued by the petitioners, when presented for encashment, were also returned dishonoured, resulting in filing of several distinct complaint cases against the petitioners.

3. A total of 10 cases came to be registered against the petitioners, and the same were spread across several distinct districts/sessions divisions and different courts of Judicial Magistrates. An application under Section 407 Cr.P.C. read with Article 227 of the Constitution came to be filed by the petitioners, thereby seeking transfer of all matters to a single division. Vide order dated 04.03.2022, this Court directed the transfer of all cases to North-West District having territorial jurisdiction.

3. Subsequently, an application under Section 220 read with Section 223 Cr.P.C. came to be filed by the petitioners seeking clubbing of all the distinct complaint cases for the purpose of single/joint trial. Vide the impugned order dated 11.01.2023, the learned MM refused the aforesaid prayer while



noting that the prayer had been made at a later stage i.e., after the framing of charges.

Aggrieved by the same, the petitioners filed a Crl.Revision before the learned ASJ. After perusing the entire material on record, learned ASJ vide order dated 23.8.2023 observed that not only was the application filed at a belated stage, but also considering that the aspect of clubbing or not clubbing of trial is procedural in nature, the order passed by learned MM was essentially procedural in nature, against which no revision was maintainable. The revision was consequently dismissed. Hence, the present petition.

4. Learned counsel for the petitioners contends that the impugned orders have been passed without due consideration of the facts as well as the legal position. It is contended that since the 10 complaint cases relate to the cheques issued w.r.t the same transaction and further considering that the evidences and witnesses in each of these cases would be the same, it would save precious judicial time if their trial is clubbed together. If such clubbing does not take place, not only would it lead to multiplicity of proceedings but would also cause great prejudice to the petitioners.

5. Learned counsel for the respondent, on the other hand, has contested the present petitioner and has contended that the impugned orders have been passed in line with the established judicial principles. It is contended that the cheques, forming the basis for the several complaint cases, were issued on different dates and were towards discharge of distinct liabilities towards interest and principal. Further, these cheques were presented for encashment and returned dishonoured on separate dates and even the statutory notice w.r.t their dishonour were also issued on different dates.



6. It is trite that the cause of action for filing of a complaint case under Section 138 NI Act arises once the drawer fails to make the payment under the cheque within 15 days of the issuance of demand notice upon the dishonour of the subject cheque.

As apparent from the record, the 10 cheques (all having different dates) were presented for encashment and dishonoured on distinct dates, and the demand notice(s) were also issued on different dates. Consequently, the cause of action for each of the complaint case arose on distinct dates.

7. Notice under Section 251 Cr.P.C. in the aforesaid complaint cases came to be framed and served upon the petitioners in the year 2019. However, it was only in the year 2022 that the petitioners filed transfer petitions before this Court seeking transfer of all the complaint cases to a single division, which request was acceded to vide order dated 04.03.2022. It was only after the aforesaid order, the petitioners filed the application seeking clubbing of the cases on 26.05.2022. It is pertinent to note that at the time of filing of the transfer petitions as well as the application seeking clubbing, the trial in each of the case had significantly progressed in as much as these cases were at the stage of cross-examination of the complainant. Thus, there has been an inordinate delay on the part of the petitioners in seeking the clubbing and no reasonable explanation has been provided as to why efforts were not made to seek clubbing of these cases at the time of framing of notice or prior thereto.

8. Another significant aspect to be noted in this regard is w.r.t the interpretation of Section 219/220 Cr.P.C. in complaint cases filed under Section 138 NI Act. Section 219 and 220 of the Cr.P.C. read 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...*

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...*”

9. The aforesaid provisions provide for clubbing of trial of offences, which in terms of the general legal principle would have to be tried separately. While Section 219 Cr.P.C. has a restriction that a maximum of 3 offences of the same kind can be clubbed together, Section 220 does not expressly provide any such bar but simply states that offences must form part of the same transaction. In either of these situations, the aforesaid provisions provide for the person to be charged with and tried at a single trial.

The Supreme Court in Re: Expeditious Trial of Cases under Section 138 of N.I. Act 1881 reported as **2021 SCC OnLine SC 325**, w.r.t application of Section 219/220 Cr.P.C., observed as under:-

“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 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.

14. The learned Amici Curiae pointed out that the judgment of this Court in Vani Agro Enterprises v. State of Gujarat & Ors. needs clarification. In Vani Agro (supra), this Court was dealing with the dishonour of four cheques which was the subject matter of four complaints. The question raised therein related to the consolidation of all the four cases. As only three cases can be tried together as per Section 219 of the Code, this Court directed the Trial Court to fix all the four cases on one date. The course adopted by this Court in Vani Agro (supra) is appropriate in view of the mandate of Section 219 of the Code. Hence, there is no need for any clarification, especially in view of the submission made by the learned Amici that Section 219 be amended suitably. We find force in the submission of the learned Amici Curiae that one trial for more than three offences of the same kind within the space of 12 months in respect of complaints under Section 138 can only be by an amendment. To reduce the burden on the docket of the criminal courts, we recommend that a provision be made in the Act to the effect that a person can be tried in one trial for offences of the same kind under Section 138 in the space of 12 months, notwithstanding the restriction in Section 219 of the Code.”

11. The aforesaid extract clearly provides that in order to allow trial of more than 3 offences of the same kind to be conducted in a single trial, in



terms of Section 219 Cr.P.C., an appropriate amendment would be required to be undertaken. However, the law as it stands today, allows for a maximum of 3 offences of the same kind to be tried together in a trial. Insofar as Section 220 Cr.P.C. which allows for offences forming part of the same transaction to be tried together is concerned, the same is aimed at ensuring that the accused is not prejudiced by raising the same contentions over and over in distinct cases as well as to save precious judicial time. What would denote 'same transaction' is a matter of fact which would need to be adjudicated at the time of consideration of application for clubbing. While there is a unity of purpose in the issuance of the subject cheques, however, that in and of itself cannot be the cause of clubbing of these cases. The fact that each cheque was presented and dishonoured on different dates and that distinct notices were issued coupled with the fact that there has been a considerable and inexplainable delay in the application seeking clubbing are all considerations which weigh heavy on the mind of this Court.

12. In view of the above discussion and keeping in view the mandate of Section 219 Cr.P.C. which restricts clubbing and trial of more than 3 cases of the same kind or transaction as well as the dicta of Supreme Court in Re: Expeditious Trial (Supra), this Court finds no ground to interfere with the impugned orders. Consequently, the petition is dismissed.

13. Order be uploaded on the website of this Court.

MANOJ KUMAR OHRI, J

MAY 20, 2024

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