

Sidhardhan Vs. Prasannan

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Court : Kerala

Decided On : Jan-24-2006

Reported in : IV(2006)BC177; [2006]133CompCas13(Ker); 2006CriLJ2568; 2006(2)KLT55

Judge : A.K. Basheer, J.

Acts : Negotiable Instruments Act - Sections 138; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 218, 219 and 220

Appeal No. : Crl. R.P. No. 1334 of 2005

Appellant : Sidhardhan

Respondent : Prasannan

Advocate for Def. : M. Dinesh and; Basant Balaji, Adv.

Advocate for Pet/Ap. : J. Jayakumar, Adv.;P.B. Suresh Kumar

Disposition : Petition dismissed

Judgement :

ORDER

A.K. Basheer, J.

1. The petitioner is being prosecuted for an offence punishable Sub-section 138 of the Negotiable Instruments Act in two cases - CC. No. 323/2003 and CC. No. 95/2004 -- on the file of the Judicial Magistrate of First Class, No. I, Attingal. Respondents 1 and 2 respectively are the complainants in the above cases. The petitioner moved two applications before the trial court under Sections 219 and 220 of the Code of Criminal Procedure for a single trial of the two cases, since according to the petitioner, the alleged offences in the two cases were committed within a span of one year. The learned Magistrate dismissed the applications holding that the prayer made by the petitioner cannot be granted in the facts and circumstances of the case. The said order passed by the learned Magistrate is under challenge in this Criminal Revision Petition.

2. Heard learned Counsel for the petitioner and the respondents as also Sri. P.B. Suresh Kumar who was requested to assist the court as amicus curiae.

3. Section 219 postulates 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. It is contended on behalf of the petitioner that the learned Magistrate ought to have allowed the application in view of the unambiguous provisions contained in Section 219 of the Code. It is submitted by the learned Counsel that the offence alleged against the petitioner in the two cases is one and the same viz., Sub-section 138 of the Negotiable Instruments Act. Referring to the issuance of the two cheques in the two complaints, it is contended by the learned Counsel that an offence of the same kind was allegedly committed by the petitioner within a space of 12 months. Though the complainants in the two cases are different, the offence being of the same kind, the learned Magistrate ought to have allowed the applications.

4. It is pertinent to note that the petitioner does not have a case that the two cheques in question were issued in connection with the same transaction or there was anything common between the two cases. Of course, it is true that the petitioner has alleged that respondent No. 1 is the brother-in-law of respondent No. 2. Nothing more, nothing less. The petitioner has not produced copy of the

complaints in the two cases. However a perusal of the averments made in the petition before this Court will clearly show that there is nothing in common between the two cases other than that the offence alleged in the two cases happens to be one and the same and the petitioner is the accused in both cases.

5. Section 219 of the Code only postulates 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. The contention raised by the petitioner on the basis of the above provision, particularly in the factual matrix of this case, is wholly misconceived and untenable. The rule is that for every distinct offence there should be a separate charge, and every such charge should be tried separately (Section 218 of the Code). It is of course true that the Magistrate may try together all or any number of charges framed against the accused, if he so desires, and also if the Magistrate is of opinion that the accused is not likely to be prejudiced by such a course of action. But that does not mean that two cases involving an offence Sub-section 138 of the Act which are being prosecuted by two different complainants arising from separate causes of action can be tried together only for the reason that the accused person is the same. A complainant is the master of his prosecution. His interests and rights also have to be protected.

6. Equally untenable is the contention that the provisions contained in Section 220 of the Code are applicable in the case. What is contemplated in the above provision is a joint charge and one trial for more than one offence, if they are committed in one series of acts so connected together as to form the same transaction. It is inconceivable as to how the common accused in two complaints filed by two different complainants albeit alleging commission of the same offence (Section 138 of the Negotiable Instruments Act), under different circumstances, can seek the benefit of Section 219 or 220 of the Code. As rightly noticed by the learned Magistrate, the complainants and their witnesses have to be examined in both the cases. The documents in the two cases have to be marked separately and for all practical purposes the merit of the two cases has to be evaluated separately. It may be true that the offence in the two cases is of the same kind.

The common factor is only that the petitioner is the accused in the two cases. For that reason alone, it cannot be contended that the two complaints filed by two different complainants under different set of circumstances have to be tried at one trial. The learned Magistrate, in my view, was therefore justified in dismissing the applications.

7. Learned counsel for invited my attention to several decisions, Kadir Kunhammed v. State of Madras : 1960 CriLJ1013 , Banwari v. State of Uttar Pradesh : AIR 1962 SC1198 , Parameswaran Nair v. State of Kerala 1990 Cri.L.J. 2011, Pinto Stick v. M.L. Oswal 1997 Cri.L.J. 2122, State of Punjab v. Rajesh Syal : 2003 CriLJ60 and Mohammed v. State of Kerala : 2004(3)KLT330 . I have carefully perused the above judgments. There cannot be any room for doubt as regards the settled position of law. But having regard to the facts and circumstances available in this case, I have no hesitation to hold that the order passed by the learned Magistrate does not suffer from any illegality or irregularity. Therefore no interference is warranted with the order impugned.

Crl.R.P fails and it is accordingly dismissed.

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