
2009 (3) GLRCD 2765,2009 eGLR_HC 10002766,2009 (3) GLH 127

Before the Hon'ble MR M R SHAH, JUSTICE

VANIAGRO ENTERPRISES THROUGH M. BALAJI Vs. STATE OF GUJARAT

SPECIAL CIVIL APPLICATION No: 554 of 2008 , Decided On: 02/07/2009

(A) Criminal Procedure Code, 1973 (2 of 1974) - Sec. 219 - Negotiable Instruments Act, 1881 (26 of 1881) - Sec. 138 - Four different cheques were dishonoured - One common notice was issued for return of the cheques - Held, "dishonour of cheques constitute different offences and different cause of action" - Orders of Magistrate and Sessions Court rejecting application for consolidation of complaints upheld.

Four different cheques came to be dishonoured, however, one common notice 20-4-1999 was issued for dishonour of cheques, and thereafter, under different criminal cases, complaints have been filed by the original complaint under Sec. 138 of the Negotiable Instruments Act, 1881.

Dishonour of cheques constitute different offences and different cause of action. Merely because common notice was issued, it cannot be said that there is only one cause of action. Each dishonour of cheque has different cause of action for different individual offences. Under the circumstances, it cannot be said that both the Courts below have committed any error in rejecting the prayer of the respective petitioners-original accused to consolidate all the criminal cases and to try it by one trial and recording common evidence.

MR HRIDAY BUCH for Applicant(s) : 1, MR KRINA CALLA, AGP for Respondent(s) : 1, NANAVATI ASSOCIATES for Respondent(s) : 2,

M. R. SHAH J., 1. As common question of law and facts arise in these group of applications and they are between the same parties challenging the common order, all these Special Criminal Applications are disposed of by this common judgement and order.

2. Four different criminal complaints, being Criminal Case Nos. 3540 to 3543/1999, are filed by respondent no. 2 against the respective common petitioners in the Court of learned Chief Judicial Magistrate (First Class), Vadodara for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. In the aforesaid complaints, applications came to be submitted by the respective common petitioners to consolidate all the complaints and to record only one common evidence. It appears that the respective petitioners made the aforesaid request in light of the provisions of Section 219 of the Code of Criminal Procedure submitting that for dishonour of four cheques, one common notice has been issued dated 20/04/1999 and, therefore, there would be only one cause of action and all the complaints are required to be consolidated and one common evidence is required to be recorded. The learned 4th Additional Senior Civil Judge and Judicial Magistrate First Class, Vadodara vide order dated 05/08/2006 dismissed all the aforesaid applications below Exh. 28 and rejected the request of the respective petitioners to consolidate all

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the aforesaid criminal cases and to record one common evidence. Being aggrieved and dissatisfied with the order passed by the learned trial Court in rejecting the aforesaid applications, respective petitioners preferred Criminal Revision Application Nos. 211/2006, 213/2006, 212/2006 and 214/2006, which came to be rejected by the learned Additional District and Sessions Judge, Fast Track Court No. 5, Vadodara dated 12/03/2007. Being aggrieved and dissatisfied with the impugned order passed by the learned trial Court dismissing the applications submitted by the respective petitioners to consolidate the aforesaid criminal cases and to record one common evidence, the respective petitioners have preferred the present Special Criminal Applications under Article 227 of the Constitution of India.

3. Shri Hriday Buch, learned advocate appearing on behalf of the respective petitioners does not press the prayer to consolidate the respective criminal cases and the trial in exercise of powers under Article 219 of the Code of Criminal Procedure. However, he has submitted that in view of the fact there are four different dishonour of cheques and there was only one common notice issued under Section 138 of the Negotiable Instruments Act, 1881, it can be said that there would be only one cause of action for all the four criminal cases and, therefore, all the four criminal cases are required to be consolidated and common evidence is to be recorded.

4. Shri Hriday Buch, learned advocate appearing on behalf of the respective petitioners has heavily relied upon the decision of the division Bench of the Bombay High Court in the case of *RAJENDRA B. CHOUDHARI Vs. STATE OF MAHARASHTRA AND ANR reported in 2007 CRI. L.J. 844* in support of his above submission. By making the above submission and relying upon the aforesaid decision, it is requested to allow the present Special Criminal Application.

5. All the Special Criminal Applications are opposed by Ms. Krina Calla, learned AGP appearing on behalf of respondent no. 1 and Shri Nandish Chudgar, learned advocate appearing on behalf of respondent no. 2-original complainant. It is submitted by Shri Nandish Chudgar, learned advocate appearing on behalf of respondent no. 2-original complainant that the controversy in question is now not res integra in view of the decision of the Division Bench of this Court in the case of *KERSHI PIROZSHA BHAGVAGAR Vs. STATE OF GUJARAT reported in 2007 (2) GLH 403*. It is submitted that the Division Bench of this Court in the aforesaid decision has observed and held that four different dishonour of cheques would constitute four distinct offences, for which may be one common notice might have been issued. It is further submitted that as such the decision of the Bombay High Court relied upon by the learned advocate appearing on behalf of the respective petitioners would not be applicable at all. Before the Bombay High court, the controversy was with respect to running the sentence of imprisonment concurrently and in a case where more than one cheques are dishonoured. It is submitted that even otherwise, the decision of the Bombay High Court would be helpful to respondent no. 2-original complainant and, therefore, it is requested to dismiss the present Special Criminal Application.

6. Heard the learned advocates appearing on behalf of the respective parties. The short question, which is posed for consideration of this Court, is;

Whether in a case where more than one cheques are dishonoured and one common notice under Section 138 of the Negotiable Instruments Act, 1881 is issued, can it be said that it will constitute only one offence and/or there would be only one cause of action?

7. In the present case, four different cheques came to be dishonoured, however, one common notice 20/04/1999 was issued for dishonour of cheques and thereafter under different criminal cases, complaints have been filed by the original complaint under Section 138 of the Negotiable Instruments Act, 1881. In view of the fact that only one common notice was issued for dishonour of different cheques it is sought to be contented on behalf of the respective common petitioners-original accused that it can be said that there is only one cause of action and, therefore, all the complaints are required to be consolidated .

8. In case of *KERSHI PIROZSHA BHAGVAGAR* (Supra) in paragraph 22 the Division Bench has observed and held as under;

"22. The essential requirements of Section 138 of the N.I. Act are that (1) there should be a cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person in discharge of any debt or liability, in whole or in part, (2) the cheque should be presented to the banker, (3) it should be dishonoured, i.e. returned by the bank unpaid, either because of the amount of money standing to the credit of that account being insufficient to honour them or for the reason that it exceeds the amount arranged to be paid from that account. In case of dishonour, a notice in writing is issued to the drawer of the cheque within a stipulated period and if the drawer of that cheque fails to make the payment of the amount of money within the period stipulated from the receipt of the notice, the drawer of the cheque shall be deemed to have committed an offence punishable under Section 138 of the N.I. Act with imprisonment for a term which may extend to two years under the N.I. Act. The ingredients of Section 138 make it amply clear that every cheque that is dishonoured gives rise to the commission of an alleged offence for which there is a specified punishment. In the instant petition, four cheques were dishonoured, giving rise to four alleged offences. Since Section 219 deals with offences and not with acts or transactions, the only conclusion that is possible is that dishonour of four cheques constitutes four distinct offences. The fact that two complaints have been filed in respect of four cheques that have been dishonoured cannot reduce the number of offences alleged to have been committed merely by clubbing two alleged offences in one complaint. The argument that all the four cheques were given as part of the same transaction cannot bring the case of the petitioner within the ambit of the provisions of Section 219 of the Code and to do so would be a clear violation of the provisions of that Section."

9. The Division Bench has specifically observed that ingredients of Section 138 make it amply clear that every cheque that is dishonoured gives rise to the commission of an alleged offence for which there is a specified punishment. The Division Bench has further observed that as four cheques were dishonoured, it gives rise to four alleged offences and, therefore, the contention on

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behalf of the respective petitioners-original accused that as only one composite notice has been given there would be only one cause of action and/or there would be only one offence cannot be accepted.

10. Now so far as the decision of the Bombay High Court in the case of *RAJENDRA B. CHOUDHARI (Supra)* relied upon by the learned advocate appearing on behalf of the respective petitioners-original accused is concerned, apart from the fact that in view of binding decision of the Division Bench of this Court referred to hereinabove, the said decision would not be of any assistance to the respective petitioners-original accused, even otherwise, considering the controversy/dispute raised in the said decision, the said decision would not be of any assistance to the petitioners-original accused. Before the Bombay High Court, in the said decision, the accused came to be convicted for the offences under Section 138 of the Negotiable Instruments Act, 1881 for four criminal cases tried separately and the learned Magistrate imposed separate sentence of imprisonment and fine in each of the cases and being aggrieved and dissatisfied with the same, the accused approached the Bombay High Court for a direction that all the sentences shall run concurrently and submitted that considering Section 219 of the Code of Criminal Procedure, the learned trial Court committed an error in not combining and/or in holding single trial and, therefore, on the facts the said decision would not be of any assistance to the petitioners. Considering the facts of the cases on hand and the decision of the Division Bench of this Court in the case of *KERSHI PIROZSHA BHAGVAGAR (Supra)*, more particularly paragraph 22, the prayer of the respective petitioners for consolidation of all the four cases and for joint one trial and to record only one common evidence cannot be accepted on the ground that there will be only one cause of action. Dishonour of cheques constitute different offences and different cause of action. Merely because common notice was issued, it cannot be said that there is only one cause of action. Each dishonour of cheque has different cause of action for different individual offences. Under the circumstances, it cannot be said that both the Courts below have committed any error in rejecting the prayer of the respective petitioners-original accused to consolidate all the criminal cases and to try it by one trial and recording common evidence.

11. For the reasons stated hereinabove, there is no substance in the Special Criminal Applications and the same deserves to be dismissed and are accordingly dismissed. Rule is discharged in each of the Special Criminal Applications. Ad-interim relief granted earlier stands vacated forthwith in each of the Special Criminal Applications.

12. Considering the fact that the criminal cases/complaints are of the year 1999, which are for the offences under Section 138 of the Negotiable Instruments Act, 1881 and considering the object and purpose of Section 138 of the Negotiable Instruments Act, 1881, the learned trial Court is directed to decide and dispose of all the aforesaid criminal cases/complaints at the earliest but not later than 31/03/2010.

13. Registry is directed to send the writ of this order to the learned trial Court immediately.

Applications dismissed.

