

Sharma Contracts (India) Vs. State and anr

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SooperKanoon Citation : sooperkanoon.com/924645

Court : Delhi

Decided On : Jan-17-2012

Appellant : Sharma Contracts (India)

Respondent : State and anr

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. No. 2351/2011 %
Judgment reserved on :11th November, 2011 Judgment delivered on: 17th
January, 2012 SHARMA CONTRACTS (INDIA) PVT. LTD. Petitioner Through:
Mr.Subhasish Mohanty, Adv. versus STATE and ANR. Respondents Through:
Ms.Ritu Gauba, APP for State. Mr. J.K. Bholra, Adv. for Respondent no..

2. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J..

1. Vide the instant petition, the petitioner has assailed the order dated 15.4.2011
passed by the learned Metropolitan Magistrate, Delhi whereby summons have
been issued against the petitioner..

2. The facts of the case in brief are that the respondent No.2/complainant dealt in
plywood, Block board flush door, Laminates Decorative and Adhesive with terms
of the sale. The petitioner approached the respondent No.2 for the purpose of
supplying of ply timer veneer of various sizes and quantity and after due
negotiations, the complainant agreed to supply the same. From April, 2010 till
October 9th, 2010, (with opening balance of ` 11,81,098/- as on 1st CRL.M.C. No.

2351/2011 Page 1 of 12 April, 2010), the petitioner purchased material against acknowledged invoices for a sum of ` .2,14,50,519/- details of which are as under:

S.No.	Sales Bill No.	Amount	Date
1	001	3,08,667/-	16 April, 2010
2	002	3,56,954/-	6th April, 2010
3	003	9,05,766/-	10th April, 2010
4	004	89,270/-	15th April, 2010
5	005	8,23,806/-	26th April, 2010
6	007	5,71,445/-	30th April, 2010
7	008	8,17,607/-	3rd May, 2010
8	009	14,41,683/-	4th May, 2010
9	010	17,862/-	4th May, 2010
10	011	1,15,380/-	5th May, 2010
11	012	7,62,140/-	11th May, 2010
12	014	70,549/-	15th May, 2010
13	015	19,556/-	18th May, 2010
14	016	1,89,109/-	19th May, 2010
15	017	4,39,353/-	19th May, 2010
16	018	3,61,648/-	21st May, 2010
17	019	1,94,054/-	22nd May, 2010
18	020	1,74,270/-	25th May, 2010
19	024	6,51,507/-	26th May, 2010
20	025	13,61,424/-	27th May, 2010
21	027	5,93,691/-	28th May, 2010
22	028	3,50,650/-	28th May, 2010
23	029	8,426/-	3rd June, 2010
24	035	13,26,342/-	8th June, 2010
25	039	39,05,667/-	12th June, 2010
26	044	14,05,576/-	26th June, 2010
27	055	39,806/-	26th June, 2010
28	056	2,10,947/-	29th June, 2010
29	061	1,10,356/-	14th July, 2010
30	075	1,54,182/-	15th July, 2010
31	076	3,43,844/-	16th July, 2010
32	077	1,09,706/-	16th July, 2010
33	080	1,93,853/-	16th July, 2010
34	081	85,410/-	16th July, 2010
35	082	3,53,692/-	16th July, 2010
36	083	3,10,609/-	16th July, 2010
37	084	3,13,656/-	17th July, 2010
38	089	3,17,471/-	9th October, 2010
39	147	4,63,487/-	

4. Against the supply of the material and after being approved and acknowledged, the following payments were made:

S. No.	Dated	C. No.	Amount	Remarks
1	13th April, 2010	929483	3,00,000/-	Passed
2	15th April, 2010	928912	61,591/-	Passed
3	5th May, 2010	012 (Claim)	23,813/-	Settled
4	30th May, 2010	929918	1,55,136/-	Passed
5	1st June, 2010	931501	3,49,799/-	Recd thru RTGS
6	5th June, 2010	929967	4,99,807/-	Passed
7	18th June, 2010	929919	3,14,572/-	Recd. D/D
8	5th July, 2010	929968	4,99,807/-	Recd. Thru RTGS
9	25th July, 2010	931354	4,99,807/-	Passed on 01/10/10
10	6th August, 2010	931391	4,72,762/-	Bounced 11/01/11
11	12th August, 2010	931392	4,72,762/-	Bounced 11/01/11
12	22nd August, 2010	931353	4,99,807/-	Recd. D.D/
13	22nd August, 2010	931394	7,18,285/-	Bounced 11/01/11
14	7th Sept. 2010	931395	7,00,000/-	Bounced 11/01/11
15	13th Sept. 2010	933716	4,99,807/-	Recd. D/D
16	18th Sept. 2010	931396	7,37,841/-	

Bounced 11/01/11 17 25th Sept. 2010 931397 7,00,000/- Bounced 11/01/11 18 15th October, 2010 917419 28,24,754/- Bounced 11/01/11 19 15th Nov., 2010 917420 28,24,754/- Bounced 11/01/11 20 15th Dec., 2010 917421 28,24,754/- Bounced 11/01/11 21 15th Dec., 2010 917586 28,24,753/- Bounced 11/01/11 22 28th Dec., 2010 933701 7,27,474/- Bounced 11/01/11 23 9th January, 2011 933957 4,63,487/- Bounced 11/01/11 24 15th January, 2011 933702 7,27,474/- Bounced 29/01/11 25 25th January, 2011 933703 7,27,475/- Bounced 29/01/11.

5. Out of 25 cheques as mentioned above, 14 cheques were dishonoured on different dates for the reasons "Exceed Arrangements".

6. The petitioner has raised a legal issue vide the instant petition that respondent No.2 filed one complaint in regard to all the 14 cheques. Vide order dated 15.4.2011 and 2.7.2011, learned Metropolitan Magistrate has issued summons to the petitioners Nos.1 to.

3. 7. Learned counsel for the petitioner has relied upon Kershi CRL.M.C. No. 2351/2011 *Page 4 of 12* Pirozsha Bhagvagar v. State of Gujarat and Anr, 2007 Crl.L.J. 3858, where it was observed that one complaint case can be filed maximum against three dishonoured cheques, whereas respondent No.2 has filed the complaint case against 14 cheques..

8. I note on his submission that notice was issued in the instant petition vide order dated 2.7.2011 and the proceedings were stayed before the trial court..

9. I further note the payment schedule in respect of S.R. Enterprises and Shankar Timers, details of which are as under: "S.No. Cheque No. Date Amount Payment Schedule 1 931391 06.8.10 4,72,762.00 15.12.10 to 30.12.10 2 931392 12.8.10 4,72,762.00 -Do- (S.R.E.) 3 931394 22.8.10 7,18,285.00 -Do- (S.R.E.) 4 917332 01.7.10 96,209.00 -Do- (Shankar Timber) 5 929965 14.8.10 4,27,771.00 -Do- (Shankar Timber.) 6 931388 25.8.10 3,73,182.00 -Do- 7 917419 15.10.10 14,12,377.00 -Do- (S.R.E.) (50%) 39,73,348.00 8 931395 7.9.10 7,00,000.00 15.01.11 to to 30.01.11 (S.R.E.) CRL.M.C. No. 2351/2011 *Page 5 of 12* 9 931396 18.9.10 7,37,841.00 -Do- 10 931397 25.9.10 7,00,000.00 -Do- 11 931389 5.9.10 4,00,000.00 -Do- (Shankar Timber) 12 931390 25.9.10 3,86,591.00 -Do- 13

917419 15.10.10 14.12.577.00 -Do- (S.R.E.) (50%) 14 917420 15.11.10
2824754.00 71,61,563.00 15 917421 15.12.10 28,24,754.00 15.2.11 to 28.2.11
(S.R.E.) Total Rs. 39,73,348.00 Rs. 71,61,563.00 Rs. 28,24,754.00
Rs.1,39,59,665.00.

10. Learned counsel for the petitioner has referred to Sec.

219. of the Criminal Procedural Code, 1860. For the convenience, it is reproduced as under: "(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. (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 laws: Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian C.R.L.M.C. No. 2351/2011 *Page 6 of 12* 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."

11. Learned counsel submits that when a person commits more offences than one of the same kind committed within a period of 12 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 by one trial for any number of them not exceeding three..

12. Learned counsel further submits that the cheques in question were issued on different dates for the different transactions, therefore, each transaction is independent and if there is any default, each would have a different offence. Therefore, filing of one complaint against dishonour of 14 cheques is barred by Section 219 of Criminal Procedural Code, 1860 as referred to above..

13. On the other hand, learned counsel for respondent No.2 has submitted that all the cheques were given on different dates however were of the same transaction.

Out of the total cheques 25 in number, only 14 were dishonoured, however remaining honoured..

14. Ld. Counsel has relied upon the case of this Court in *Lalit Fabrics Private Limited v. Linkers Associates Limited* 1995 Law Suit (Del) 874, wherein it is held that all the cheques were of different dates and on presentations, the said cheques were dishonoured from time to time for the reasons of "Insufficient Funds", cannot be said to lose its right to initiate criminal complaint merely on the ground that notice related to more than one cheque, such interpretation of Section 219 Criminal Procedural Code, 1860 would be contrary to the very spirit of Section 138 of Negotiable Instruments Act, therefore, the Court was of the opinion that notice in respect of more than one cheques disentitles the payee to initiate action under Section 138 of Negotiable Instruments Act..

15. Learned counsel has further relied upon a case decided by the Andhra Pradesh High Court in *B. Venkat Narendra Prasad and Anr v. State of A.P.* III (2003) BC 319 wherein it was held as under "17. The facts of the case would go to show that the accused had a running ledger account with the 2nd respondent and the purchases and payments made by them were debited and credited in the account books which were maintained in the regular course of business. Thus, the accused-company had a single ledger account with the 2nd respondent in respect of all transactions made by the accused-company. Therefore, there is nothing wrong in filing a single complaint in respect of dishonour of several cheques. The contention of the learned Counsel for the petitioners on this aspect is thus devoid of merit."

16. And he also referred the case of Karnataka High Court in *Tiruchandoor Muruhan Spinning Mills (Private) Limited v. Madanlal Ramkumar Cotton and General Merchants* 2000 Law Suit (Kar) 486 where in it was held as under: CRL.M.C. No. 2351/2011 *Page 8 of 12* "6. Insofar as the important question raised for consideration in this petition that the provisions of Section 219 of the Cr. P.C. is attracted to the facts of the case is concerned, it is contended that cause of action for the complainant arose only after service of notice to the accused. It is pointed out that the complainant has issued a single notice calling upon the accused by

way of demand to pay the cheque amount within 15 days from the date of service of notice and the accused failed to pay the cheque amount within the time stipulated under Section 138(b) of the Act and therefore the complainant filed a complaint within one month from the date of service of notice which is well within time. There is no bar for lodging a complaint for initiation of action under Section 138 of the Negotiable Instruments Act as the accused committed the offence punishable under Section 138 of the Negotiable Instruments Act. In fact it is not to his disadvantage but it is an advantage that a single complaint is lodged against the accused by the complainant. The cause of action giving rise to a complaint is upon the service of notice contemplated under Section 138(b) of the Negotiable Instruments Act and not upon the dishonour of the cheques and therefore the contention canvassed by the learned Counsel for the respondent that the provisions of Section 219 of the Cr. P.C. are not applicable to the proceeding under Section 138 of the Negotiable Instruments Act has to be accepted."

17. Learned counsel has also relied upon a case of this Court reported as *Alpha Graphics v. Arjun Kohli* 148 (2008) Delhi Law Times 373 wherein it was held as under: "10. Turning to the next submission regarding one complaint being filed for as many as 20 dishonoured CRL.M.C. No. 2351/2011 *Page 9 of 12* cheques, a reference may be made to Section 219 Cr PC which reads as under: 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. (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 laws: 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..

11. The purport of the above provision is that where a person is accused of more than one offence of the same kind committed within the space of twelve months he can be charged and tried at one trial for, any number of them not exceeding three. The stage for determining whether there should be more than one charge and therefore more than one trial has not yet been reached. That will be decided at the appropriate stage by the learned trial court as and when charges are framed. This issue should therefore be appropriately addressed to that Court. The mere reference in the complaint to 20 cheques as having been dishonoured cannot render the complaint bad in law or not maintainable. The order of the learned MM issuing summons also does not get invalidated on that score. The second submission of learned Senior counsel for the Petitioner is also rejected." and that of Bombay High Court in *Rajasthan Trading Co. and Anr. v. Chemos International Limited and Anr.* II (2001) BC 426 observing: CRL.M.C. No. 2351/2011 *Page 10 of 12* "It is true that in the instant case petitioner has issued 27 cheques, 2 of which were dated 30.11.1996 while the remaining were dated 26.2.1997. Thus all the 27 cheques came to be issued to respondent No.1, within a span of less than 3 months. It is also true that dishonour in respect of each cheque would constitute separate offence. However, it is to be borne in mind that all the 27 cheques were presented to the Bank on one and the same date and they were dishonoured by the Bank. The intimation of dishonour of the cheques was given by the Bank to respondent No.1 on one and the same date i.e. 10.3.1997. It may further be noted that a single notice dated 19.3.1997 in respect of the dishonour of all the 27 cheques was given to the petitioners. The offence under Section 138 is deemed to have committed when the drawer of the chques fails to make payment of the amount of money within 15 days of the receipt of the demand notice given under Section 138(b) of the Negotiable Instruments Act. It is also material to note that all the 27 cheques issued by the petitioner were in connection with a single transaction entered with respondent No.1. Therefore, the provisions of Section 220(1) of Cr. P. Code permits the respondent No.1 to file one complaint against the petitioners in respect of the said transaction and the petitioners can be tried together for the dishonour of 27 cheques which in fact forms the same transactions. In this respect Mr. Sathyanarayanan referred to the decision in *K. Govindaraj v. Ashwin Baral, I* (1998) BC 581=1998 Crl.L.J 22, which was a case in

respect of 6 dishonoured cheques given to the complaint within a period of three months. The Madras High Court held that the cheques through given on different dates, were presented on one particular date as requested by the accused, and, therefore, one offence must be deemed to have been committed in respect of the single transaction. It was further held that acts of giving the cheques were merged together to form the same transaction. Therefore, the accused should be charged and tried at one trial for such an offence. It was, however, held that even otherwise Section 220(1) of the Cr. P. Code permits for such a single trial. I am inclined to adopt the same view taken by the Madras CRL.M.C. No. 2351/2011 *Page 11 of 12* High Court. Consequently, it will have to be held that the challenge given by the petitioners in this petition cannot be sustained. The learned Magistrate must be held to be right in holding that the petitioners can be tried at a single trial for the dishonour of all the 27 cheques."

18. Keeping in view the above discussion and the settled law in view, I am not inclined to interfere with the order passed by learned Metropolitan Magistrate, dated 15th April, 2011..

19. The interim order passed is vacated and Crl.M.A.No.8602/2011 stands disposed of as such..

20. Accordingly, Crl. M. C. No.2351/2011 is dismissed..

21. No order as to costs. SURESH KAIT, J January 17, 2012 Raj /jg CRL.M.C. No. 2351/2011 *Page 12 of 12*

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