

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.5909 OF 2023

BETWEEN:

A ADINARAYANA REDDY

... PETITIONER

(BY SRI. SAMPAT ANAND SHETTY, ADVOCATE)

AND:

1 . S. VIJAYALAKSHMI

2 . M. THIPPANNA @ THIPPAIAH

ONDENTS

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THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO 1.SET ASIDE THE ORDER DATED 20.04.2023 PASSED BY THE LEARNED XII A.C.M.M, BENGALURU IN PCR NO.12765/2020 OFFENCE P/U/S 138 OF N.I ACT WHEREBY THE LEARNED MAGISTRATE WAS PLEASED TO DISMISS THE COMPLAINT SUMMARILY.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 30.01.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDERS

This petition is filed by the complainant under Section 482 of Cr.P.C., for quashing the order passed by XII Additional Chief Metropolitan Magistrate, Bangalore, dated 20.04.2023 in PCR No.12765/2020, for having rejected the complaint filed under Section 138 of NI Act, as not maintainable.

2. Heard the arguments of learned counsel for the petitioner. The respondents were not at all summoned by the trial court, hence issuing notice to respondents, is dispensed with.

3. The case of the petitioner is that the respondent Nos.1 and 2, issued cheques for discharge of the liability and those cheques were dishonoured. Hence, after issuing legal notice, required under Section 138 of the NI Act, the complaint came to be filed against both respondents for having committed the offence punishable under Section 138 of NI Act. It is further contended that the petitioner being the complainant filed a single complaint for dishonour of 5 cheques as under,

1. Cheque no. 060591 drawn on AXIS Bank Limited for Rs.10,00,000/- (rupees ten lakhs) by no.1 amongst you and returned unpaid by your Banker on 24/06/2020 with an endorsement "Funds insufficient".

2. Cheque no.447617 drawn on Canara Bank for Rs.10,00,000/-(rupees ten lakhs) by No.2 amongst you and returned by your Banker on 03/07/2020 with an endorsement "Dormant".

3. Cheque No.048993 drawn on Axis Bank Limited for Rs.15,00,000 (rupees fifteen lakhs) by no.2 amongst you and returned unpaid by your Banker on 08/07/2020 with an endorsement "Account closed".

4. Cheque No.447618 drawn on Canara Bank for Rs.10,00,000/-(rupees ten lakhs) by No.2 amongst you and returned unpaid by your Banker on 08/07/2020 with an endorsement "Account Dormant".

5. Cheque No.048992 drawn on Axis Bank Limited for Rs.10,00,000 (rupees ten lakhs) by No.2 amongst you and returned unpaid by your Banker on 08/07/2020 with an endorsement "Account closed".

4. The complainant filed a single complaint against both the accused for the dishonour of 5 cheques. The complainant himself was examined as P.W.1 and got marked 17 documents. After hearing the arguments, the Trial Court dismissed the complaint as not maintainable for dishonour of 5 cheques, the single complaint is not maintainable, which is under challenge.

5. Learned counsel for the petitioner has contended that as per section 219 of Cr.P.C., three criminal cases can be tried as one trial and for the same cause of action. The accused persons were given 5 cheques, who are the husband and wife. Therefore, filing single complaint is

maintainable, instead of filing 5 complaints. In support of his contention, he has relied upon the judgment of the Hon'ble Supreme Court reported in **2010 Criminal Law Journal 2860** and Delhi High Court in the case of **Unique Infoways Pvt., Ltd., Vs M/s. MPS Telecom Pvt., Ltd.**, and other cases.

6. Having heard the arguments, perused records, the only point that arises for the consideration is that,

"Whether single complaint is maintainable for multiple cheques issued by the respondent/accused on the same cause of action."

7. The Hon'ble Supreme Court in the **Damodar S Prabhu Vs Syed Babalal** has held "(B) Dishonour of cheque - Cheques issued in one transaction - Filing of multiple complaints - causes tremendous harassment and prejudice to drawer of the cheque". It has held the complainant should file an affidavit stating that he has not filed any other complaint for the same cause of action. At paragraph No.16 of the Hon'ble Supreme Court in case of in

the ***Damodar S Prabhu Vs Syed Babalal*** has held as under;

16. We are also in agreement with the Learned Attorney General's suggestions for controlling the filing of multiple complaints that are relatable to the same transaction. It was submitted that complaints are being increasingly filed in multiple jurisdictions in a vexatious manner which causes tremendous harassment and prejudice to the drawers of the cheque. For instance, in the same transaction pertaining to a loan taken on an installment basis to be repaid in equated monthly installments, several cheques are taken which are dated for each monthly installment and upon the dishonour of each of such cheques, different complaints are being filed in different courts which may also have jurisdiction in relation to the complaint. In light of this submission, we direct that it should be mandatory for the complainant to disclose that no other complaint has been filed in any other court in respect of the same transaction. Such a disclosure should be made on a sworn affidavit which should accompany the complaint filed under Section 200 of the Cr.P.C. If it is found that such multiple complaints have been filed, orders for transfer of the complaint to the first court

should be given, generally speaking. by the High Court after imposing heavy costs on the complainant for resorting to such a practice. These directions should be given effect prospectively."

8. In another case by **High Court of Andhra Pradesh**, in case of "**Rajini Chandra Vs State of Andhra Pradesh**" has taken the similar view, that both the accused have committed same offence in the course of same transaction, as the transaction is arising out of land dealing for which advance was paid and after the settlement, the cheques were issued by both the accused towards discharging the liability which is of legally enforceable debt. Therefore, a joint trial can be conducted.

9. In another case, the coordinate bench of this court reported in **ILR 2000 KAR 5000** in the case of **Tiruchandoor Muruhan Spinning Mills (P) Ltd and Others Vs M/s Madanlal Ramkumar Cotton and General Merchants** has held at paragraph 6 as under;

"6. In so far as the important question raised for consideration in this petition that the provisions of Section 219 Cr.P.C. is attracted to the facts of the case is concerned, it is contended that cause of action for the complainant arose only after service of notice to the accused. It is pointed out that the complainant has issued a single notice calling upon the accused by way of demand to pay the cheque amount within 15 days from the date of service of notice and the accused failed to pay the cheque amount within the time stipulated under Section 138(b) of the Act and therefore the complainant filed a complaint within one month from the date of service of notice which is well within time. There is no bar for lodging a complaint for initiation of action under Section 138 of the Negotiable Instruments Act as the accused committed the offence punishable under Section 138 of the Negotiable Instruments Act. Infact it is not to his disadvantage but it is an advantage that a single complaint is lodged against the accused by the complainant. The cause of action giving raise to a complaint is upon the service of notice contemplated under Section 138(b) of the Negotiable Instruments Act and not upon the dishonour of the cheques and therefore the contention canvassed by the learned Counsel for the respondent that

the provisions of Section 219 Cr.P.C. are not applicable to the proceeding under Section 138 of the Negotiable Instruments Act has to be accepted."

10. The High court of Punjab and Haryana at Chandigarh, in case of "**Sh.Charashni Kumar Talwani Vs. M/s. Malhotra Poultries, Naraingarh Road, Barwala,** by relying upon the judgment of the Hon'ble Supreme Court in the case of **Siva Kumar Vs Natarajan (2009) 13 SCC 623** has held as under;

"Thus, from this, it flows that it was only after a lapse of 15 days of the receipt of the notice under Section 138 (c) of the Act by the accused and on non-payment, the offence under Section 138 of the Act is deemed to have been committed. Since, in the present case, there is a single consolidated notice for all the ten cheques so dishonoured, so after the period of 15 days of the receipt of this consolidated notice upon non payment of the amount of these cheques, the offence under Section 138 of the Act is deemed to have taken place. Thus, it invariably gives

rise to a single offence only as it is a single criminal act of omission and conduct of the accused."

11. Further it has held that a consolidated single notice has been issued for dishonour of multiple cheques which amounts to commission of single offence under the 138 of NI Act. Therefore, single complaint is maintainable for all the dishonoured cheques.

12. Delhi High court in ***Unique Infoways Pvt., Ltd., Vs M/s. MPS Telecom Pvt., Ltd.***, held at paragraph 21 of the judgment as under,

*"21. As regards the contention raised on behalf of the petitioner herein that in relation to the six cheques adverted to herein above, there was only one criminal complaint that had been filed i.e. CC No. 1529/2015 out of which the impugned order arises, in relation thereto it is essential to observe in as much as it was laid down by this Court in **Sharma Contracts India Pvt. Ltd. V. State & Anr. (2012) SCC Online Delhi***

310 vide para 11 to the effect

"11. The purport of the above provision is that where a person is accused of more than one offence of the same kind committed within the space of twelve months he can be charged and tried at one trial for, any number of them not exceeding three. The stage for determining whether there should be more than one charge and therefore more than one trial has not yet been reached. That will be decided at the appropriate stage by the learned trial court as and when charges are framed. This issue should therefore be appropriately addressed to that Court. The mere reference in the complaint to 20 cheques as having been dishonoured cannot render the complaint bad in law or not maintainable. The order of the learned MM issuing summons also does not get invalidated on that score. The second submission of learned Senior counsel for the Petitioner is also rejected." and that of Bombay High Court in *Rajasthan Trading Co. v. Chemos International Limited II* (2001) BC 426 observing:

"It is true that in the instant case petitioner has

issued 27 cheques, 2 of which were dated 30.11.1996 while the remaining were dated 26.2.1997. Thus all the 27 cheques came to be issued to respondent No. 1, within a span of less than 3 months. It is also true that dishonour in respect of each cheque would constitute separate offence. However, it is to be borne in mind that all the 27 cheques were presented to the Bank on one and the same date and they were dishonoured by the Bank. The intimation of dishonour of the cheques was given by the Bank to respondent No. 1 on one and the same date i.e. 10.3.1997. It may further be noted that a single notice dated 19.3.1997 in respect of the dishonour of all the 27 cheques was given to the petitioners. The offence under Section 138 is deemed to have committed when the drawer of the cheques fails to make payment of the amount of money within 15 days of the receipt of the demand notice given under Section 138(b) of the Negotiable Instruments Act. It is also material to note that all the 27 cheques issued by the petitioner were in connection with a single transaction entered with respondent No. 1. Therefore, the provisions of Section 220(1) of Cr. P. Code

permits the respondent No. 1 to file one complaint against the petitioners in respect of the said transaction and the petitioners can be tried together for the dishonour of 27 cheques which in fact forms the same transactions."

13. I am in respectful agreement with the judgment of the Punjab and Delhi High Court and principles enunciated by the Hon'ble Supreme Court in the **Damodar S Prabhu**'s case stated supra, when all the cheques were issued by the husband and wife for the same cause of action and cheques were dishonoured, a common notice was issued against the accused. Such being the case, instead of filing the multiple complaints, single complaint for dishonour of multiple cheques are maintainable. Therefore, the impugned order of dismissing of the complaint by trial court is liable to be set aside. Accordingly, answered the point raised above in favour of the complainant. In view of the above findings, I proceeding to pass the following order.

This Criminal petition is ***allowed.***

The impugned order dated 20.04.2023 dismissing the complainant passed by XII Additional Chief Metropolitan Magistrate, Bangalore, in PCR No.12765/2020, is set aside.

The complaint is restored to the file of the Magistrate and it is directed to take cognizance and proceed in accordance with law.

**Sd/-
JUDGE**

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