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

Judgment reserved on: 05.07.2019

% Judgment delivered on: 08.07.2019

\+ **CRL. REF 1/2014**

STATE ..... Petitioner

Through: Mr. N. Hariharan, Sr. Advocate (*Amicus Curiae*) with Mr. Aditya Vaibhav Singh, Mr. Prateek Bhalla, Ms. Mallika Chaddha and Mr. Siddharth S. Yadav, Advocates
Mr. Sanjay Jain, Sr. Adv with Mr. Kewal Singh, APP for State, Ms. Ruchi Jain, Sneh Suman and Shreya Sinha Adv. with SI Gulshan Yadav, ACP Virender Singh, EOW, Delhi Police

versus

KHIMJI BHAI JADEJA ..... Respondent

Through: Mr. Kulish Tanwar, Advocate
Mr. Satish K Sansi, Adv for Complainant

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE I.S. MEHTA

J U D G M E N T

VIPIN SANGHI, J.

1. The present is a reference received from the Learned Additional District & Sessions Judge- II, North- West District, Rohini Courts, Delhi,

Dr. Kamini Lau under Section 395 (2) of the Code of Criminal Procedure, 1973 (Cr.P.C. for short). The questions of law framed by the Ld. ASJ for determination of this Court, read as follows:

> *"**a.** Whether in a case of inducement, allurement and cheating of large number of investors/ depositors in pursuance to a criminal conspiracy, each deposit by an investor constitutes a separate and individual transaction or all such transactions can be amalgamated and clubbed into a single FIR by showing one investor as complainant and others as witnesses?*
>
> ***b.** If in case the Hon'ble Court concludes that each deposit has to be treated as separate transaction, then how many such transactions can be amalgamated into one charge- sheet?*
>
> *(**Note**: - As per the provisions of section 219 Cr.PC. and as observed by the Hon'ble Apex Court in the case of **Narinderjit Singh Sahni & Anr. Vs. Union of India &Ors.** Only three transactions in a particular year can be clubbed in a single charge- sheet).*
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> ***c.** Whether under the given circumstances the concept of maximum punishment of seven years for a single offence can be pressed into service by the accused by clubbing and amalgamating all the transactions into one FIR with maximum punishment of seven years?*
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> *(**Note: -** If this is done, this would be in violation of concept of Proportionality of Punishment as provided in the Code of Criminal Procedure. In the case of **Narinderjit Singh Sahni vs. Union of India &Ors.** it has been observed by the Hon'ble Supreme Court that this cannot be done but in case if we go by the ratio laid down by the Delhi High Court in the case of **State vs. Ramesh Chand Kapoor** this is possible. Hence this aspect requires an authoritative pronouncement by a larger Bench)".*

2. The aforesaid questions have been framed by the referring Court in the background that the accused/ respondent-Khimji Bhai Jadeja (hereinafter

referred to as "accused") was allegedly one of the promoters of an investment scheme floated in and around Delhi. It is alleged that around 1,852 different victims were allured; induced and; cheated to invest different amounts of money, at different points of time, and at different places under the scheme, on the pretext that their money would be tripled within three days. The accused allegedly constituted a group, namely, "Bajrang Group" for collection of investments from the victims in the above scheme, and collected about Rs. 46.40 crores from these investors/ depositors. Since the accused was allegedly a beneficiary of the cheated amount, an FIR bearing No. 89/2009 under sections 420/406/120-B IPC was registered against him on the complaint of one Rajesh, with the Police Station- Economic Offences Wing (EOW), Crime Branch, Delhi. Insofar as the other 1,851 victims are concerned, they were made witnesses in this case, and all their complaints have been amalgamated into a single FIR bearing No. 89/2009.

3. During the hearing of regular bail application of the accused, the ld. ASJ was, *prima facie*, of the view that the aforesaid acts constituted separate and distinct offences, thereby necessitating the registration of separate FIR's. In her order dated 22.02.2014, she relied upon the decision in ***Narinderjit Singh Sahni & Anr. Vs. Union of India & Ors.,*** (2002) 2 SCC 210 : AIR 2001 SC 3810 rendered by a 3-Judge Bench of the Supreme Court, wherein it was observed that each deposit agreement between a victim and accused shall have to be treated as a separate transaction. Reference has also been made by the learned ASJ to the decision of another three-Judge Bench in ***State of Punjab & Anr. V. Rajesh Syal***, AIR 2002 SC 3687, which reaffirms the view in ***Narinderjit Singh Sahni*** (supra).

4. She has also referred to ***Mohd. Shakeel vs. State***, Crl. MC No. 3374/2008 decided by this Court on 17.12.2008 and ***Anil Kumar Jain vs. State (NCT) of Delhi***, W.P.(CRL) No.1486/2010 decided by this Court on 10.02.2011. She has referred to the following decisions of other High Courts as well on the issue:

i) Decision of the Jharkand High Court in ***Lalu Prasad @ Lalu Prasad Yadav v. State through CBI***, 2003 Cr LJ 610;

ii) Decision of the Punjab & Haryana High Court in ***N.K. Garg v. U.T. Chandigarh***, 2003 (3) Cri CC 550;

iii) Decision of the Andhra Pradesh High Court in ***K. Manoj Reddy v. Commissioner of Police***, 2008 Cr LJ 768.

5. She was also of the, *prima facie*, view that the registration of a single FIR and filing of a single charge sheet appeared to be contrary to the statutory provisions and scheme contained in Section 218, 219, 220, 221 and 222 Cr.P.C., and appeared to be illogical and opposed to the concept of proportionality of punishment enshrined in the Cr.P.C.

6. In this regard, she sought a response from the EOW, Delhi Police. The DCP Economic Offences Wing, Delhi submitted that only a single FIR is required to be registered in the present case, because all investors/ depositors were allegedly cheated in pursuance of a single conspiracy, constituting a single transaction and as such, the commission of multiple acts did not require the registration of separate FIR's for each victim. They placed reliance on the judgments in the cases of ***S. Swamirathnam Vs. State of***

Madras., AIR 1957 SC 340; ***T. T. Antony vs. State of Kerela***, (2001) 6 SCC 181; ***Amitbhai Anilchandra Shah vs. CBI &Anr***., (2013) 6 SCC 348, and ***State vs. Ramesh Chand Kapoor,*** Crl. MC No. 1369/ 2010 decided by this Court on 30.08.2012.

7. The Director of Prosecution was also heard on the issue. He disagreed with the stand taken by the DCP (EOW) and, rather, placed reliance on the provisions of the Cr.P.C. and also on the law as declared by the Supreme Court in ***Narinderjit Singh Sahni and Anr.,*** (Supra) and the several other discussions taken note of by the Ld. ASJ in the referring order.

8. Since Ld. Single judges of this court appear to have taken contradictory views in ***Mohd. Shakeel*** (supra) and ***Anil Kumar Jain*** (supra), on the one hand, and ***Ramesh Chand Kapoor*** (supra) on the other hand, the Ld. ASJ has made this reference to invite an authoritative pronouncement by a larger bench.

9. Vide order dated 12.02.2015, Mr. Hariharan, Sr. Advocate was appointed *Amicus Curiae* to assist the Court in rendering our opinion. Court notice was issued to the accused/ respondent, who has appeared through counsel. The respondent has filed his short note of arguments on record. Accordingly, we heard the ld. *Amicus Curiae* as well as the learned senior counsel for the Delhi Police, Mr. Sanjay Jain on these issues. Orders were reserved on 10.08.2018. However, the same could not be pronounced earlier and, therefore, we listed the matter for recapitulation of arguments on 05.07.2019. We have heard the submissions of Mr. Sanjay Jain, Sr. Advocate and Mr. Hariharan, Sr.Advocate, the learned *Amicus*, and we proceed to answer the reference. No oral submission was advanced on

behalf of the respondent. However, his stand is the same as that of the State/ Delhi Police.

10. Before proceeding further, we consider it appropriate to take note of the relevant statutory provisions contained in the Cr.P.C. These are Sections 218 to 220, which fall under Chapter XVII titled "The Charge" and sub-chapter 'B', which deals with "Joinder of Charges". They read as follows:

> "***218. Separate charges for distinct offences.***–*(1) For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately:*
>
> *Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.*
>
> *(2) Nothing in sub- section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223.*
>
> ***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.*
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> *(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:*
>
> *Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.*

> ***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.*
>
> *(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub- section (2) of section 212 or in sub- section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.*
>
> *(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.*
>
> *(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, or such acts.*
>
> *(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860).*

11. On a reading of Section 218 of the Cr.P.C., the legislative mandate that emerges is that for every distinct offence of which any person is accused, there shall be a separate charge, and every such charge shall be tried separately. This Section embodies the fundamental principle of Criminal Law that the accused person must have notice of the charge which he has to meet. The proviso to Sub-Section (1) seeks to carve out an

exception to this general rule. This proviso states that the accused may make an application to the Magistrate that the Magistrate may try all or any number of charges framed against the person together, provided the Magistrate is of the opinion that such person is not likely to be prejudiced thereby. Thus, this exceptional course of action may be adopted only upon the accused making an application therefor, and upon the Magistrate forming the opinion that trial of all or some of the charges together would not prejudice the accused. Sub-Section (2) makes it clear that sub-Section (1) shall not affect the operation of Sections 219, 220, 221 & 223, meaning thereby, that the said sections would apply irrespective of: (a) the mandate of sub-Section (1) – that for every distinct offence, of which any person is accused, there shall be a separate charge and every such charge shall be tried separately, and; (b) the order that the Magistrate may pass under proviso to sub-Section (1) of Section 218 of the Cr.P.C.

12. Sections 219 and 220 deal with different aspects of the matter. For attracting Section 219, the necessary circumstance is that the same person is accused of more offences than one; the offences of which the person is accused are of the same kind; they are committed in a space of 12 months from the first and the last of such offences, and; the said offences may, or may not, be in respect of the same person. The offences need not have any causal connection between them for Section 219 to be invoked. They may be completely independent; may have taken place at different points of time within the space of one year, and; may involve different and unrelated victims. However, the accused is the same person and the offences are of the same kind – as defined in Sub-Section (2). Sub-Section (2) explains that

offences are of the same kind when they are punishable with the same amount of punishment under the same Section of the IPC, or of any special or local law. In such a situation, the person may be charged with and tried at one trial for any number of them, not exceeding three. For the present, we are not concerned with the proviso to sub-Section (2) of Section 219 and, therefore, we need not dwell upon the same.

13. Section 220, on the other hand, deals with a situation where one series of acts is connected together to form the same transaction, and in that series of acts which are connected together, more offences than one are committed by the same person. In that situation, he may be charged with and tried at one trial for every such offence. Sub-Section (2) of Section 220 makes it clear that if a person charged with one or more offences of criminal breach of trust, or dishonest misappropriation of property is also accused of committing – for the purpose of facilitating or concealing the commission of the offences aforesaid, the offence of falsification of accounts, he may be charged with and tried at one trial for every such offence. Thus, at the same trial, apart from the offence of criminal breach of trust or dishonest misappropriation of property, he may be tried for the offence of falsification of accounts for the purpose of facilitating or concealing the commission of the primary offence of criminal breach of trust, or dishonest misappropriation of property.

14. Question "**a**" of the reference reads as follows:

> *"**a**. Whether in a case of inducement, allurement and cheating of large number of investors/ depositors in pursuance to a criminal conspiracy, each deposit by an investor constitutes a*

separate and individual transaction or all such transactions can be amalgamated and clubbed into a single FIR by showing one investor as complainant and others as witnesses?"

15. This question relates to the applicability of Section 220 of the Cr.P.C. to a case of inducement, allurement and cheating of a large number of investors/ depositors in a criminal conspiracy. The issue posed is whether the offence of cheating – by acceptance of deposits made by individual investors – and there would be multiple such investors, would all constitute the "same transaction" – because the conspiracy or design may be the same or, whether, the act of cheating – by acceptance of deposits made by different investors, would constitute separate transactions – because each act of inducement, allurement and consequential cheating would be unique. The question is whether such transactions could be amalgamated and clubbed together into a single FIR, by showing one investor as the complainant, and the others as the witnesses.

16. Mr. Hariharan, ld. *Amicus Curiae*, has submitted that each case of inducement, allurement and cheating of an investor constitutes a separate transaction, mandating registration of a separate FIR for each such transaction. On the aspect as to what forms the "same transaction", or a "separate transaction", he places reliance on elaborate analysis of the law contained in ***Shapurji Sorabji v. Emperor***, AIR 1936 Bom 154. He further submits that the Supreme Court decision in ***Narinderjit Singh Sahni*** (supra) has conclusively settled the legal position, that each transaction of an individual investor, which has been brought about by the allurement of the financial companies, must be treated as a separate transactions, for the reason that the investors/ depositors are different; the amount of deposit is

different, and; the period when which the deposit was effected is also different. He has also placed reliance upon ***Rajesh Syal*** (supra), ***Mohd. Shakeel*** (supra)***, K Manoj Reddy*** (supra) and ***Lalu Prasad Yadav*** (supra) on the same issue. He submits that amalgamation and clubbing of all transactions into one would vitiate the trial. The same would be contrary to Section 218 of Cr.P.C., and to the decision in ***Narinderjit Singh Sahni*** (supra). Thus, he submits that in respect of every such case of inducement and cheating of different investors, the law mandates the registration of separate FIR's.

17. On the other hand, Mr. Sanjay Jain, ld. Senior Counsel appearing for Delhi Police submits that every case of cheating and inducement of an investor constitutes the "*same transaction*", when such transactions are a sub-specie of a single specie of transaction – i.e. of a single conspiracy. In this regard, he places reliance upon ***Ganesh Prasad vs. Emperor***, AIR 1931 PC 52; ***State of A.P. v. Cheemalapati Ganeswara Rao***, AIR 1963 SC 1850; and ***Mohd. Husain Umar Kochra v. K.S. Dalipsinghji and Another***, (1969) 3 SCC 429. He further submits that every act of cheating a large number of investors is covered under the umbrella of a single transaction, arising out of a single conspiracy. He places strong reliance on ***S. Swamirathnam*** (supra) in support of this submission**.** Mr. Sanjay Jain submits that all such transactions can be amalgamated and clubbed into a single FIR by showing one investor as the complainant, and others as witnesses.

18. In order to answer question (a) of the present reference, it is vital to first understand the meaning of the expression "*same transaction*". What is it that constitutes "*same transaction*", and what is it that does not constitute

"*same transaction*" i.e. it constitutes "*separate transactions*". Pertinently, these expressions have not been defined in the Cr.P.C. However, the expression "*same transaction*" finds mention in Sections 220 and 223 of the Cr.P.C.

19. The meaning of the expression "*same transaction*" is no longer res-integra.

20. We may first refer to the decision of the Division Bench of the Bombay High Court in ***Shapurji Sorabji*** (supra), wherein the issue arose whether the acts of the accused formed part of the "*same transaction*" – as contended by the prosecution, to justify the framing of a common charge and conduct of one trial (by resort to Section 235 of the Code of 1898, which is similar to Section 220 of the Cr.P.C.) or, "*separate transaction*" – as contended by the accused, who alleged misjoinder of four different charges extending over a period of nearly two years, thereby contravening Section 233 of the Code of 1898 (similar to Section 218 of the Cr.P.C.). In this case, the accused had allegedly got multiple spurious ticket books printed. The accused allegedly sold these spurious tickets – got printed on several occasions, and misappropriated the sale proceeds, thereby allegedly committing offences of criminal breach of trust, forgery, use of forged tickets as genuine knowingly, and of cheating. While determining whether the said transactions constituted "*same transaction"* or "*separate transaction*", the Division Bench observed:

> " *…….Charges in respect of the total number of alleged forgeries extending over this period could only be tried on one charge and at one trial, and such charges could only be*

combined with the other charges of breach of trust or misappropriation and cheating, if the whole series of acts covered by the four charges can properly be considered as forming the same transaction. That is to say, the trial on these four charges is only legal if it comes within the terms of section 235 of the Criminal Procedure Code, which, as an exception to the general rule that distinct offences must be separately tried, provides in sub-section (1) that 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……"

It was further observed:

"*… ....Commonsense and the ordinary use of language must decide whether on the facts of a particular case we are concerned with one transaction or several transactions. In that connection I may refer to the observations of Mr. Justice Reilly in Mallayya v. King-Emperor [(1924) 49 Mad. 74.] and also to Ramaraja Tevan, In re. [(1930) 53 Mad. 937.]"*

21. The Division Bench went on to observe:

"6. Let us then look at this case first from the commonsense point of view apart from any authority and let us assume for the purpose of argument that the prosecution story is true. What happened, it seems to me, must have been something like this. The accused conceived the idea of getting spurious ticket books printed, disposing of them as if they were genuine books and pocketing the proceeds. In accordance with that scheme accused No. 2 goes to the Caxton Press and orders 200 books. They are supplied, stamped with the Settlement stamp, or possibly a replica of it, and sold in the ordinary way either in the office or outside it. The books are presented by the purchasers at the water stations and accepted without suspicion. The accused have received the money and they keep it. Finding that the scheme has succeeded without any hitch,

they decide to repeat the procedure. A further consignment of books is ordered and dealt with in the same way. With occasional intervals, as for instance when No. 2 was sick at the beginning of 1934, they went on ordering fresh consignments of books and disposing of them and pocketing the money for a period of nearly two years until the fraud was discovered in February 1935. ***Describing that state of affairs in ordinary language, I think one would call it not one transaction but a, series of transactions. All the offences committed in connection with any one consignment of books, forgery, misappropriation, cheating and so on, would no doubt be part of the same transaction; but the offences committed in connection with any other consignment of books would in my opinion not be part of the same but of a similar transaction.***

7. As the section itself says, in order that a series of acts be regarded as the same transaction, they must be connected together in some way. The Courts have indicated various tests to be employed to decide whether different acts are part of the same transaction or not, namely, proximity of time, unity of place, unity or community of purpose or design and continuity of action. There are numerous cases on this point. I need only refer to Choragudi Venkatadri v. Emperor, [(1910) 33 Mad. 502.] a case which has been frequently followed, Mallayya v. King-Emperor, [(1924) 49 Mad. 74.] and Emperor v. Sherufalli [(1902) 27 Bom. 135.]. Proximity of time is not essential, though it often furnishes good evidence of what unites several acts into one transaction and, as illustration (d) to section 235 shows, it may often be a very important factor in determining whether different offences of the same kind are to be treated as part of one transaction. That is the case of a man found in possession of several counterfeit seals intending to use them for the purpose of committing several forgeries. Mr. Justice Krishnan in Mallayya v. King-Emperor [(1924) 49 Mad. 74.] says that generally he agrees with the observations of the Judges in Choragudi Venkatadri v. Emperor [(1910) 33 Mad. 502.] but opines that unity of place and proximity of time are not important tests at all. According to him the main test is unity of purpose, though he says that continuity of action goes

with it. That, I think, is a very important qualification, for ***it is obvious that there may be unity or community of purpose in respect of a series of transactions or several different transactions, and therefore the mere existence of a common purpose cannot by itself be enough to convert a series of acts into one transaction. I think the observations of Abdur Rahim, J. in Choragudi Venkatadri v. Emperor [(1910) 33 Mad. 502.] are very important in this connection. He says (page 507):***

> *"**As regards community of purpose I think it would be going too far to lay down that the mere existence of some general purpose or design such as making money at the expense of the public is sufficient to make all acts done with that object in view part of the same transaction. If that were so, the results would be startling; for instance, supposing it is alleged that A for the sake of gain has for the last ten years been committing a particular form of depredation on the public, viz., house-breaking and theft, in accordance with one consistent systematic plan, it is hardly conceivable that he could be tried at one trial for all the burglaries which he committed within the ten years. The purpose in view must be something particular and definite such as where a man with the object of misappropriating a particular sum of money or of cheating a particular individual of a certain amount falsifies bocks of account or forges a number of documents.** In the present case not only is the common purpose alleged too general and vague but there cannot be said to be any continuity of action between one act of misappropriation and another. **Each act of misappropriation was a completed act in itself and the original design to make money was accomplished so far as the particular sum of money was concerned, when the misappropriation took place**."*

8. That was a case in which it was alleged that a company was formed with the object of defrauding the public in a particular manner and the promoters of the company were charged with several distinct acts of embezzlement committed in the course of several years. These acts were all committed in prosecution of the general object for which the company was founded. ***But it was held nevertheless that they were not parts of the same transaction and could not be joined in the same charge.*** *The ratio decidendi of the judgments in this case appears to me to apply very closely to the facts of the present case.*

9. ***It seems, therefore, that the main test must really be continuity of action. We have to consider what that expression means. It cannot mean, I think, merely doing the same thing or similar things continuously or repeatedly, for a recurring series of similar transactions is not, according to the ordinary use of language, the same transaction. Continuity of action in the context must, in my opinion, mean this: the following up of some initial act through all its consequences and incidents until the series of acts or group of connected acts comes to an end, either by attainment of the object or by being put an end to or abandoned. If any of those things happens and the whole process is begun over again, it is not the same transaction but a new one, in spite of the fact that the same general purpose may continue.*** *So that, I think, if we apply the recognised tests, the procuring of 4,100 books of tickets to be printed at intervals from May 1933 to February 1935 and the disposing of them and misappropriating the proceeds is not one transaction but a series of similar transactions. It might well be different if the prosecution had alleged a conspiracy between the accused to print 4,100 books from the beginning. But there is no such charge, and as far as I can see, that is not really the prosecution case. At any rate it is perfectly consistent with, the prosecution case as presented in the evidence that the accused ordered a fresh supply of ticket books when the last was exhausted without any definite idea as to the extent of their operations, other than the obvious and natural limitation that they would not be likely to continue once they were found out.*

> ***10. Now every case depends on its own facts and none of the authorities cited to us has any close bearing on the present case so far as the facts are concerned. The case of Choragudi Venkatadri v. Emperor [(1910) 33 Mad. 502.] is perhaps the nearest. If I may suggest an analogy it would be this. Suppose a man were to forge a railway season ticket and use it daily, it may be, for a period of three months without being detected. Suppose that having succeeded in doing that he were then to forge a new season ticket for the following quarter and were to continue to do that with impunity say for a period of two years. On the arguments which have been addressed to us on behalf of the Crown in this case it would be permissible to prosecute and charge such a man at one trial for forging eight season tickets and cheating the railway administration of the value of those tickets. But I think that would be obviously impossible. The forging of each particular ticket together with its consequences would be a single transaction. In the present case the line of demarcation between the different transactions is not so clearly cut, but the principle seems to me to be the same.****"(emphasis supplied)*

22. Accordingly, for a series of acts to be regarded as forming the "*same transaction*", they must be connected together in some way, and there should be continuity of action. Though: (i) proximity of time; (ii) unity of place; and, (iii) unity or community of purpose or design have been taken into account to determine the issue viz. whether the series of acts constitute the "*same transaction*", or not, neither of them is an essential ingredient, and the presence or absence of one or more of them, would not be determinative of the issue, which has to be decided by adoption of a common sense approach in the facts of a given case. In ***Shapurji Sorabji*** (supra), the expression "*continuity of action*" was explained by the Division Bench as "*the following up of some initial act through all its consequences and incidents until the series of acts or group of connected acts comes to an end, either by*

attainment of the object or by being put an end to or abandoned. If any of those things happens and the whole process is begun over again, it is not the same transaction but a new one, in spite of the fact that the same general purpose may continue."

23. In ***Narinderjit Singh Sahni*** (supra), the Supreme Court was dealing with a batch of writ petitions preferred under Article 32 of the Constitution of India, alleging infraction of Article 21 and to seek bail for the accused. The accused Narinderjit Singh Sahni (Petitioner in WP (Crl.) Nos.245-246/2000) was the Managing Director of M/s Okara Group of Companies. On 25.3.1998, a FIR bearing No. 149/98 was registered at P.S. Prasad Nagar under sections 420/406/409/120B IPC against the company and its directors for accepting deposits from large number of people in different schemes and for failure to make repayment inspite of requests. Charge-sheet was subsequently field by the Crime Branch of Delhi Police in the Court of Metropolitan Magistrate, Tis Hazari. Subsequently, on 28.4.98 a FIR being No. 264/98 was registered at P.S. Prasad Nagar on the complaint of one Om Parkash Mishra against the petitioner alleging that the latter had defrauded and cheated him and other members of his family in accepting money in various schemes of the company and when the complaint asked for the money, the post-dated cheques issued by the company were dishonored, since the accounts were closed. It is in regard to the FIR 264/98 that the petitioner No.1 was arrested by the Crime Branch of Delhi Police on 26.6.1998. In all, about 250 FIRs were registered throughout the country against the accused. (Vide paragraph 14 of the judgment in ***Narinderjit Singh Sahni*** (supra))

24. It was, *inter alia*, argued on behalf of the accused that the offence of conspiracy being in the nature of continuing offence, its inclusion would be sufficient to establish the connection of one offence with the other for the purpose of converting all the offences into a single offence, or in the alternative, into the kind of offence which could only have been committed in the course of the "*same transaction*" within the meaning of Section 220 of the Code.

25. It was argued that all the cases initiated against the petitioner were basically under section 420 read with section 120B IPC, and as such the question was whether there are numerous cases of cheating, or there is only one offence and one case. It was contended that many persons may have been induced, but since the act of deception was one i.e. the issuance of the advertisement by the petitioner and his group of companies - even if several persons stood cheated, it was a single offence.

26. On behalf of the State, it was contended that each act of cheating constitutes a separate offence, and the attempt on behalf of the accused to say that only one advertisement had resulted into multitude of consequential deprivation of property to the thousands of investors was an endeavor to mislead the court.

27. The bench of 3 Learned Judges of the Supreme Court held:

> *"57. ……In a country like ours, if an accused is alleged to have deceived millions of countrymen, who have invested their entire life's saving in such fictitious and frivolous companies promoted by the accused and when thousands of cases are pending against an accused in different parts of the country,*

can an accused at all complain of infraction of Article 21, on the ground that he is not being able to be released out of jail custody in view of different production warrants issued by different courts. Issuance of production warrants by the court and the production of accused in the court, in cases where he is involved is a procedure established by law and consequently, the accused cannot be permitted to make a complaint of infraction of his rights under Article 21. In our considered opinion, it would be a misplaced sympathy of the court on such white-collared accused persons whose acts of commission and omission has ruined a vast majority of poor citizens of this country……..

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60. ***As regards the issue of a single offence, we are afraid that the fact situation of the matters under consideration would not permit to lend any credence to such a submission. Each individual deposit agreement shall have to be treated as separate and individual transaction brought about by the allurement of the financial companies, since the parties are different, the amount of deposit is different as also the period for which the deposit was affected. It has all the characteristics of independent transactions and we do not see any compelling reason to hold it otherwise****. The plea as raised also cannot have our concurrence.*" (emphasis supplied)

28. In ***Rajesh Syal*** (supra), the accused, who was a Director of M/s. Golden Forests (India) Ltd, allegedly cheated a large number of investors. Several FIRs were registered against the accused under section 406, 420, 468, 471 and 120B IPC and section 7(2) of the Punjab Reforms Act, 1972. The High Court transferred the cases filed in different courts across the State of Punjab to one Court of the Special Judicial Magistrate. That decision of the High court was assailed before the Supreme Court. While defending the decision of the High Court, the accused placed reliance on section 218 of the

Cr.P.C. Reliance was also placed on section 220 of the Cr.P.C., evidently, to claim that the series of acts are so connected together, as to form the "*same transaction*" and where more than one offence is committed, there could be a joint trial. The Supreme Court rejected the aforesaid submissions on behalf of the respondent/ accused. The Supreme Court, inter alia, observed:

> *"6. ……. Even Section 220 does not help the respondent as that applies where any one series of acts are so connected together as to form the same transaction and where more than one offence is committed, there can be a joint trial.*
>
> *7. In the present case,* ***different people have alleged to have been defrauded by the respondent and the company and therefore each offence is a distinct one and cannot be regarded as constituting a single series of facts/ transaction****….."*(emphasis supplied)

29. Thus, in ***Narinderjit Singh Sahni*** (supra) and in ***Rajesh Syal*** (supra), a similar submission – as advanced by Mr. Jain, that the series of acts were so connected together as to form the "*same transaction*", and that even where more than one offence is committed, there could be a joint trial, was rejected by the Supreme Court. The Supreme Court, in clear terms, stated that each offence is a distinct one, and cannot be regarded as constituting a single series of acts/transaction.

30. We may now refer to the decisions of learned Single Judges of this Court and other High Courts, placed before us. In ***Mohd. Shakeel*** (supra), the two petitioners were accused of being involved in serial blasts which rocked the capital city on 13.09.2008 at five prime commercial locations. The petitioners had assailed the order passed by the learned CMM granting police remand of the accused in case FIR No. 418/2008. The accused had

earlier been sent to police remand in two FIR Nos.130/2008 and 166/2008, which were also registered in relation to the said serial blasts. One of the submissions advanced on behalf of the petitioners/ accused was that since there was commonality of purpose and design, and since the acts of the accused are traced to the same conspiracy and there is continuity of action, the accused were entitled to be treated as having committed offences arising out of the same transaction, and not different transactions. It was argued that the initial conspiracy unifies the transaction and, therefore, the plurality of offence at various places, or at different intervals, would amount to "*same transaction*".

31. A learned Single Judge of this Court, after noticing several decisions including the decision in ***Narinderjit Singh Sahni*** (supra), held that the investigation being at the stage of infancy, it was difficult to accept the proposition of counsel for the petitioner that separate occurrences of serial blasts form part of the same transaction. Registration of independent FIRs, occurrence of various bomb blasts within jurisdictions of different police stations, mode and manner of planting bomb, the victims being different, witnesses also being different, and the investigation to be conducted at sites also being different – would, prima facie, lead to the conclusion that each and every incident of blast is an independent transaction, and not the same transaction.

32. In ***Lalu Prasad @ Lalu Prasad Yadav*** (supra), the allegation against the accused was that money was fraudulently withdrawn from the Treasuries of the State of Bihar on the basis of forged and fabricated allotment letters for making payment to non- existent suppliers of feed, fodder, medicines and

other equipments. In pursuance of the criminal conspiracy, on the strength of fake allotment letters, payments to the tune of hundreds of crore were fraudulently made to the accused supplier, who never supplied the materials. The accused moved the Jharkand High Court to seek amalgamation of several distinct cases and for orders that the trial be proceeded as one case. The CBI opposed the petitions for amalgamation claiming that the cases were distinct from each other, involving separate transactions. On behalf of the petitioners, it was contended that the prosecution had alleged a common and single conspiracy and the *modus operandi* of the accused persons for withdrawal of huge amounts from the government treasury was, allegedly, the same i.e. by submitting fake allotment letters.

33. This plea of the petitioners/ accused was rejected by the Court. After noticing section 223 of the Code, the learned Single Judge, inter alia, observed:

> *"19. It may be noted here that the provision of joint trial is an enabling one as the said section itself provides that the Court may charge and try the accused jointly. Therefore, it is not incumbent or obligatory for the Court to try the cases jointly even if the offences committed by one or the other accused persons are part of the same transaction. Thus whether there should be a joint or separate trial depends upon the discretion of the Presiding Officer who is competent enough to be satisfied about the entire circumstances depending upon the legal provisions. Here the only provision of Section 223, Clause (d) is attracted which provides that the persons accused of different offences committed in the course of the same transaction may be charged and tried together".*

34. The learned Single Judge noticed a decision of the Supreme Court in ***Cheemalapati Ganeswara Rao*** (supra), as also the circumstance that huge

amounts of withdrawal had been made from different treasuries, and the period of withdrawal was also different spanning between 1990-1996. Though the *modus operandi* of the accused might have been the same for withdrawing amounts from the government treasuries by submitting fake allotment letters, but the withdrawals were made apparently at different places, and also at different points of time. Merely because the accused are alleged to have committed offence with the same motive that, by itself, would not establish that they had done so in pursuance of a single conspiracy. The learned Single Judge also held that there was no continuity of action in the cases at hand, and there was no proximity of time, place, money etc. Inter alia, for the aforesaid reasons, the petitions were rejected by the learned Single Judge. The Court held:

> *"20. In the instant case, it is apparent that huge withdrawal was made from different Treasuries such as Chaibasa, Dumka, Doranda, Deoghar etc.* ***The period of withdrawal is also different such as some withdrawals were made for the period 1991–92; December, 1995 to January, 1996; 1990–91 to 1995–96: 1990–94 and 1992–93 as well as the amount said to have been withdrawn under fake allotment letters for the materials which have never been supplied by the suppliers are also different*** *as from Chaibasa Treasury, a sum of Rs. 37.7 crores was withdrawn in 1991–92, from Dumka Treasury a sum of Rs. 3.79 crores was withdrawn from December, 1995 to January, 1996; from Doranda Treasury during the period 1990–91 to 1995–96 Rs. 185.62 crores.* ***It may be possible that modus operandi of the people/accused might have been the same for withdrawing money from the Government Treasuries under fake allotment letters but the withdrawal was made apparently at different places and also at different point of time and all these factors are matter for consideration.*** *It may also be clarified that only because the petitioners/accused are alleged to have committed offence for*

the same motive, that by itself will not prove that they had done in pursuance of a single conspiracy rather the withdrawal of such a huge amount from Government Treasury appears to be outcome of larger conspiracy. ....

x x x x x x x x x

22. ***There is no continuity of action in the cases at hand as there is no proximity of time, place, money etc., even the modus operandi attached in those cases can be said to be one/same.*** *The order passed in Cr. Misc. No. 25150 of 1999 is intact as well as it is specific and lucid to the point which has not been complied with by the petitioners. Thus these applications filed at this belated stage having no merit and are liable to be dismissed." (emphasis supplied)*

35. In ***K. Manoj Reddy*** (supra) the petitioner, having received certain initial deposit and installments from different investors, breached the contract and refused to register plots in the name of those investors. Separate FIR's were registered against the accused persons for cheating, which was under challenge before the learned single judge of the Andhra Pradesh High Court. The single judge held:

"*12. In a case of this nature* ***where financial scams have been committed in the course of selling the plots, all the particulars i.e., the date of purchase, mode of payment and the customers, will be different and distinct. Therefore, I am of the opinion that each and every written complaint of a subscriber constitutes an offence****." (emphasis supplied)*

36. We may now deal with the decisions relied upon by Mr. jain on behalf of the State/ Delhi Police.

37. ***S. Swamirathnam*** (supra) is a decision of 3 learned Judges of the Supreme Court. This judgment was authored by *Syed Jafer Imam, J.* In paragraph 7 of this decision, the Supreme Court observed as follows:

> *"7. On behalf of the appellant Abu Bucker it was contended that there has been misjoinder of charges on the ground that several conspiracies, distinct from each other, had been lumped together and tried at one trial. The advocate for Swamirathnam, however, did not put forward this submission. We have examined the charge carefully and find no ground for accepting the contention raised. The charge, as framed, discloses one single conspiracy, although spread over several years. There was only one object of the conspiracy and that was to cheat members of the public. The fact that in the course of years others joined the conspiracy or that several incidents of cheating took place in pursuance of the conspiracy did not change the conspiracy and did not split up a single conspiracy into several conspiracies. It was suggested that although the modus operandi may have been the same, the several instances of cheating were not part of the same transaction. Reliance was placed on the case of Sharpurji Sorabji v. Emperor [ILR LX Bombay 148.] and on the case of Choragudi Venkatadari v. Emperor [ILR XXXIII Madras 502.] . These cases are not in point. In the Bombay case no charge of conspiracy had been framed and the decision in the Madras case was given before Section 120-B, was introduced into the Indian Penal Code. In the present case, the instances of cheating were in pursuance of the conspiracy and were therefore parts of the same transaction."*

38. Thus, on the reading of ***S. Swamirathnam*** (supra), no doubt, the Supreme Court held that where there was a single conspiracy, spread over several years with the object to cheat members of the public, the fact that in the course of implementation of the conspiracy several incidents of cheating

took place in pursuance thereof, the several acts of cheating constituted part of the same transaction.

39. However, as pointed out by Mr. Hariharan, the learned *Amicus Curiae*, firstly, this decision proceeds on the premise that in ***Shapurji Sorabji*** (supra), no charge of conspiracy had been framed. This premise does not appear to be correct on a complete reading of ***Shapurji Sorabji*** (supra) and in particular on reading of the extracts of the decision quoted hereinabove. Pertinently, the Supreme Court did not observe that the decision in ***Shapurji Sorabji*** (supra), was incorrect. The ratio of that decision was not disagreed with. Since the Supreme Court proceeded on the basis that ***Shapurji Sorabji*** (supra) was a case which did not involve a charge of conspiracy, the decision of the Supreme Court in ***S. Swamirathnam*** (supra) has to be read and understood in the context of the said fact.

40. Secondly, and even more importantly, in another 3-Judge Bench decision of the Supreme Court in ***Natwarlal Sakarlal Mody Vs. State of Bombay,*** 1964 Mah LJ 1 : 1961 SCC OnLine SC 1, the Supreme Court has made observations which clearly have the effect of diluting, if not completely nullifying, the precedential value of the decision in ***S. Swamirathnam*** (supra). It is interesting to note that ***S. Swamirathnam*** (supra) was authored by *Syed Jafer Imam, J.* – while sitting as a puisne judge. However, in ***Natwarlal Sakarlal Mody*** (supra), *Syed Jafer Imam, J.* was heading the 3-Judge Bench of the Supreme Court, and the said decision has been authored by *K. Subbarao, J.*, for the Court. In ***Natwarlal Sakarlal***

Mody (supra), the Supreme Court while dealing with ***S. Swamirathnam*** (supra) observed as follows:

> *"13. This Court in S. Swaminathnam v. State of Madras [1957] A.I.R. S.C. 340 again considered the question of the propriety of framing a charge of conspiracy* ***in the peculiar circumstances of that case****. In that case, as in the present case, it was contended that there had been misjoinder of parties on the ground that several conspiracies distinct from each other had been lumped together and tried at one trial. That contention was rejected with the following remarks (p. 344) :*
>
> > *"...The charge, as framed, discloses one single conspiracy, although spread over several years. There was only one object of the conspiracy and that was to cheat members of the public. The fact that in the course of years others joined the conspiracy or that several incidents of cheating took place in pursuance of the conspiracy did not change the conspiracy & did not split up a single conspiracy into several conspiracies. It was suggested that although the modus operandi may have been the same, the several instances of cheating were not part of the same transaction In the pre sent case, the instances of cheating were in pursuance of the conspiracy and were therefore parts of the same transaction."*
>
> *14. There the appellants were tried for the offence of conspiracy to cheat members of the public and for specific offences committed in pursuance of that conspiracy. The method adopted for cheating was to persuade such members of the public as could be persuaded to part with their money to purchase counterfeit Rs. 5 currency notes at half their face value and after having obtained their money to decamp with it. When a member of the public handed over his money, at a certain stage, one of the conspirators pretending to be a Police Officer would arrest the man who had the box containing their*

money and take him away with the box. The victim was thus deprived of his money without even having a single counterfeit currency note in his possession in exchange of the genuine money paid by him. It was found on evidence that all the appellants took part in the various acts committed pursuant to that conspiracy. In such a situation this Court held that there was only one conspiracy. ***The only principle this Court laid down is that an accused need not be a member of a conspiracy from its inception but he may join it at a later stage, and that every one of the conspirators need not take part in every incident.*** *If there is one conspiracy, the said circumstances cannot obviously make any difference in the application of s. 239(d) of the Code of Criminal Procedure. In this context a decision of an English Court is rather instructive and that is in R. v. Dawson,(1960) 1 All ER 558. In that ease, an indictment on which two appellants were charged with other accused included fifteen counts. Fourteen of these charged various fraudulent offences on dates in and between 1955 and 1957. The first count charged conspiracy to defraud between November 1, 1954 and December 31, 1957. The transactions which were the subject of the other fourteen charges were within the purview of the conspiracy charge. Both the appellants were convicted on the conspiracy charge and one of the appellants was convicted also on other counts. On appeal, Finnemore, J., made the following weighty observations (p. 563):*

> *"...This court has more than once warned of the dangers of conspiracy counts, especially these long conspiracy counts, which one counsel referred to as a mammoth conspiracy. Several reasons have been given. First of all if there are substantive charges which can be proved, it is in general undesirable to complicate matters and to lengthen matters by adding a charge of conspiracy. Secondly, it can work injustice because it means that evidence, which otherwise would be inadmissible on. the substantive charges against certain people, becomes admissible.*

> *Thirdly, it adds to the length and complexity of the case so that the trial may easily be well-nigh unworkable and impose a quite intolerable strain both on the court and on the jury."*

15. Applying these observations to the facts of that case, the learned Judge proceeded to state thus (p. 564):

> *"...we are satisfied this was not one conspiracy, and it is no more correct to charge several conspiracies, though they are called one conspiracy, if it is to include other different charges, in one count. Again we want to say in the strongest possible way that quite apart from what we think it is wholly undesirable, and in this case it was obviously quite unnecessary, to have a long count of this kind, because it has lengthened the case enormously, and we think that in the result to which we have come it plainly worked an injustice on one at least of the appellants before this court today. Therefore we quash the convictions on the first count."*

16. This authority, though it may not be of any help in construing s. 239(d) of the Code of Criminal Procedure, points out the dangers of irregular exercise of discretion in the matter of framing a charge of conspiracy clubbed along with innumerable illegal acts against many persons.

17. This discussion leads us to the following legal position. ***Separate trial is the rule and joint trial is an exception. While s. 239 of the Code of Criminal Procedure allows a joint trial of persons and offences within defined limits, it is within the discretion of the Court to permit such a joint trial or not, having regard to the circumstances of each case. It would certainly be an irregular exercise of discretion if a Court allows an innumerable number of offences spread over a long period of time and committed by a, large number of persons under the protecting wing of all-embracing conspiracy, if***

> ***each or some of the offences can legitimately and properly form the subject-matter of a separate trial;*** *such a joint trial would undoubtedly prolong the trial and would be a cause of unnecessary waste of judicial time. It would complicate matters which might otherwise be simple; it would confuse accused and cause prejudice to them, for more often than not accused who have taken part in one of the minor offences might have not only to undergo the long strain of protracted trial, but there might also be the likelihood of the impact of the evidence adduced in respect of other accused on the evidence adduced against him working to his detriment. Nor can it be said that such an omnibus charge or charges would always be in favour of the prosecution for the confusion introduced in the charges and consequently in the evidence may ultimately benefit some of the accused, as a clear case against one or other of the accused may be complicated or confused by the attempt to put it in a proper place in a larger setting.* ***A Court should not be overzealous to provide a cover of conspiracy for a number of offences unless it is clearly satisfied on the material placed before it that there is evidence to prove prima facie that the persons who committed separate offences were parties to the conspiracy and they committed the separate acts attributed to them pursuant to the object of the said conspiracy."***
>
> *(emphasis supplied)*

41. From the above extract, it would be seen that, firstly, the Supreme Court observed that ***S. Swamirathnam*** (supra) was decided "***in the peculiar circumstances of that case***". Thus, this itself denudes ***S. Swamirathnam*** (supra) of its precedential value, since that decision was subsequently understood by the Supreme Court as a decision rendered in the peculiar circumstances of that case. Moreover, the Supreme Court explained the ratio of the decision in ***S. Swamirathnam*** (supra) by observing that:

> *"14. ... ... The only principle this Court laid down is that an accused need not be a member of a conspiracy from its*

inception but he may join it at a later stage, and that every one of the conspirators need not take part in every incident. ... ..."

42. Thus, the observations made by the Supreme Court in ***S. Swamirathnam*** (supra) to the effect that where there is a single and common conspiracy, and in pursuance of the said conspiracy several acts – which constitute separate offences are undertaken, then they constitute the "*same transaction*" and are liable to be charged and tried at a single trial, has not been considered as the ratio of the said decision. The observation made by the Supreme Court in paragraph 14 of ***Natwarlal Sakarlal Mody*** (supra) renders the decision in ***S. Swamirathnam*** (supra) of no avail to Mr. Jain, since it cannot be regarded as a precedent on the issue under our consideration. Pertinently, the Supreme Court observed in ***Natwarlal Sakarlal Mody*** (supra) that it would tantamount to irregular exercise of discretion, if the Court were to allow an innumerable number of offences, spread over a long period of time and committed by a large number of persons, under the protective wing of all embracing conspiracy, to be put to joint trial, if different offences are committed, or some of the offences can legitimately and properly form a subject matter of separate trial. It further observed that a Court should not be overzealous to provide a cover of conspiracy for a number of offences, unless it is clearly satisfied on the material placed before it that there is evidence to prove *prima facie* that the persons who committed separate offences were parties to the conspiracy and they committed the separate acts attributed to them pursuant to the object of the conspiracy.

43. Mr. Jain has also placed reliance on ***Cheemalapati Ganeswara Rao*** (supra). In this decision, the Supreme Court was concerned with Section 239(d) of the Code of 1898 which is *para materia* to Section 223(d) of the Cr.P.C. Both these provisions read "*The following persons may be charged and tried together, namely; ... ... persons accused of different offences committed in the course of the same transaction;*". The Supreme Court in this decision, inter alia, observed:

> "25. … … … ***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. The connection between a series of acts seems to us to be an essential ingredient for those acts to constitute the same transaction and, therefore, the mere absence of the words "so connected together as to from" in clause (a), (c) and (d) of s. 239 would make little difference. Now, a transaction may consist of an isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stands out independently, they would not form part of the***

> ***same transaction but would constitute a different transaction or transactions.*** *Therefore, even if the expression "same transaction" alone had been used in s. 235(1) it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression "same transaction" occurring in clauses (a), (c) and (d) of s. 239 as well as that occurring in s. 235(1) ought to be given the same meaning according to the normal rule of construction of statutes. Looking at the matter in that way, it is pointless to inquire further whether the provisions of s. 239 are subject to those of s. 236(1). The provisions of sub-section (2) and (3) of s. 235 are enabling provisions and quite plainly can have no overriding effect. But it would be open to the court to resort to those provisions even in the case of a joint trial of several persons permissible under s. 239."* (emphasis supplied)"

44. Mr. Jain has emphasized the observation made in this decision that if several acts committed by a person show unity of purpose or design, that would be a strong circumstance to indicate that those acts form part of the same transaction. This observation, firstly, cannot be read as a Statute. Secondly, this observation cannot be understood to mean that in every case where there is unity of purpose or design, the acts would constitute the "*same transaction*" in every such case. Pertinently, in the same extract, the Supreme Court observed that series of acts which constitute the "*same transaction*", "*must of necessity be connected with one another and if some of them stands out independently, they would not form part of the same transaction but would constitute a different transaction or transactions*". In the fact situation that we are concerned with, the transaction entered into by the accused with each of the complainants/ victims stand out independently, and it cannot be said that the specific transaction entered into with one of the complainants/ victims is necessarily connected with all other similar

transactions. Thus, the decision in ***Cheemalapati Ganeswara Rao*** (supra) supports the submission of the learned Amicus Curiae rather than supporting the submission of Mr. Jain.

45. Mr. Jain has also placed reliance on ***State of Jharkhand Through S.P., Central Bureau of Investigation Vs. Lalu Prasad Yadav Alias Lalu Prasad***, (2017) 8 SCC 1. This is a decision of two learned Judges the Supreme Court. He specifically relies upon paragraphs 43 & 44 of this decision, which read as follows:

> *"43. The learned Senior Counsel has relied upon the decision of this Court in S. Swamirathnam [S. Swamirathnam v. State of Madras, AIR 1957 SC 340 : 1957 Cri LJ 422] in which the charge disclosed one single conspiracy, although spread over several years. There was only one object of the conspiracy, and that was cheating members of the public. The fact that in the course of years others joined the conspiracy or that several incidents of cheating took place in pursuance of the conspiracy, does not change the conspiracy and does not split up a single conspiracy into several conspiracies. The accused persons raised the submission as to misjoinder of the charges. This Court has dealt with the matter thus: (AIR pp. 341 & 344, paras 2 & 7)*
>
> > *"2. Both the courts below, relying on the oral and documentary evidence in the case, held it as a fact that there had been a conspiracy during the years 1945-1948 to cheat members of the public between some of the accused and the approvers Ramaswami Mudaliar and Vellayam Pillai examined as PWs 91 and 61 respectively. The method adopted for cheating was to persuade such members of the public, as could be persuaded, to part with their money to purchase counterfeit Rs 5 currency notes at half their face value and after*

having obtained their money to decamp with it. When a member of the public handed over his money, at a certain stage, one of the conspirators pretending to be a police officer would arrest the man who had the box containing their money and take him away with the box. The victim was thus deprived of his money without even having a single counterfeit currency note in his possession in exchange of the genuine money paid by him. We have scrutinised with care the judgments of the Sessions Judge and the learned Judge of the High Court and find that they were amply justified, having regard to the state of the evidence on the record, in coming to the conclusion that the case of the prosecution concerning the existence of the conspiracy as charged to cheat the members of the public, had been proved. We are unable to find any special circumstance, arising from the evidence on the record, which would justify our interference with the finding of fact arrived at by the courts below. Indeed, the evidence is overwhelming and convincing to prove the case of the prosecution that there had been a conspiracy in the relevant years to cheat the members of the public between some of the accused and the aforesaid approvers.

***

7. On behalf of the appellant Abu Bucker it was contended that there has been misjoinder of charges on the ground that several conspiracies, distinct from each other, had been lumped together and tried at one trial. The advocate for Swamirathnam, however, did not put forward this submission. We have examined the charge carefully and find no ground for accepting the contention raised. The charge, as framed, discloses one single conspiracy, although spread over several years. There was only one object of

> *the conspiracy and that was to cheat members of the public. The fact that in the course of years others joined the conspiracy or that several incidents of cheating took place in pursuance of the conspiracy did not change the conspiracy and did not spilt up a single conspiracy into several conspiracies. It was suggested that although the modus operandi may have been the same, the several instances of cheating were not part of the same transaction. Reliance was placed on Shapurji Sorabji v. Emperor [Shapurji Sorabji v. Emperor, 1935 SCC OnLine Bom 57 : AIR 1936 Bom 154] and on Choragudi Venkatadri v. Emperor [Choragudi Venkatadri v. Emperor, ILR (1910) 33 Mad 502] . These cases are not in point. In the Bombay case [Shapurji Sorabji v. Emperor, 1935 SCC OnLine Bom 57 : AIR 1936 Bom 154] no charge of conspiracy had been framed and the decision in the Madras case [Choragudi Venkatadri v. Emperor, ILR (1910) 33 Mad 502] was given before Section 120-B was introduced into the Penal Code, 1860. In the present case, the instances of cheating were in pursuance of the conspiracy and were therefore parts of the same transaction."*
>
> *44. It is apparent from the aforesaid decision that this Court did not consider various provisions and question of double jeopardy did not arise for consideration. It was held in the facts that there was no prejudice to the accused persons. There was no misjoinder of the charges. On facts the case has no application and cannot be said to be an authority on Article 20 of the Constitution and Section 300 CrPC."*

46. On a bare reading of the aforesaid extracts, we fail to appreciate as to how the same advances the submission of Mr. Jain. The argument advanced by the respondent/ accused before the Supreme Court in the aforesaid

decision was that the holding of separate trials in respect of separate charges framed relating to cheating – which stem out of the same conspiracy, would tantamount to double jeopardy. This submission of the accused was rejected by the Supreme Court. After referring to several decisions rendered by it earlier, it held that the substantive offence was that of defalcation. Conspiracy was an allied offence to the said substantive offence. In paragraph 38 of its decision, the Supreme Court observed:

> *"38. Section 218 deals with separate charges for distinct offences. Section 219 quoted above, provides that three offences of the same kind can be clubbed in one trial committed within one year. Section 220 speaks of trial for more than one offence if it is the same transaction.* ***In the instant case it cannot be said that defalcation is same transaction as the transactions are in different treasuries for different years, different amounts, different allotment letters, supply orders and suppliers.*** *Thus the provision of Section 221 is not attracted in the instant case. There are different sets of accused persons in different cases with respect to defalcation."*
>
> *(emphasis supplied)*

47. In paragraph 42 of this decision, the Supreme Court observed:

> *"42. ... ...* ***Though there was one general charge of conspiracy, which was allied in nature, the charge was qualified with the substantive charge of defalcation of a particular sum from a particular treasury in particular time period. The charge has to be taken in substance for the purpose of defalcation from a particular treasury in a particular financial year exceeding the allocation made for the purpose of animal husbandry on the basis of fake vouchers, fake supply orders, etc. The sanctions made in Budget were separate for each and every year. This Court has already dealt with this matter when the prayers for amalgamation and joint trial had been made and in view of***

> ***the position of law and various provisions discussed above, we are of the opinion that separate trials which are being made are in accordance with the provisions of law otherwise it would have prejudiced the accused persons considering the different defalcations from different treasuries at different times with different documents.*** *Whatever could be combined has already been done.* ***Each defalcation would constitute an independent offence.*** *Thus, by no stretch, it can be held to be in violation of Article 20(2) of the Constitution or Section 300 CrPC.* ***Separate trials in such cases is the very intendment of law.*** *There is no room to raise such a grievance. Though evidence of general conspiracy has been adduced in cases which have been concluded, it may be common to all the cases but at the same time offences are different at different places, by different accused persons. As and when a separate offence is committed, it becomes punishable and the substantive charge which has to be taken is that of the offence under the PC Act, etc.* ***There was conspiracy hatched which was a continuing one and has resulted into various offences. It was joined from time to time by different accused persons, so whenever an offence is committed in continuation of the conspiracy, it would be punishable separately for different periods as envisaged in Section 212(2), obviously, there have to be separate trials****. Thus it cannot be said to be a case of double jeopardy at all. It cannot be said that for the same offence the accused persons are being tried again."* *(emphasis supplied)*

48. Pertinently, even in this decision, ***S. Swamirathnam*** (supra) was relied upon on behalf of the respondent accused. The Supreme Court rejected the said reliance by observing that in ***S. Swamirathnam*** (supra)

> *"44. ... ... this Court did not consider various provisions and question of double jeopardy did not arise for consideration. It was held in the facts that there was no prejudice to the accused persons. There was no misjoinder of the charges. On facts the case has no application and cannot be said to be an authority on Article 20 of the Constitution and Section 300 CrPC."*

49. The Supreme Court in paragraph 50 observed as under:

> *"50.* ***The modus operandi being the same would not make it a single offence when the offences are separate.*** *Commission of offence pursuant to a conspiracy has to be punished.* ***If conspiracy is furthered into several distinct offences there have to be separate trials. There may be a situation where in furtherance of general conspiracy, offences take place in various parts of India and several persons are killed at different times. Each trial has to be separately held and the accused to be punished separately for the offence committed in furtherance of conspiracy. In case there is only one trial for such conspiracy for separate offences, it would enable the accused person to go scot-free and commit a number of offences which is not the intendment of law.*** *The concept is of "same offence" under Article 20(2) and Section 300 CrPC.* ***In case distinct offences are being committed there has to be independent trial for each of such offence based on such conspiracy and in the case of misappropriation as statutorily mandated, there should not be joinder of charges in one trial for more than one year except as provided in Section 219.*** *One general conspiracy from 1988 to 1996 has led to various offences as such there have to be different trials for each of such offence based upon conspiracy in which different persons have participated at different times at different places for completion of the offence. Whatever could be combined has already been done. Thus we find no merit in the submissions made by the learned Senior Counsel appearing on behalf of the accused persons."* *(emphasis supplied)*

50. A similar submission on behalf of the appellant in ***Lalu Prasad Vs. State through CBI (A.H.D.) Ranchi, Jharkhand,*** (2003) 11 SCC 786, was rejected by a three judge bench of the Supreme Court in the following manner:

> *"11. ... ... Thus it has already been held, by a three-Judge Bench of this Court, that the main offences were under the*

> *Prevention of Corruption Act.* ***It has been held that the offence of conspiracy is an allied offence to the main offence under the Prevention of Corruption Act.*** *The cases are before the Special Judges because the main offences are under the Prevention of Corruption Act.* ***The main offence under the Prevention of Corruption Act in each case is in respect of the alleged transaction in that case. As conspiracy is only an allied offence, it cannot be said that the alleged overt acts are in the course of the same transaction.*** *We are bound by this decision. In any case we see no reason to take a different view. As it has already been held that* ***the charge of conspiracy is only an allied charge and that the main charges (under the Prevention of Corruption Act) are in respect of separate and distinct acts i.e. monies siphoned out of different treasuries at different times, we fail to see as to how these cases could be amalgamated.****" (emphasis supplied)*

51. We have already given our reasons as to why, in our view, the decision in ***S. Swamirathnam*** (supra) cannot be considered to be binding precedent on the issue under consideration. However, even if the same were to be treated as a binding precedent, clearly, the ratio of that decision goes contrary to several subsequent decisions of the Supreme Court itself, including in ***Natwarlal Sakarlal Mody*** (supra), ***Narinderjit Singh Sahni*** (supra), ***Rajesh Syal*** (supra), ***Lalu Prasad Vs. State through CBI (A.H.D.) Ranchi, Jharkhand,*** (supra) and ***State of Jharkhand*** (supra). Pertinently, ***Natwarlal Sakarlal Mody*** (supra), ***Narinderjit Singh Sahni*** (supra), ***Rajesh Syal*** (supra) and ***Lalu Prasad Vs. State through CBI (A.H.D.) Ranchi, Jharkhand,*** (supra) are all decisions of three learned Judges, as ***S. Swamirathnam*** (supra). In this situation, as to what should be the approach of this Court, and which view the Court should follow was considered by a learned Single Judge of this Court (*Late Valmiki J. Mehta, J.*) in ***Simplex Waterpipes India Limited Vs. Union of India***, ILR (2010) II Delhi 699.

The learned Judge cited ***Smt. Gopa Manish Bora Vs. Union of India***, ILR (2009) 4 Del 61, decided by a Division Bench of this Court, wherein the Division Bench observed as follows:

> *"8. ... ...*
>
> *"19. We are, therefore, faced with a situation where one line of decisions of the Supreme Court indicates that the five circumstances mentioned in Alka Gadia (supra) are exhaustive and another line of decisions of the Supreme Court of benches of equal strength indicates that the said circumstances are illustrative and not exhaustive.* ***This raises the question as to what the High Court is to do in a situation where there is a conflict between decisions of the Supreme Court rendered by Benches of equal strength.*** *In Ganga Saran v. Civil Judge, Hapur, Ghaziabad, AIR 1991 All 114, a Full Bench of the High Court of Allahabad considered this very question. The Full Bench observed as under:—*
>
> > ***"7. One line of decision is that if there is a conflict in two Supreme Court decisions, the decision which is later in point of time would be binding on the High Courts. The second line of decisions is that in case there is a conflict between the judgments of Supreme Court consisting of equal authorities, incidence of time is not a relevant factor and the High Court must follow the judgment which appears it to lay down law elaborately and accurately."***

20. The Full Bench of the Allahabad High Court referred to a Full Bench decision of the Punjab and Haryana High Court in the case of Indo Swiss Time Limited, Dundahera v. Umrao, AIR 1981 P&H 213, wherein it was observed as under:—

> ***"Now the contention that the latest judgment of a co-ordinate Bench is to be mechanically followed and must have pre-eminence irrespective of any other consideration does not commend itself to me. When judgments of the superior Court are of co-equal Benches and therefore, of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not by the mere fortuitous circumstances of the time and date on which they were rendered. It is manifest that when two directly conflicting judgments of the superior Court and of equal authority are extant then both of them cannot be binding on the courts below. Inevitably a choice, though a difficult one, has to be made in such a situation. On principle it appears to me that the High Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgments of coequal Benches of the Superior Court are earlier later is a consideration which appears to me as hardly relevant."***

> *21. The Allahabad High Court in Ganga Saran (supra) agreed with the view taken by the Full Bench of Punjab & Haryana High Court in Indo Swiss Time Limited (supra) that* ***when there is a conflict between two decisions of equal Benches, which cannot be reconciled, the courts must follow the judgment which appears to them to state the law accurately and elaborately.***
>
> *22. A Division Bench of this court in Virender Kumar (a), Bittoo v. State, 59 (1995) DLT 341 (DB) also considered the question of conflict of judgments of different Benches of the Supreme Court of coequal strength. The Division Bench noted with approval the decision of the Full Bench of the Allahabad High Court in the case of Ganga Saran (supra) as having been laid down* ***that if there is a conflict between two decisions of equal Benches of the Supreme Court, which cannot possibly be reconciled, the courts must follow the judgment which appears to them to state the law accurately and elaborately and particularly so when the later decision of the Supreme Court did not notice the earlier decision.****""*
>
> *(emphasis supplied)*

52. Thus, assuming that there is a subsisting conflict of opinion of the Supreme Court in ***S. Swamirathnam*** (supra) on the one hand, and ***Natwarlal Sakarlal Mody*** (supra), ***Narinderjit Singh Sahni*** (supra), ***Rajesh Syal*** (supra), and ***Lalu Prasad Vs. State through CBI (A.H.D.) Ranchi, Jharkhand,*** (supra) on the other hand, it is left to us to decide as to which of the two sets of decisions state the law accurately and elaborately. Having given our thoughtful consideration to the matter, we are of the considered view that the law declared by the Supreme Court in ***Natwarlal Sakarlal Mody*** (supra), ***Narinderjit Singh Sahni*** (supra), ***Rajesh Syal*** (supra), and

Lalu Prasad Vs. State through CBI (A.H.D.) Ranchi, Jharkhand, (supra) is a more accurate and elaborate enunciation of the law. This is for the reason that while deciding ***S. Swamirathnam*** (supra), it did not fall for consideration by the Supreme Court that conspiracy is an allied offence, whereas the acts committed in pursuance of the conspiracy, which eventually led to commission of specific offences, are the substantive and main offences. We also find that in ***Natwarlal Sakarlal Mody*** (supra), the Supreme Court noticed with approval the legal position as prevalent in the English Courts even prior to the decision in ***S. Swamirathnam*** (supra) was delivered. In ***Natwarlal Sakarlal Mody*** (supra), the Supreme Court quoted, with approval, the decision in ***R. Vs. Dawson*** (supra). Even subsequently, the Supreme Court on several occasions, while noticing ***S. Swamirathnam*** (supra), did not invoke the said decision. We are also of the view that the enunciation of the law contained in ***Shapurji Sorabji*** (supra) is most elaborate, and we find ourselves in agreement to the said view. Thus, we reject the reliance placed by Mr. Jain on ***S. Swamirathnam*** (supra).

53. We find that the decision in ***Ramesh Chand Kapoor*** (supra) – decided by a learned Single Judge of this Court, merely relies upon the decision of the Supreme Court in ***S. Swamirathnam*** (supra). The learned Single Judge has not examined the issue independently. The decisions in ***Natwarlal Sakarlal Mody*** (supra), ***Narinderjit Singh Sahni*** (supra), ***Rajesh Syal*** (supra), and the other earlier decisions relied upon by Mr. Hariharan were neither cited before, nor considered by the learned Single Judge in this decision. Thus, reliance placed on ***Ramesh Chand Kapoor*** (supra) by Mr. Jain is equally misplaced.

54. Mr. Jain has particularly placed reliance on ***Mohd. Husain Umar Kochra*** (supra). This decision, in our view, is of no avail since the Supreme Court was not concerned with the aspect of joinder of charges, or the joinder of accused persons in the same trial. The Supreme Court framed the questions considered by it in the said decision, which read as follows:

> *"(1) was the import of gold in contravention of Section (1) of the Foreign Exchange Regulation Act, 1947 punishable under Section 167(81) of the Sea Customs Act, 1878;*
>
> *(2) did the prosecution establish the general conspiracy laid in Charge 1;*
>
> *(3) did the learned Magistrate wrongly allow a claim of privilege in respect of the disclosure of certain addresses and cables and if so, with what effect;*
>
> *(4) did he wrongly refuse to issue commission for the examination of Pedro Fernandez and*
>
> *(5) did he wrongly refuse to recall PW 50 Ali for cross-examination?"*

55. Mr. Jain has also placed reliance on paragraph 15 of this decision. The same reads as follows:

> *"15. As to the second question the contention was that the evidence disclosed a number of separate conspiracies and that the charge of general conspiracy was not proved. Criminal conspiracy as defined in Section 120-A of the IPC is an agreement by two or more persons to do or cause to be done an illegal act or an act which is not done by illegal means. The agreement is the gist of the offence. In order to constitute a single general conspiracy there must be a common design and a common intention of all to work in furtherance of the common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose.*

> *Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished. The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be a general plan to accomplish the common design by such means as may from time to time be found expedient. New techniques may be invented and new means may be devised for advancement of the common plan. A general conspiracy must be distinguished from a number of separate conspiracies having a similar general purpose. Where different groups of persons cooperate towards their separate ends without any privity with each other, each combination constitutes a separate conspiracy. The common intention of the conspirators then is to work for the furtherance of the common design of his group only. The cases illustrate the distinction between a single general conspiracy and a number of unrelated conspiracies. In S.K. Khetwani v. State of Maharashtra [(1967) 1 SCR 595] and S. Swaminathan v. State of Madras [AIR 1957 SC 340] the Court found a single general conspiracy while in R. v. Griffiths [(1962) 2 All ER 448] the Court found a number of unrelated, separate, conspiracies."*

56. The aforesaid extract would show that the Supreme Court merely explained the meaning of a criminal conspiracy as defined in Section 120A of the IPC. It went on to observe that a general conspiracy must be distinguished from a number of separate conspiracies having a similar general purpose. That is not the issue under our consideration and this proposition has no bearing on the issue being considered by us. Thus, in our view, this decision is absolutely of no avail in the present context.

57. The reference order notices the decision of the Supreme Court in ***T. T. Antony*** (supra) and ***Amitbhai Anilchandra Shah*** (supra). These decisions

are distinguishable, since the issue involved in this case was registration of two FIRs from the same cause of action. In ***Amitbhai Anilchandra Shah*** (supra), the Supreme Court referred to its decision in ***C. Muniappan v. State of T.N.***, (2010) 9 SCC 567, which explains the "consequence test" i.e. if an offence which forms part of the second FIR arises as a consequence of the first FIR, then the offences covered by both the FIRs are the same and, accordingly, it will be impermissible in law to register the second FIR. The same shall form part of the first FIR itself. In the present context, it cannot be said that the cheating of the successive complainants/ victims undertaken under the same conspiracy is a "consequence" of the offence alleged in the complaint– on the basis of which, the sole FIR was registered. It was open to the accused not to proceed to commit the subsequent offence(s), even after committing the offence of hatching a conspiracy to cheat the people and even after cheating one or more persons. Thus, neither of the aforesaid decision is of any relevance for our purpose.

58. Mr. Jain has also placed reliance on ***Ganesh Prasad*** (supra). In this decision, the Division Bench of the Patna High Court observed:

> *"3. He relies in this connection on Section 235 (Sic 200), Criminal P.C., which provides that for every distinct offence there shall be a separate charge which shall be tried separately. But the answer to the argument is found in the fact that all the persons convicted took part in these occurrences and that* ***Section 235, Criminal P.C., allows acts so connected together as to form the same transaction to be tried together. The question therefore arises as to whether this is substantially the same transaction.*** *I think the definition given by Batty, J., in the case of* ***Emperor v. Datto Hanmant Shahapurkar*** *[1906] 30 Bom. 49 is correct. The section under*

> *construction in that case was Section 239, sub-clause (a), using the expression "in the course of the same transaction"; and it appears to me that the definition of the expression "transaction" in the one section will equally apply to the expression "the same transaction" in Section 235.* ***During the course of the judgment it was stated that "the same transaction" suggests not necessarily proximity in time so much as continuity of action and purpose; and in my judgment for the purpose of this case that definition is the correct interpretation of the expression "the same transaction****". (emphasis supplied)*

59. This decision, in our view, is of no avail to Mr. Jain. All that this decision observes – on the basis of the earlier decision in ***Datto Hanmant Shahapurkar*** (supra), is that the "*same transaction*" suggests, not necessarily, proximity in time so much as continuity of action and purpose. As noticed above, continuity in action is an important test and when the same is applied, that we find that the continuity in action ends in respect of each act of cheating, when that act is complete. There is no continuity in action in respect of the act of cheating of another complainant/ victim. We agree with the submission of Mr. Hariharan that the real test to determine whether multiple offences form the same transaction, or not, is whether there was continuity in action. Recurring series of similar transactions cannot be considered as "*same transaction*".

60. The practice followed by the Delhi Police/ State of registering a single FIR on the basis of the complaint of one of the complainants/ victims, and of treating the other complainants/ victims merely as witnesses, even otherwise, raises very serious issues with regard to deprivation of rights of such complainants/ victims to pursue their complaints, and to ensure that the

culprits are brought to justice. Firstly, the other complainants/ victims cannot be merely cited as witnesses in respect of the complaint of one of the victims on the basis of which the FIR is registered. They may not be witnesses in respect of the transaction forming the basis of the registration of the case. In a situation where hundreds of persons claim that they have been cheated by the same accused at different locations and at different points of time by adoption of the same *modus operandi*, it is unthinkable and unlikely that all the complainants/ victims – who are cited as witnesses, would be witnesses to the single transaction in relation to which FIR is registered. They may, at the most, be witnesses only to establish the conspiracy – which is an allied offence, but unless there is a charge framed in respect of the specific act of cheating – to which each of the Complainant/ victim is subjected, it may not be permissible to cite such other complainants/ victims as witnesses to prove the act of cheating relating to them. Mere citing a large number of complainants/ victims only as witnesses would also deny them the right to file their protest petitions in the eventuality of a closure report being field by the police in respect of the complaint on the basis of which FIR was registered, or the Magistrate not accepting the final report/ charge-sheet and discharging the accused. (See ***Bhagwat Singh Vs. Commissioner of Police***, AIR 1985 SC 1285). Their right to oppose, or to seek cancellation of bail that the accused may seek in relation to their particular transaction would also be denied. If the accused enters into a settlement/ compromise with the complainant on whose complaint the FIR stands registered, and he chooses not to diligently participate in the trial, the complaints of other victims may go unaddressed. Thus, the practice adopted

by the State/ Delhi Police, and which is sought to be defended by them, is clearly erroneous and not sustainable in law

61. Mr. Jain has also drawn our attention to Section 180 Cr.P.C. However, the same is completely irrelevant in the present context, since that Section deals with the aspect of the territorial jurisdiction of the Court which may inquire into or try the offence.

62. Thus, our answer to Question (a) is that in a case of inducement, allurement and cheating of large number of investors/ depositors in pursuance to a criminal conspiracy, each deposit by an investor constitutes a separate and individual transaction. All such transactions cannot be amalgamated and clubbed into a single FIR by showing one investor as the complainant, and others as witnesses. In respect of each such transaction, it is imperative for the State to register a separate FIR if the complainant discloses commission of a cognizable offence.

63. We may now turn to question "**b**" of the present reference which reads as follows:

> "**b**" "*If in case the Hon'ble Court concludes that each deposit has to be treated as separate transaction, then how many such transactions can be amalgamated into one charge- sheet?*"

64. Mr. Hariharan, the learned Amicus submits that each FIR registered in respect of the commission of a cognizable offence under Section 154 Cr. P.C. should lead to investigation on the information disclosed relating to commission of cognizable offences and, eventually, to the filing of a final

report, on completion of investigation, under Section 173 Cr.P.C. Thus, in respect of each FIR, the Investigating Authority is obliged to file a separate final report. The Investigating Authority may furnish a further report or reports in terms under Section 173(8) Cr.P.C. However, in respect of each FIR, a separate final report under Section 173 would, necessarily, be required to be submitted. He submits that at the stage of registration of FIR and its investigation, Section 219 does not come into play.

65. Mr. Hariharan submits that after completion of investigation and after filing of the charge sheet in respect of each of the FIRs, three cases of the same kind in a particular year could be clubbed together and tried by virtue of Section 219 of the Cr.P.C. In this regard, he not only places reliance on the observations made by the Division Bench in ***Sharpurji Sorabji*** (supra), he also places reliance on ***Sheo Saran Lal v. Emperor***, 5 Ind. Cas. 896. In this case, the appellant was charged and tried at one and the same trial for three offences under Section 408 IPC, and three offences for forgery under Section 467 IPC. He was convicted and sentences in respect of the six offences. The case against him was that three different persons, seeking to deposit money in the bank, gave certain amounts to him for which he gave receipts in his own handwriting and even forged the signatures of the Manager of the bank. However, he embezzled the amounts.

66. The primary question which arose before the learned Single Judge of the Allahabad High Court was whether the trial of the accused at one trial in respect of those offences was illegal in view of Section 233 of the Code of Criminal Procedure 1898, which lays down (like in Section 218 of the Cr.P.C.), that there shall be a separate charge for every distinct offence and that every such charge shall be tried separately, except in cases mentioned in

Sections 234,235,263 and 239 of the Code of Criminal Procedure, 1898(which are similar to Sections 219, 220,221,223 of the Cr.P.C.).

67. Section 234 of the Code of Criminal Procedure 1898 (similar to Section 219 of the Cr.P.C.) and lays down 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. Offences are of the same kind, when they are punishable with the same amount of punishment under the same section of the IPC, or of any special or local laws.

68. The learned Single Judge of the Allahabad High Court held that the trial of the appellant/ accused in respect of those offences at one and the same trial – though committed within a space of 12 months, contravened Section 233, read with Section 234, of the Code of Criminal Procedure, 1898.

69. The learned Single Judge rejected the submission on behalf of the respondent/ Emperor that the expression "three offences" should be understood as three "same transaction". The learned Single Judge observed:

> *"2. Prima facie, the trial of the accused in respect of six offences at one and the same trial, although they may have been committed within the space of 12 months, contravenes the rule laid down in Section 233 even when read with Section 234. It has been argued, however, that Section 235 Clause (1) must be read with Section 234, and that the three offences mentioned in the latter section must be deemed to include all the offences committed in three similar transactions such as contemplated by Section 235 Clause (1); in other words, if an*

accused person goes through three similar transactions within the period of twelve months, committing in each transaction the same series of offences, he can be tried at one and the same trial, on account of all offences committed in the course of the three transactions, even if they total more than three. I am of opinion that this would be too great an extension of the exception mentioned in Section 234. A point connected with these sections came before the Bombay High Court in the case of Bal Gangadhar Tilak 33 B. 221 : 10 Bom. L.R. 973 : 9 Cr. L.J. 226 : 4 M.L.T. 45 : 2 Ind. Cas. 277. The judgment in that case makes no reference to whatever Clause (1), Section 235. Clause (2) of that section and Sections 237 and 239 were considered, no doubt, but the present point was not before that Court and, in my opinion, Clause (1), Section 235 and Section 234 must be mutually exclusive. Even at the trial of Bal Gangadhar Tilak 33 B. 221 : 10 Bom. L.R. 973 : 9 Cr. L.J. 226 : 4 M.L.T. 45 : 2 Ind. Cas. 277, the prosecution was restricted to three offences, although there were two similar transactions in each of which two similar offences had been committed, and the accused has been committed for trial in respect of all four offences. To hold that Section 234 covered all offences, committed in the course of three similar but separate transactions when the number of offences was more than three, would, in my opinion, be straining the language of the section beyond all bounds, Even in the trial of Bal Gangadhar Tilak 33 B. 221 : 10 Bom. L.R. 973 : 9 Cri. L.J. 226 : 4 M.L.T. 45 : 2 Ind. Cas. 277 the Bombay Court did not go to this extent, and, in my opinion, the trial of the present appellant in respect of six offences, three of embezzlement and three of forgery, is an illegality, as was laid down in the case of Subrahmania Ayyar v. King-Emperor"

70. No doubt, the aforesaid decision cited by Mr. Hariharan supports his submission, but we may observe that the view expressed by the learned Single Judge was a *prima facie* view.

71. Mr. Hariharan has also placed reliance on ***Chaman Lal Sankhla v. State of Haryana*** (2008 CriLJ 2640: 2008 SCC OnLine P&H 207), decided by learned Single Judge. In this case, the petitioner/ accused was alleged to have issued 177 driving licenses without following the procedure prescribed under the Motor Vehicles Act and the rules framed thereunder. FIR 26/2001 was registered against him and another co accused under Sections 218, 420, 467, 468, 471 and 120B IPC read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The charge sheet was filed on 15.04.2002 under the aforesaid provisions. The accused were discharged under Section 13(1)(d) of the Prevention of Corruption Act. The learned CJM charged the petitioner under Section 218,420,467,468 IPC while discharging him under Sections 471 and 120B IPC. The learned ASJ, Gurgaon vide his order dated 26.09.2006, passed in revision proceedings, held that issuance of every license was a separate offence and by virtue of Section 219 of the Cr.P.C., the prosecution agency was obliged to submit different charge sheets under Section 173 Cr.P.C. joining 3 offences in one charge sheet.

72. The decision of the learned ASJ was assailed before the High Court. One of the issues framed by the Court for its determination was whether the learned Additional Sessions Judge had erred while holding that the issuance of every licence was a separate offence, and by virtue of Section 219 of Cr.P.C., separate report under Section 173 of Cr.P.C. are required to be submitted.

73. The aforesaid issue was answered by the learned Single Judge as follows:

> ***11.*** *It is apposite to point out here that as per allegations, the petitioner alongwith others issued 177 driving licenses on one and the same day before he relinquished the charge in consequence of his transfer. The expression used in the language of Section 219 of Cr.P.C. is "whether in respect of the same person or not". Here in this case, the licenses have been issued to different persons. Therefore, all the applicants fall within the expression of "whether in respect of the same or not". As per this Section if a person is accused of more offences than one of the same kind committed within the space of twelve months may be charged with and tried at one trial for, any number of them not exceeding three. The reasonable interpretation which can be put on this expression is that three offences of the same kind within one year may be charged together. The offences of the same kind have been defined in Sub-section 2 of Section 219 of Cr.P.C. and as per the same, the offenses are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any special or local law.*
>
> ***12.*** *In the present case, the offences being of the same kind are punishable with the same amount of punishment. The offences being of the same kind having been committed within one year, only three offences of the same year could be joined.* ***In the case in hand, a composite report under Section 173 of Cr.P.C. has been submitted by the prosecution agency though in adherence to the provisions of Section 219(1) of Cr.P.C., the report under Section 173 of Cr.P.C. was required to comprise only three offences. A single challan containing the commission of 177 offences of the same kind has been filed, which is quite contrary to the spirit of Section 219(1) of Cr.P.C.*** *Sequelly, there is nothing wrong with the observations made by the learned Additional Sessions Judge in his impugned order.*
>
> ***13.*** *In view of the above discussion, the provisions of Section 220 of Cr.P.C. are not attracted to the case in hand. The first poser is accordingly answered."* *(emphasis supplied)*

74. Mr. Hariharan has also placed reliance on ***K.Manoj Reddy*** (supra) notice whereof has been taken hereinabove. In this decision, the learned Single Judge of the Andhara Pradesh High Court, inter alia, observed:

> *"14. Therefore, after completing investigation and after filing charge sheet, three cases can be clubbed together and tried under Section 219 Criminal Procedure Code, but it does not mean that all the crimes in question, can be construed as one offence by registering one comprehensive crime."*

75. On the aforesaid question (b), the only submission advanced by Mr. Jain is the one advanced in relation to question (a) i.e. that of acts of cheating under a single conspiracy constitute the "*same transaction*". He further submitted that question (b), as framed by the leaned ASJ, was flawed since it proceeded on the assumption that number of transactions represents the same number of offences. We have already rejected the aforesaid submission of Mr. Jain while dealing with question (a).

76. From Chapter XII of the Cr.P.C., it is evident that upon disclosure of information in relation to commission of a cognizable offence, the police is bound to register the FIR. The registration of FIR sets into motion the process of investigation. The same culminates into the filing of the final report by the police officer before the Magistrate. Thus, in respect of every FIR, there would be a separate final report and, there could be, further report(s) in terms of Section 173(8).

77. Thus, the observations made by the learned Single Judge in ***Chaman Lal Sankhla*** (supra), though generally correct, do not appear to be correct in so far as it purports to convey that the report under Section 173 Cr.P.C. could comprise of up to three offences covered by the different FIRs. In fact, in our view, the final report under Section 173 Cr.P.C. would be

required to be filed in respect of each FIR separately, and Section 219 would come into play only at the stage of the framing of the charge. It is quite possible that the final report in respect of one, or the other, of the multiple FIRs (in relation to the commission of the offence of the same kind), may be a closure report which is accepted by the Magistrate. It is also possible that in respect of the Final Report filed in one of the several similar cases, the Magistrate discharges the accused. Thus, we are of the view that the observation made in paragraph 14 of ***K.Manoj Reddy*** (supra) records the legal position more accurately than ***Chaman Lal Sankhla*** (supra).

78. The Investigating Agency/ Police is not authorized either to charge, or to try the accused and the same is a judicial function. Thus, the Investigating Agency/ Police cannot amalgamate the separate offences investigated under separate FIRs, into one charge sheet.

79. Mr. Jain had also argued that after registration of a single FIR in relation to commission of multiple offences arising from the same conspiracy, and after filing of the Final Report under Section 173 Cr.P.C., the police could file supplementary/ further charge sheets under Section 173(8) Cr.P.C. in respect of each of the victims. We do not agree with this submission, firstly, for the reason that to begin with, a single FIR cannot be registered in respect of separate cognizable offences which do not form the same transaction. Secondly, the supplementary/ further charge sheet under Section 173(8) relates to the cognizable offence in respect whereof the FIR is registered and, therefore, cannot relate to specific offences in respect of which the victim is other than the complainant on whose complaint the FIR is registered.

80. Thus, our answer to question (b) is that in respect of each FIR, a separate final report (and wherever necessary supplementary/ further charge sheet(s)) have to be filed, and there is no question of amalgamation of the final reports that may be filed in respect of different FIRs. The amalgamation, strictly in terms of Section 219 Cr.P.C., would be considered by the Court/ Magistrate at the stage of framing of charge, since Section 219(1) mandates that where the requirements set out in the said Section are met, the accused "*may be charged with, and tried at one trial for, any number of them not exceeding three*"

81. We may now proceed to answer question (c), which read as follows:

> *"c. Whether under the given circumstances the concept of maximum punishment of seven years for a single offence can be pressed into service by the accused by clubbing and amalgamating all the transactions into one FIR with maximum punishment of seven years?"*

82. In our view, the aforesaid question does not survive in view of the answer to question (a) and (b). It would be for the Trial Court to consider the sentence to which the convict may be subjected as per law, keeping in view the well settled principles of sentencing. In this regard, we may only refer to Section 31 of the Cr.P.C. which, inter alia, provides that when a person is convicted at **one trial** of two or more offences, the Court, may subject to the provisions of Section 71 IPC, sentence him for such offences to the several punishments prescribed therefor which such Court is competent to inflict. It further provides that such punishments, which consist of imprisonment, would commence one after the expiration of the

other, unless the Court directs that such punishments shall run concurrently. The limitation on the quantum of sentence is prescribed by sub Section 2 of Section 31 of the Cr.P.C., but the same would apply in respect of convictions at **one trial** of two or more offences. However, where the trials are multiple, which result into multiple convictions, the proviso to Section 31(2) would have no application.

83. Accordingly, the Criminal reference is answered in the above terms.

(VIPIN SANGHI)
JUDGE

(I.S. MEHTA)
JUDGE

JULY 08, 2019