

Mohammed Vs. State of Kerala

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Court : Kerala

Decided On : Jun-17-2004

Reported in : II(2005)BC303; 2004(3)KLT330

Judge : R. Basant, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 220 and 220(1)

Appeal No. : CrI. R.P. No. 1569 of 2003

Appellant : Mohammed

Respondent : State of Kerala

Advocate for Def. : A. Mohamed Mustaque,; M.K. Sumod,; Kauser Edappagath

Advocate for Pet/Ap. : V. Ramkumar Nambiar, Adv.

Disposition : Petition dismissed

Judgement :

R. Basant, J.

1. The accused in a prosecution under Section 138 of the N.I. Act has filed this revision petition against a direction issued by the learned Magistrate that the trial against him -- in respect of the alleged offence punishable under Section 138 of

the N.I. Act in respect of six separate cheques, can proceed in one trial.

2. There is no serious dispute on fundamental facts. These cheques dated 4.5.2000, 11.5.2000, 16.5.2000, 25.5.2000, 31.5.2000 and 8.6.2000 each for an amount of Rs. 30,000/- were allegedly issued by the accused to the complainant on the same date i.e., 4.5.2000 for the due discharge of a total liability of Rs. 1,80,000/-. Though the cheques bore different dates, they were not presented for encashment on or immediately after the dates shown in such cheques. All of them were presented together for encashment. The precise date of presentation is not very clear. But at any rate, dishonour memos issued are all dated 18.9.2000. Those separate dishonour memos, six in number, reveal that all the six cheques were dishonoured on the identical ground of insufficiency of funds on 18.9.2000; Thereupon the complainant caused one registered notice of demand to be issued i.e., dated 25.9.2000. A common reply was given dated 9.10.2000 raising identical contentions in defence, the details of which are irrelevant for our purpose now. As payment was not forthcoming within the period stipulated by law the complainant filed an omnibus complaint raising the allegation of commission of the offence punishable under Section 138 of the N.I. Act in respect of all six cheques.

3. One should have thought that the accused would be happy that he has to face only one trial. But surprisingly it is the accused who raised objections against the continuance of the trial against him in one trial. He contended that in as much as six cheques were involved separate trials are necessary, at any rate he contended that not more than three cheques could be brought within one prosecution heeding to the mandate of Section 219(1) Cr.P.C.

4. The learned Magistrate considered the objections and by the impugned order held that there was nothing wrong in the prosecution for commission of the offence under Section 138 of the N.I. Act in respect of all the six cheques being held in one trial. This conclusion of the learned Magistrate is assailed in this Revision Petition.

5. Section 218(1), 219(1) and 220(1) Cr.P.C. appear to be relevant. I extract those statutory provisions below;

Section 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.

Section 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.

Section 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.

Section 218 declares general policy of law that for every distinct offence there must be a separate charge/allegation and that every such charge/allegation shall be tried separately. One offence, one charge and one trial is thus the declared policy of law. But this is not rigid principle of universal application. In later provision of Chapter XVII B we get exceptions to this general rule. Even in Section 218(1) there is a well recognised exception. If an accused person So desires and makes an application in writing and the court is satisfied that no prejudice is likely to result therefrom, any number of charges framed against a person can be tried in one trial. Section 219(1) Cr.P.C. refers to identical offences committed on different dates during a span of 12 months. Section 219(1) permits joinder of those charges provided they are offences of the same kind.

6. Section 220(1) deals with a different situation. Exception to the Rule under Section 218 is carved out and any number of offences can be subjected to and tried in one trial if such offences are committed by the same person and the acts

alleged are so connected together as to form and part of the same transaction. I need not refer, to other provisions of Chapter XVII B which deal with other exceptions, Section 223 stipulates that where more accused persons than one are concerned in the commission of the offence all of them can be tried together provided common charge can be framed by virtue of the earlier provisions of that Chapter.

7. In the instant case six separate cheques are issued. All of them are dishonoured on the same day consequent to the alleged presentation on the same day. Separate dishonour memos are issued. But all of them are issued on the same day and dishonour memos show that the dishonour was for identical reason. Thereafter, one notice of demand was issued covering all the cheques and one reply was issued by the accused in respect of all the cheques. Identical defence was raised also in respect of the cheques.

8. Proviso to Section 218(1) is not applicable as accused is not willing to follow that course. Section 219 cannot also be made applicable because there are more offences than three. The only question therefore is whether Section 221 can be applied and that can be applied only if the issue of the six cheques can be said to be acts, so connected together as form the same transaction. In the decision reported in Mohan Baitha v. State of Bihar, (2001) 4 SCC 350, Supreme Court has lucidly referred to the principles which have to be borne in the mind to decide whether offences can be reckoned as part of the same transaction. I shall only advert to the relevant passage.

'It may be noticed that under Section 220 of the Code of Criminal Procedure, offences more than one committed by the same persons could be tried at one trial, if they can be held to be one series of acts, so as to form the same transaction. The expression 'same transaction' from its very nature is incapable of an exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be in one transaction. It is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. But the

circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not. Therefore, a series of acts Whether are to be connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria'.

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

10. A contention is raised by the learned counsel for the petitioner that Section 219(1) must control Section 220(1) also. I am unable to accept this contention. Sections 219 and 220 lay down different and distinct exception to the general rule contemplated under Section 218. It cannot hence be contended that Section 219(1) must control Section 220(1) also. The decision of the Division Bench of this Court reported in Swarnalatha v. Chandramohan, 1996 (1) KLT 534, and decision of the Single Judge reported in Manoharan v. D.G.P., Kerala and Ors., 2001 (2) KLJ 721, Naresh Chander v. State of Rajasthan, 2001 (1) KLT 425, Mohan Baitha v. State of Bihar, (2001) 4 SCC 350 and Metropolli Over Seas Ltd. v. Kuttiyanickal Rubbers (P) Ltd., 2003 (3) KLT SN 42, Case No. 58 do all support the conclusion of the learned Magistrate.

11. I am in these circumstances satisfied that course adopted by the learned Magistrate of directing that the trial can be held in one common trial for the offences committed in respect of six cheques is correct and does not warrant interference. The challenge fails.

12. In the result this Revision Petition is dismissed.