"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 7TH DAY OF MARCH 2023 / 16TH PHALGUNA, 1944

CRL.MC NO. 456 OF 2023

ST 1864/2020 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, CHAVARA

PETITIONER/S:

1 M/S DE-FAB
PANAMPALLY NAGAR, KOCHI REPRESENTED BY MANAGING DIRECTOR, MRS PRIYA VARMA, NANDANAM, KANNANKULANGARA, OEN ROAD, THRIPPUNITHURA, ERNAKULAM, PIN - 682301

2 PRIYA VARMA,
AGED 34 YEARS
NANDANAM, KANNANKULANGARA, OEN ROAD, THRIPPUNITHURA, ERNAKULAM, PIN - 682301

BY ADVS.
S.RAJEEV S
V.VINAY(K/355/2009)
M.S.ANEER(K/644/2013)
PRERITH PHILIP JOSEPH(K/000736/2015)
SARATH K.P.(K/001467/2021)

RESPONDENT/S:

S BALACHANDRAN
AGED 63 YEARS
ANILA BHAVAN, CHAVARA BRIDGE P.O., KOLLAM, REPRESENTED BY HIS WIFE AND POWER OF ATTORNEY HOLDER, PRAMEEELA BALACHANDRAN, AGED 50 YEARS, RESIDING AT ANILA BHAVAN, CHAVARA BRIDGE P.O., KOLLAM, PIN - 691583

BY ADVS.
P.MOHANDAS(ERNAKULAM) P.
K.SUDHINKUMAR(K/572/2014)
SABU PULLAN(K/35/2001)
GOKUL D. SUDHAKARAN(K/000886/2016)
R.BHASKARA KRISHNAN(K/000891/2016)
K.P.SATHEESAN (SR.)(S-242)

OTHER PRESENT:

SR.PP.RENJITH GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FILED ON 06.03.2023, THE COURT ON 07.03.2023 PASSED THE FOLLOWING:

"CR"

ORDER

Dated this the 07th day of March, 2023

The first petitioner, partnership firm and the second petitioner, its Managing Partner, are the accused in S.T.No.1864 of 2020 filed by the respondent alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act. The short facts leading to the filing of the complaint are as under;

The second petitioner and the respondent were partners of the first petitioner firm. The disputes between the partners resulted in the respondent filing a complaint under Section 420 of IPC against the second petitioner and her husband. This prompted the second petitioner and her husband to approach this Court seeking anticipatory bail. Thereupon, this Court directed

the parties to resolve their disputes through mediation. Accordingly, the matter was mediated and settled. As per the terms of settlement, the second petitioner agreed to pay an amount of Rs.2 Crores in full and final settlement of the monetary claims of the respondent. The amount of Rs.2 Crores was to be paid in 32 instalments. In discharge of that liability, the second petitioner issued 32 cheques dated the 15th of every month, commencing from 15.04.2018 onwards. In addition, the second petitioner's husband executed a personal cheque in favour of the respondent, without mentioning the amount, so as to enable the respondent to realise the amount that may become due by reason of dishonour of any of the 32 cheques issued by the second petitioner.

2. Of the 32 cheques issued by the second petitioner, the first six cheques for Rs.5 lakhs each were honoured. With respect to the 7th

cheque, only Rs.1,00,000/- was paid by the petitioner. The balance cheques got dishonoured, the initial three, for reason of insufficiency of funds and the other cheques, due to the stop payment direction issued by the drawer. Since only Rs.31 lakhs out of the Rs.2 Crores was paid, the cheque issued by the second petitioner's husband was presented by entering the balance amount of Rs.1,69,00,000/-. As that cheque was also dishonoured, the respondent filed complaints under Section 138 of the N.I.Act, after issuing separate statutory notices for each dishonoured cheques. S.T.No.1864 of 2020 is one among the cases arising from the complaints filed by the respondent.

3. In S.T.No.1864 of 2020, the accused filed a petition under Section 219 of Cr.P.C, seeking joint trial of seven other cases instituted by the respondent. The prayer for joint trial was stoutly opposed by the

respondent, contending that there is no provision for joint trial of 8 cases. Further, the dates on the cheques, their dates of presentation, dishonour and issuance of notices being different, there cannot be any joint trial. The learned Magistrate, after detailed analysis of Section 218(1), 219 and 220 Cr.P.C, as also the precedents, dismissed the prayer for joint trial. Aggrieved, this Crl.M.C is filed.

4. Learned Counsel for the petitioners assertively contended that the refusal to conduct joint trial is contrary to the statutory provisions as also the decisions in ***V.K.Muhammed v. State of Kerala and another [2004 (3) KLT 330] and Shibi @ Jibi Shony v. Chalakkudy Town Financiers, Thrissur and another [2017 KHC 682]***. In elaboration of the contention, attention was drawn to Section 218 Cr.P.C, which mandates separate charge for every distinct offence of

which person is accused and separate trial for every such charge. Reference is made to the proviso to Section 218(1), which provides opportunity for the accused to apply for joint trial of any number of charges framed against him and confers the Magistrate with the discretion to permit joint trial if the accused will not be prejudiced by such procedure. Reliance is placed on Section 220(1) to argue that, if more offences than one are committed by same person, in one series of acts which are so connected together as to form the same transaction, he can be charged with and tried at one trial for every such offence. It is submitted that the cheques, which are the subject matter of different complaints are issued as part of the same transaction, viz; the settlement arrived by the parties and therefore, the offences under Section 138 originating from such transaction can be tried together. The contention is sought to be

buttressed with paragraph 9 of ***V.K.Mohammed*** (supra) and paragraph 17 of ***Shibi @ Jibi Shony*** *(supra)*, extracted below;

V.K.Muhammed

> *"9. In the facts and circumstances of the case I am of the opinion that the offences in respect of six cheques must certainly be held to be part of the same transaction considering the purpose, the sequence, events, nature of the allegation, proximity of commission, unity of action etc. Therefore, it appears to be easy to conclude that the offences under S.138 in respect of those cheques can easily be held to be offences committed in the course of same transaction. If that be so, S.220(1) squarely applies."*

Shibi @ Jibi Shony

> *"17..... The instant cheques are said to be in respect of 3 different loan accounts and have been presented on separate days and have been dishonoured also on different days. But the crucial fact of the matter is that it is clearly averred in the complaint that after defaults on the part of the petitioner in clearing the loan instalments the complainant had issued a single and composite*

> *notice as per Anx.A1 dated 22.1.2015 calling upon the complainant to clear the entire liabilities in all the 3 loans coming to Rs.55,200/-, Rs.1,65,600/- and Rs.7,72,800.....Since the complainant has issued Anx. A-1 notice, the separateness of the 3 loan accounts have lost their relevance and therefore the 4 cheques can be said to have been issued by the petitioner accused for clearing the liabilities of the same transaction flowing from Anx.A1 notice."*

It is submitted that interest of justice demands joint trial of the cases and no prejudice will be caused to the respondent by such procedure being adopted. On the other hand, the court's valuable time can be saved.

5. Learned Senior Counsel appearing for the respondent stoutly opposed the prayer for joint trial by contending that, each cheque bears a different date and were presented and dishonoured on different dates, the statutory notices were issued on different dates. The cause of action is hence different for each case and there cannot

be a joint trial of such cases. It is contended that the decisions relied on were rendered on entirely different of set of facts and has no application to the case under consideration. Reference is made to the decisions in ***Chhutanni v. State of U.P. [AIR 1956 SC 407], Mohinder Singh v. State of Punjab [1998 (7) SCC 390] and Balbir v. State of Haryana [(2000 (1) SCC 285]*** to contend that Section 220 is only an enabling provision permitting the court to try more than one offence in one trial and it is for the court to decide whether or not to go for joint trial. No illegality is committed by the court by deciding to try the offences separately. Hence, there cannot be any interference in exercise of the inherent power under Section 482 Cr.P.C. Reliance is placed on the decision in ***Rajendra B. Choudhari v. State of Maharashtra and another [2007 KHC 6155]*** to point out that, under

identical circumstances, the High Court of Bombay had rejected the prayer for joint trial.

6. Admittedly, the 8 cheques bear different dates and were presented and dishonoured on different dates. The statutory notices were also issued on different dates. Consequently, the cause of action for filing the complaint, viz; failure of the drawer to make payment within the stipulated time, after receipt of statutory notice issued under proviso (b) of Section 138 of the Act, are also different. The complaints were therefore filed based on different cause of actions, pertaining to offences in relation to each individual cheque. The question whether joint trial could be ordered under such circumstances, was considered by the High Court of Bombay in ***Rajendra B. Choudhari***, *(supra)*, the relevant portion of which is extracted hereunder;

> *"3. First contention of learned Counsel for the petitioner is that the Trial Judge*

committed an error in not combining all the causes of action for holding a single trial. It is not possible for us to accept this contention for a simple reason that a cause of action for the prosecution in respect of dishonour of a cheque arises only if the drawer commits default in making payment within stipulated period, after receipt of the notice required to be given in conformity with proviso (b) of Section 138 of the Act, in respect of each tender and the non-payment of the drawee bank on the ground that the balance amount in the account of the drawer is insufficient to Honour his commitment or it exceeds the amount arranged to be paid from that account by an agreement with the drawee bank. Each tender of a cheque and its dishonour gives rise to separate cause of action subject to a condition that separate notices are issued in respect of each of these cheques. The payee is not prevented from combining the causes of action by covering all the instances in a single notice. In such a case all the transactions covered by the notice would be regarded as a single transaction, permitting a single trial. However, in a case where cheques were issued on

different dates, presented on different dates and separate notices are issued in respect of each default, the transactions cannot be held to be a single transaction attracting provision of Section 219 of the Code. In support of his contention, learned Counsel has placed reliance on the judgment of this Court reported in 2001 All MR (Cri) 630 in the matter of Rajasthan Trading Company v. Chemos International Ltd. In that case, in all 27 cheques were issued on different dates but only one notice was issued by the payee. In this view of the matter it was held that single trial in respect of the 27 cheques is permissible. However, it has been categorically observed by the Court that dishonour of each cheque constitutes separate offence which should ordinarily be tried by different trials. Apart from this, it is pertinent to bear in mind that Section 219 is an enabling provision and does not mandate a single trial. In appropriate case the Court is at liberty to try the offences of the same kind in different trial. While dealing with a similar situation in the matter of Ranchhod Lal v. State of M.P. , their Lordships of the Apex Court observed in

paras 15 and 16 of the report thus:

15. Learned Counsel for the appellant also relied on Section 234, Cr. P.C. and urged that three offences of criminal breach of trust could have been tried at one trial as Section 234 provides that 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. This again, is an enabling provision and is an exception, to Section 233, Cr. P.C. If each of the several offences is tried separately, there is nothing illegal about it.

16. Lastly, reference was made, on behalf of the appellant to Section 235, Cr. P.C., and it was urged that all these offences were committed in the course of the same transaction, and, therefore, they should have been tried at one trial. Assuming, without deciding, that these offences could be said to have been committed in the course of the same transaction, the separate trial of the appellant for certain specific offences is

not illegal. This section too is an enabling section.

In this view of the matter, we cannot sustain contention of learned Counsel for the petitioner that by holding separate trials the trial Court has committed an illegality."

7. Pertinently, one of the cases (ST No.115 of 2021) is with respect to the cheque for Rs.1,69,00,000/- issued by the second petitioner's husband, which, under no circumstance, can be termed as part of the same transaction. Yet another aspect is that the petition for joint trial was filed in S.T.No.1864 of 2020, after filing of affidavit in lieu of chief examination and the case was posted for cross-examination, while the other cases have not been listed for trial.

8. As far as the decisions relied on by the petitioners are concerned, a single registered notice was issued and filed an omnibus complaint under Section 138 in respect of six cheques. It

was under such circumstances that this Court held the offences in respect of the six cheques to be part of the same transaction, in view of the sequence, the events, nature of allegation, proximity of commission, unity of action etc. In ***Shibi @ Jibi Shony*** *(supra)*, even though the cheques were issued towards discharge of liability under three loans, a single notice was issued calling upon the accused to clear the entire dues under the three loans. This had prompted this Court to direct joint trial, as evident from the relevant portion of the discussion at paragraph 17 here under;

> *"17. The facts of the present case are not similar to those in the decision of this Court in V.K.Muhammed's case reported in n 2004 (3) KLT 330. The instant cheques are said to be in respect of 3 different loan accounts and have been presented on separate days and have been dishonoured also on different days. But the crucial fact of the matter is that it is clearly averred in the complaint that after defaults on the part of the petitioner in*

clearing the loan instalments the complainant had issued a single and composite notice as per Anx.A1 dated 22.1.2015 calling upon the complainant to clear the entire liabilities in all the 3 loans coming to Rs.55,200/-, Rs.1,65,600/- and Rs.7,72,800. Even as per the complaints, it is in pursuance of that composite Anx.A1 notice that the petitioner had issued the four cheques comprising of cheque dated 18.2.2015 for Rs.1,80,000/-, cheque dated 2.3.2015 for Rs.1,60,000/-, cheque dated 28.3.2015 for Rs.3 lakhs and cheque dated 15.3.2015 for Rs.2 lakhs. The petitioner's husband is said to have issued a separate cheque, apart from the abovesaid four cheques of the petitioner. Thus even going by the versions in the impugned complaints, none of the cheques issued by the petitioner are for clearing solely any of the 3 loan accounts, but have been issued to clear part of the total liabilities covered in the single and composite Anx.A1 notice. Since the complainant has issued Anx. A-1 notice, the separateness of the 3 loan accounts have lost their relevance and therefore the 4 cheques can be said to have been issued by the petitioner accused for clearing the liabilities of the same transaction flowing from Anx.A1 notice. In view of this aspect, this Court is of the considered

view that the issuance and execution of the 4 cheques, can be broadly said to be part of the same transaction as envisaged in S. 220 (1) of the Cr.P.C., even though the presentations and dishonour were on different days. This interpretation is well justified especially in complaints for offence under S.138 of the N.I. Act. If the necessary ingredients of the abovesaid provisions in the Cr.P.C. are satisfied in a given case, and the trial court is also convinced that it will not cause any serious prejudice to the accused or any inconvenience to the parties and the court, through such joint trial, then consideration of such plea, especially in complaints under N.I. Act, may also expedite the trial process, as otherwise separate trials in such cases might only cause unnecessary delay, which may only take away the time and resources of the parties and the court. That apart, the proviso to S. 218(1) of the Cr.P.C. does not in any manner insist that the cases should emanate from the same transaction. Since the accused is insisting for joint trial, the proviso to S. 218(1) will be invokable in the facts of this case."

It is also doubtful whether Section 220 of the Code would apply to complaints under Section 138

of the N.I Act since the procedure to prescribe is that of summons trials. Even if Section 220 does apply, it is only an enabling provision. In this context, it may be profitable to refer the Apex Court decisions in ***Chhutanni***, ***Mohinder Singh*** ***and*** ***Balbir*** *(supra)* and ***Essar Teleholdings Ltd*** ***v.*** ***Central Bureau of Investigation*** ***[(2015) 10 SCC 562].*** The legal position emanating from the above precedents is that it is not obligatory for the court to hold joint trial, Section 220 being an enabling provision. It is therefore within the discretion of the court concerned to decide whether or not to order joint trial. In the case at hand, such discretion was exercised by the learned Magistrate as reflected from the last sentence of the order which reads as follows;

> *"... Moreover clubbing of all these cases together and taking of composite evidence would lead to confusion as all the cheques bear different dates and they have been dishonoured on different dates*

for different reasons and in such circumstances in order to avoid confusion and for better appreciation of evidence this Court is of the view that joint trial of the said case is not feasible."

Being so, there is no reason to interfere with the impugned order.

In the result, the Crl.M.C is dismissed.

Sd/-

V.G.ARUN
JUDGE

Scl/

APPENDIX OF CRL.MC 456/2023

PETITIONER ANNEXURES	
Annexure1	ORDER DATED 03/01/2023 IN CMP NO 878/2022 IN S T 1864/2020 BY THE JUDICIAL 1ST CLASS MAGISTRATE, CHAVARA
Annexure2	CMP FILED BY THE ACCUSED (PETITIONER HEREIN) U/S 219 OF THE CRPC IN ST 1864 OF 2020
RESPONDENT ANNEXURES	
Annexure-R1	True copy of the Order passed by the Hon'ble Supreme Court in Special Leave to Appeal (Criminal)No. 4272/2020 dated 19-04-2022
PETITIONER ANNEXURES	
Annexure3	OBJECTION FILED BY COMPLAINANT IN S.T NO 1864/2020 BEFORE JUDICIAL FIRST CLASS MAGISTRATE CHAVARA
RESPONDENT ANNEXURES	
Annexure-R2	True copy of the memorandum of settlement issued between the 2nd petitioner and this respondent before this Hon'ble Court in Bail Appl. No. 7489/2017 dated 2-2-2018