

Crl.O.P.No.21268 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :01.10.2024

Pronounced on :17.10.2024

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.21268 of 2024

and

Crl.M.P.Nos.12190 & 12191 of 2024

1.M/s Challani Rank Jewellery  
A Partnership Firm  
Represented by its Partnership  
Mr.Sumti Challani

2.Mr.Sumti Challani, Age 42,  
Partner M/s Challani Ranka Jewellery

3.Mr.Maya Challani, Age 40,  
Partner M/s Challani Ranka Jewellery  
All at  
Challani Plaza, No.36,  
Veerappan Street, Sowcarpet, Chennai 600 079  
and also at No.2, Ritherdon Avenue,  
Vepery, Chennai 600 007.

.. Petitioners

/versus/



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Ashok Kumar Jain  
Proprietor of M/s Mangalkalash Jewellers  
No.152, Mint Street, 1<sup>st</sup> Floor,  
Sowcarpet, Chennai 600 079.

.. Respondent

Criminal Original Petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records in S.T.C.No.3866 of 2022 on the file of IV FTC George Town, Chennai and quash the same.

For Petitioners :Mr.S.Ramesh Kumar

For Respondent :Mr.J.Ranjith Kumar for  
M/s Surana @ Surana

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ORDER

The Criminal Original Petition to quash the criminal complaint filed for offence under Section 138 of the Negotiable Instruments Act, 1881(in short “NI Act”) is on the following two specific grounds.

(1) Single complaint in respect of dishonour of 36 cheques bearing different dates is not maintainable in view of Section 219 of Cr.P.C.

(2) The account from which the cheques drawn had sufficient fund to



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honour the cheque but not honoured in view of the account blocked as per order of the Income Tax Department and the Enforcement Directorate. Hence, the facts of the case does not fall under any of two contingencies contemplated under Section 138 of NI Act.

2. The crux of the complaint against the petitioners:

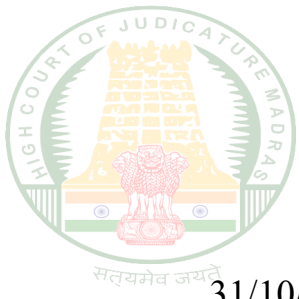
Complainant Mr.Ashok Kumar Jain, Proprietor of M/s Mangalkalsh Jewellers carrying on business at 152, Mint Street, First Floor, Sowcarpet, Chennai, is a dealer in silver articles and silver bullions. The first accused M/s Challani Ranka Jewellery, a partnership Firm, dealing with silver articles and silver bullions. The second and third accused are its partners. On 14/08/2020 M/s Chellani Ranka Jewellery purchased silver articles and silver bullions worth Rs.1,10,35,566/- from the complainant under invoice even dated with promise to pay the price within 7 days, failing which will pay 24% interest p.a. till the date of payment.



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3. Towards part discharge of the legally enforceable debt/liability, on behalf of the first accused, the second accused with the knowledge of the third accused issued 36 cheques drawn on Indian Overseas Bank, Sowcarpet Branch, Chennai. The cheques are for different amount drawn on various dates between 14/08/2020 and 30/09/2020, totally for Rs.1,05,35,566/-.

4. The complainant initially presented 10 cheques for collection through State Bank of India, Elephant Gate Branch. All 10 cheques were dishonoured. Subsequently, the complainant met the 2<sup>nd</sup> and 3<sup>rd</sup> accused, informed them about the dishonour of the cheques and sought for payment. The 2<sup>nd</sup> and 3<sup>rd</sup> accused assured honouring the cheques and requested to represent them. However, on representation all the 36 cheques were returned with endorsement "Account blocked situation covered in 2125". Intimating the dishonour of the 36 cheques, the complainant issued statutory notice dated 29/10/2020 to the accused, demanding payment of Rs.1,05,35,566/- being the cheques amount. The notice was received by the accused on



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31/10/2020 and they replied through their counsel vide, reply notice dated 07/11/2020 containing false and frivolous statements and allegations. The accused never took any steps to clear the legally enforceable debt.

5. Having issued cheques with fraudulent intention to cheat, the accused 1 to 3 have jointly and severally committed offence punishable under Section 138 of NI Act.

6. At paragraph 11 of the complaint, the cause of action for the complaint is narrated as below:-

The cause of action for the above Complaint arose at Chennai when 1<sup>st</sup> Accused had purchased silver articles and silver bullions from the Complainant with prior approval and consent of the 2<sup>nd</sup> and 3<sup>rd</sup> Accused, when an Invoice dated 14.08.2020 was raised for a total value of Rs.1,10,35,566/- against such purchases, when the 2<sup>nd</sup> Accused as an Authorized signatory of the 1<sup>st</sup> Accused with full knowledge, concurrence and approval of the 3<sup>rd</sup> Accused had issued the above said Cheques towards



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discharge of their liability and subsequently, when the Complainant presented the said Cheques for encashment to their Bankers, State Bank of India, Elephant Gate Branch, Wall Tax Road, Chennai 600 003, and when the said Cheques were returned dishonoured by the Bankers of the Accused, Indian Overseas Bank, Sowcarpet, Chennai - 600 079 vide Return Memo dated 19.10.2020 for the reason 'Account Blocked Situation Covered in 2125' and when the Legal Notice dated 29.10.2020 was issued to all the Accused by the Counsel of the Complainant, when the legal notice was received by all the Accused on 31.10.2020 and the Accused issued reply notice dated 07.11.2020 through their Counsel containing false and frivolous statements and allegations, however the Accused failed to repay till date. This Complaint is filed within time. The State Bank of India, Elephant Gate Branch is within the jurisdiction of the C2, Elephant Gate Police Station, Chennai. The above said police station is within the jurisdiction of this Hon'ble Court.

7. Crux of the quash petition:-



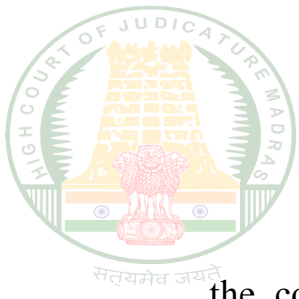
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The second petitioner/second accused Mr. Sumti Challani in his affidavit filed in support of the quash petition contends that, he is the partner of the first accused firm M/s Challani Ranka Jewellers. The third accused Maya Challani is his wife, but she is not a partner of the first accused firm as alleged in the complaint. Mr.R.J. Anandmul and Mahender Chalani are the other partners of the First accused Firm.

8. The 36 cheques which are subject matter of the complaint were not given in respect of the alleged supply of silver articles and silver bullions by the complainant on 14/08/2020. They were cheques given to the complainant for the previous transactions for the period 2019 and same been misused to initiate complaint under Section 138 of NI Act against him and his wife.

9. In fact, on 14/08/2020 the date on which the complainant alleged to have supplied silver articles, he was not running any business in the address given by him. The police who enquired his complaint for cheating, found in



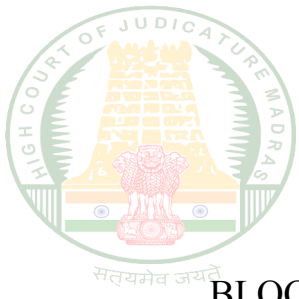
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the course of the investigation that the running numbers of the subject cheques (901318 to 901352 and 901286) were of the year 2019 and other cheques (prior and later numbers) were passed between May 2019 and June 2019. Thus, the allegation of the complainant that these 36 cheques were given on 14/08/2020 is a patent lie. Hence, the complaint given to the police for cheating was closed as mistake of fact. The complainant for the very same transaction had filed money suit before the High Court and same is pending in C.S.(Commercial)No:361/2020 on the file of High Court, Madras.

10. During the police enquiry, the complainant failed to produce the invoice book to prove the sales on 14/08/2020. The alleged sale is denied and invoice is a fake one as if the complainant was carrying on business in the address mentioned in the invoice. One complaint for 36 cheques bearing different dates and amount will not constitute same transaction and prejudicial to the accused interest besides violation of Section 219 of the Cr.P.C. The cheques were returned with endorsement "ACCOUNT





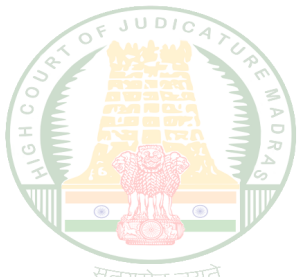
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BLOCKED SITUATION COVERED IN 2125”. This reason will not cover Section 138 of Negotiable Instruments Act, 1881. The account was blocked by Enforcement Directorate on 28/01/2020. On the day of blocking the petitioner's account, a balance of Rs.10crores lying in the Account and the Bank has clearly explained to the Police that the cheques were issued to the account holder in the year 2019.

11. To buttress the above submission, the petitioners have enclosed the statements of witnesses recorded by the police during the investigation of the complaint given by the respondent in Crime No: 216/2021 ( on the file of CCB/Team IV, Chennai) and the letter of the Indian Overseas Bank, Sowcarpet Branch to the Sub Inspector of Police, CCB- Team IV furnishing KYC details and about the lien created in the petitioner’s bank account.

12. The Learned Counsel for the petitioners rely upon the following judgement in support of his argument that single complaint for 36 cheques not maintainable unless suitable amendment is made to section 219 of



13. Suo Motu Writ Petition No:02/2020 ( Expeditious Trial of Cases under Section 138 of NI Act, 1881): Reported in CDJ 2021 SC 289.

14. Per contra, the learned counsel for the respondent/complainant rely upon the following judgments to sustain the single complaint for 36 cheques.

(i)Manjula –vs- Colgate Palmolive ( India ) Ltd:  
[2006 (5) STC 303].

(ii)M/s Kaizer Trade Ventures –vs- M/s Sutha  
Enterprises: [20217 SCC OnLine Mad 15608].

(iii)Suryakant V. Kankia –vs- Muthukumaran:  
[MANU /TN/0072/2004].

(iv)G.Thenmozhi –vs- N.Subramaniam:  
[MANU/TN/2026/2022].



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15. To consider the merits of the argument put forth by the respective counsels, it is appropriate to place on record the sequence of dates and events relevant for consideration.

16. As per the complaint, on 14/08/2020, the complainant supplied silver articles and bullions worth Rs.1,10,35,566/-.

17. The following 36 cheques were given for discharge of the debt:

| S.No. | Cheque No. | Date       | Amount (Rs.) |
|-------|------------|------------|--------------|
| 1.    | 901318     | 30.09.2020 | 1,00,000/-   |
| 2.    | 901319     | 30.09.2020 | 1,00,000/-   |
| 3.    | 901320     | 30.09.2020 | 1,00,000/-   |
| 4.    | 901321     | 30.09.2020 | 1,00,000/-   |
| 5.    | 901322     | 30.09.2020 | 1,00,000/-   |
| 6.    | 901323     | 26.09.2020 | 1,00,000/-   |
| 7.    | 901324     | 26.09.2020 | 1,00,000/-   |
| 8.    | 901325     | 26.09.2020 | 1,00,000/-   |
| 9.    | 901326     | 26.09.2020 | 1,00,000/-   |
| 10.   | 901327     | 26.09.2020 | 1,00,000/-   |
| 11.   | 901328     | 19.09.2020 | 1,00,000/-   |
| 12.   | 901329     | 19.09.2020 | 1,00,000/-   |
| 13.   | 901330     | 19.09.2020 | 1,00,000/-   |



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| S.No. | Cheque No. | Date       | Amount (Rs.) |
|-------|------------|------------|--------------|
| 14.   | 901331     | 19.09.2020 | 1,00,000/-   |
| 15.   | 901332     | 19.09.2020 | 1,00,000/-   |
| 16.   | 901333     | 12.09.2020 | 1,00,000/-   |
| 17.   | 901334     | 12.09.2020 | 1,00,000/-   |
| 18.   | 901335     | 12.09.2020 | 1,00,000/-   |
| 19.   | 901336     | 12.09.2020 | 1,00,000/-   |
| 20.   | 901337     | 12.09.2020 | 1,00,000/-   |
| 21.   | 901338     | 05.09.2020 | 1,00,000/-   |
| 22.   | 901339     | 05.09.2020 | 1,00,000/-   |
| 23.   | 901340     | 05.09.2020 | 1,00,000/-   |
| 24.   | 901341     | 05.09.2020 | 1,00,000/-   |
| 25.   | 901342     | 05.09.2020 | 1,00,000/-   |
| 26.   | 901343     | 28.08.2020 | 1,00,000/-   |
| 27.   | 901344     | 28.08.2020 | 1,00,000/-   |
| 28.   | 901345     | 28.08.2020 | 1,00,000/-   |
| 29.   | 901346     | 28.08.2020 | 1,00,000/-   |
| 30.   | 901347     | 28.08.2020 | 1,00,000/-   |
| 31.   | 901348     | 14.08.2020 | 1,00,000/-   |
| 32.   | 901349     | 14.08.2020 | 1,00,000/-   |
| 33.   | 901350     | 14.08.2020 | 1,00,000/-   |
| 34.   | 901351     | 14.08.2020 | 1,00,000/-   |
| 35.   | 901352     | 01.10.2020 | 50,000/-     |
| 36.   | 901286     | 21.08.2020 | 70,85,566/-  |



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18. Out of the above 36 cheques, the complainant claims that initially he presented the following 10 cheques and same was dishonoured.

| S.No. | Cheque No. | Date       | Amount (Rs.) | Return Memo |
|-------|------------|------------|--------------|-------------|
| 1.    | 901343     | 28.08.2020 | 1,00,000/-   | 29.08.2020  |
| 2.    | 901344     | 28.08.2020 | 1,00,000/-   | 29.08.2020  |
| 3.    | 901345     | 28.08.2020 | 1,00,000/-   | 29.08.2020  |
| 4.    | 901346     | 28.08.2020 | 1,00,000/-   | 29.08.2020  |
| 5.    | 901347     | 28.08.2020 | 1,00,000/-   | 29.08.2020  |
| 6.    | 901348     | 14.08.2020 | 1,00,000/-   | 27.08.2020  |
| 7.    | 901349     | 14.08.2020 | 1,00,000/-   | 27.08.2020  |
| 8.    | 901350     | 14.08.2020 | 1,00,000/-   | 27.08.2020  |
| 9.    | 901351     | 14.08.2020 | 1,00,000/-   | 27.08.2020  |
| 10.   | 901286     | 21.08.2020 | 70,85,566/-  | 24.08.2020  |

19. Subsequently, he presented all the 36 cheques for collection and same were returned with 36 individual memos dated 19/10/2020 stating “Account blocked situation covered in 2125”.



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20. Thus, from the complaint it is found that for discharge of debt arose on the supply of goods on 14/08/2020, 36 cheques for different amount on different dates between 14/08/2020 and 30/09/2020 issued. Out of 36 cheques the complainant had initially presented 4 cheques dated 14/08/2020 each for Rs.1,00,000/- and got it returned with memo dated 27/08/2020. One cheque dated 21/08/2020 for Rs.70,85,566/- and got returned on 24/08/2020, five cheques dated 28/08/2020 each for Rs.1,00,000/- and got it returned on 29/08/2020. Subsequently he had presented all the 36 cheques and got it returned on 19/10/2020.

21. The date of presentation of the cheques not found in the statutory notice or in the complaint. The convergence of the events after issuance of cheques on three different dates and presentation on different dates, had happened only when the statutory notice dated 29/10/2020 issued by the complainant through his counsel. The statutory notice discloses transactions on different dates.



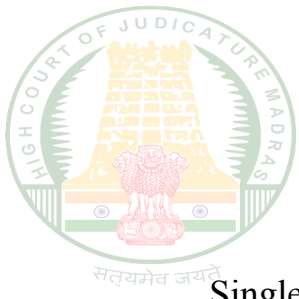
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22. Section 219 of Cr.P.C., deals with offence of same kind committed within the space of 12 months and Section 220 of Cr.P.C., deals with more offences than one, committed by same person, in one series of act so connected together as to form same transaction. These two provisions enable the court to frame charge together and conduct one trial, respectively.

23. The field of operation of these two sections though at times co-exist and overlap, but their operation can never be inter-changeable. While Section 219 of Cr.P.C enables one trial up to 3 cases for offences of same kind committed by same person within the space of 12 months, Section 220 Cr.P.C enables one trial for several offences forming part of same transaction. The offences need not be of same kind. It may be of different kind but form part of same transaction.

24. In *Suryakant V Kankia –vs- Muthukumaran* cited supra, Learned



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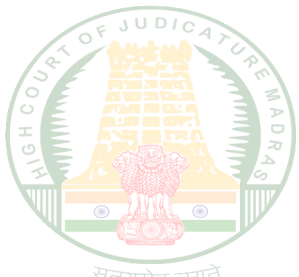
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Single Judge of this Court held that Section 219 of Cr.P.C incorporates a general rule and not mandatory in proceedings under Section 138 of NI Act. While Section 219 Cr.P.C contemplates joinder of charges to avoid multiplicity of proceedings in criminal matters. Though it is desirable to file separate complaints , there is nothing illegal in filing a single complaint for dishonour of 9 cheques drawn on various dates within span of two months but presented together on the same day and returned on the same day. The issuance of single notice for the 9 cheques result in forming part of same transaction.

25. In *Manjula –vs- Colgate Palmolive (India) Limited* cited supra, the Division Bench of this Court considering the facts of the case wherein 16 cheques of different dates and different amount given for discharge of liability presented on same day and got return on same day. One common notice was issued and reply was also one and common for all the 16 cheques. One complaint for 16 cheques when challenged before the Court as violation of the general rule, the division bench of this Court observed as

16/31





below:-  
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*“12. The above said 16 cheques were drawn on different dates and they were for different amounts, but, they were presented together for payment and were dishonoured and a single notice was sent by the complainant to the drawer. The general rule is that every distinct offence of which a person is accused, there shall be separate charge and every such charge shall be tried separately. As observed by the Division Bench of the Kerala High Court in Swarnalatha v. Chandramohan, 1996 (3) Crimes 283, Section 219, Cr.P.C. is an exception to the general rule. As stated earlier, even though different cheques were given on different dates, the presentation of all those cheques formed the same transaction. Further, the demand was also made by the complainant on the dishonouring of the cheques by giving one lawyer's notice and not several demands for the payment of the dishonoured cheques. In those circumstances, we are of the view that the petitioner/accused herein may be charged and tried at one trial for several such offences, because, the series of acts are so inter-linked or inter-connected.*

*13. The very object of Section 219, is to prevent miscarriage of justice by clubbing together a number of offences and making it impossible for the accused to defend them. Sections 219 and 220, Cr.P.C. lay down different and distinct exception to the general rule contemplated under Section 218*



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*Cr.P.C. in framing charges. We are of the view that the number of three offences underlined in Section 219 of the Code cannot control Section 220(1) of the Code.*

*14.In the instant case, the offences committed by the same person in respect of 16 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. In such circumstances, it is easy to conclude that the offences under Section 138 of the Act in respect of those cheques can be held to be offences committed in the course of same transaction. Section 219(1), Cr.P.C. refers to identical offences committed on different dates during a span of 12 months. It permits joinder of those charges provided they are offences of the same kind.*

*15.In these circumstances, we hold that Section 219(1), Cr.P.C. permits joinder of all charges provided they are offences of the same kind. We are also of the view that the number of transactions and the cheques issued prior to the issuance of the statutory notice under Section 138(b) of the Act could at best be considered as bundle of facts giving rise to a cause of action and that it is not a ground to quash the criminal proceedings against the drawer of the cheques. We further hold that if the offences are of the same kind, the number of transactions between the parties which culminated into issuance of the statutory notice is no ground to urge that under Section 219, Cr.P.C., the prosecution laid against the petitioner is not maintainable.*



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*16. In the case on hand, though the act of issuance of 16 cheques was on different dates, in view of the fact that a demand was made by issuing a common notice, the complaint cannot be said to be vitiated. To put it clear, though the giving of cheques by the accused to the complainant may be on different dates, all those acts of giving those cheques were merged together to form the same transaction viz., the presentation of the cheques together was on one particular date. In view of the fact that demand was also made by the complainant on the dishonouring of the cheques by giving one lawyer's notice and not several demands, we are of the view that the accused may be charged and tried at one trial for several such offences because the series of acts are so inter-linked or inter-connected together so as to form the same transaction of dishonouring the cheques, therefore, it cannot be said that the complaint is vitiated.”*

26. Following the Manjula judgment of the Division Bench, the later judgments in *M/s KaizerTrade Ventures –vs- M/s Sudha Enterprises and Thenmozhi –vs- Subramanian* favoured filing single complaints for more than three cheques if they form part of same transaction.

27. The judgment of the Supreme Court rendered in the Suo motu writ



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petition been relied by the petitioner which is in respect of suggestion to amend Section 219 Cr.P.C to facilitate filing of single complaint between same parties for multiple cheques to avoid multiplicity of proceedings. The discussion and observation of the constitutional Bench of 5 Learned Judges regarding Sections 219 and 220 of Cr.P.C qua Section 138 of NI Act are under:-

“ Section 219 and 220 of the Code:

13. Section 219 of the Code provides that when a person is accused of more offences than one, of the same kind, committed within a space of 12 months, he may be tried at one trial for a maximum of three such offences. If more than one offence is committed by the same person in one series of acts so committed together as to form the same transaction, he may be charged with and tried at one trial, according to Section 220. In his preliminary report, the learned Amici Curiae suggested that a legislative amendment is required to Section 219 of the Code to avoid multiplicity of proceedings where cheques have been issued for one purpose. In so far as Section 220 of the Code is concerned, the learned Amici Curiae submitted that same/similar offences as part of the same transaction in one series of acts may be the subject matter of one trial. It was argued by the learned Amici Curiae that Section 220(1) of the Code is not



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controlled by Section 219 and even if the offences are more than three in respect of the same transaction, there can be a joint trial. Reliance was placed on a judgment of this Court in *Balbir v. State of Haryana & Anr.* ((2000) 1 SCC 285) to contend that all offences alleged to have been committed by the accused as a part of the same transaction can be tried together in one trial, even if those offences may have been committed as a part of a larger conspiracy.

14. The learned Amici Curiae pointed out that the judgment of this Court in *Vani Agro Enterprises v. State of Gujarat & Ors.* (2019 (10) SCJ 238) needs clarification. In *Vani Agro (supra)* this Court was dealing with the dishonour of four cheques which was the subject matter of four complaints. The question raised therein related to the consolidation of all the four cases. As only three cases can be tried together as per Section 219 of the Code, this Court directed the Trial Court to fix all the four cases on one date. The course adopted by this Court in *Vani Agro (supra)* is appropriate in view of the mandate of Section 219 of the Code. Hence, there is no need for any clarification, especially in view of the submission made by the learned Amici that Section 219 be amended suitably. We find force in the submission of the learned Amici Curiae that one trial for more than three offences of the same kind within the space of 12 months in respect of complaints under Section 138 can only be by an amendment. To reduce the burden on



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the docket of the criminal courts, we recommend that a provision be made in the Act to the effect that a person can be tried in one trial for offences of the same kind under Section 138 in the space of 12 months, notwithstanding the restriction in Section 219 of the Code.

15. Offences that are committed as part of the same transaction can be tried jointly as per Section 220 of the Code. 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 (State of Andhra Pradesh v. Cheemalapati Ganeswara Rao



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& Anr., (1964) 3 SCR 297). There is no ambiguity in Section 220 in accordance with which several cheques issued as a part of the same transaction can be the subject matter of one trial.

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24.The upshot of the above discussion leads us to the following conclusions:

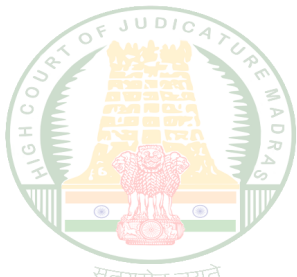
(1).....

(2).....

(3).....

(4)We recommend that suitable amendment be made to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in Section 219 of the Code.”

28. As far as the facts and circumstances of the instance case, it is similar to the facts found in *Suryakant V Kanakia –vs- Muthukumaran* ( MANU/TN/0072/2004) and *Manjula –vs- Colgate Palmolive ( India) Ltd.* ( 2006(5) CTC 303. Therefore, the single complaint under Section 138 of NI Act for dishonour of 36 cheques is maintainable in view of the convergence of the events by presenting the cheques on same day, return of the cheques



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on same day besides causing single notice common to all the cheques.

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29. The second point for consideration is whether the Account blocked by the Enforcement Directorate or Income Tax Department will protect the drawer from prosecution under Section 138 of NI Act.

30. Section 138 of the NI Act envisages two contingencies to attract prosecution. They are:

(1)the amount of money standing in the account must be insufficient to honour the cheque or

(2)the cheque amount should exceeds the amount arranged to be paid.

31. Though account blocked is not specifically mentioned as a reason for dishonour to attract Section 138 of NI Act, the judicial pronouncements





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had made it clear that the two contingencies mentioned in the Section 138 of the NI Act are genus, the reasons like account closed, stop payment, signature differs etc., are species. If the complaint disclosed that the subject cheque was given without sufficient fund or in excess of arrangement, the other reasons which are species to the genus will follow to proceed under Section 138 of NI Act.

32. In this regard, it is profitable to refer the observation of the Supreme Court judgment in *Laxmi Dyechem v. State of Gujarat* reported in [(2012) 13 SCC 375]:-

*“We find ourselves in respectful agreement with the decision in Magma case (NEPC Micon Ltd. v. Magma Leasing Ltd. (1999) 4 SCC 253) that the expression “amount of money ... is insufficient” appearing in Section 138 of the Act is a genus and dishonour for reasons such “as account closed”, “payment stopped”, “referred to the drawer” are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the “signatures do not*



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*match” or that the “image is not found”, which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Section 138 of the Act. (emphasis supplied).”*

33. If the above logic and analogy is applied, it is amply clear that in cases of ‘account block’ or ‘account freezed’ complaint under Section 138 of NI Act is maintainable, if the complainant *prima facie* satisfies that in the account there was no sufficient fund to honour. As supreme court has held, the genus of the crime is any one of the contingencies envisaged under Section 138 of NI Act. If the complaint discloses that de hors of account block or account freeze and even otherwise, the cheque could not been passed due to want of fund in the account, the drawer of the cheque cannot take umbrage under the fact that his account is blocked or freezed. Issuing the cheque without sufficient fund to honour is the genus of the crime.

34. The Learned Counsel for the petitioners referring the KYC information given by the Bank claims that on the date of the cheque, in the



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petitioner account more than Rs.10 crores lying in the account. The said contention of the petitioner does not appear to be factually correct. The letter of the IOB dated 01/03/2022 addressed to the Sub-Inspector of Police, CCB – Team IV discloses that as per Income Tax order dated 28/01/2020 a lien of Rs.53,13,298/- created. The petitioner account has become NPA due to failure of repayment of loan and as on 01/03/2022 a sum of Rs.10,78,25,666.91 remain in debit. The statement of account enclosed with the KYC details further discloses that between 14/08/2020 and 30/09/2020, the dates of the cheques, the petitioner firm had debit of Rs.9,33,83,328.46 and no credit in his account as claimed.

35. The further contention of the petitioners that the KYC detail from the bank discloses that the cheques which are subject matter of the complaints were issued to the account holder by the Bank on 23/07/2018 (Cheque No. 901286) and on 15/04/2019 (Cheque Nos:901318 to 901352) are not evidence to disprove the case of the complainant that those cheques were not given by the accused/petitioners on 14/08/2020 or on subsequent



dates.

36. Regarding the third petitioner/third accused, the petitioners contention is that she is not a partner of the first accused firm. Whereas in the complaint it is specifically stated that she had been in active participation of the business and with her knowledge the goods were sold and cheques were issued. These facts are being disputed, it is for the parties to establish their case through evidence in the course of trial. This Court cannot venture into testing the veracity of facts in dispute while dealing the quash petition in exercise of the inherent power under the Code.

37. As a result, in the facts and circumstances of this case, this Court hold that, filing of single complaint for dishonouring 36 cheques is maintainable since the transaction is in respect of supply of goods on 14/08/2020 and default in payment. The cheques were given to discharge the debt arising on the single transaction. The numerous cheques given for clearing the debt, returned on the same day. Complaint is filed after causing



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common notice. Hence the dictum laid by the Division Bench of this Court in **Manjula case** squarely applies to the case in hand.

38. The cheques were returned with endorsement “account blocked. Situation covered in 2125”. On the date of presentation of the cheque or even on the date of the cheque, the petitioners had no sufficient fund to honour it or made arrangement with bank to honour the cheques. The balance in the account running in debit. Therefore, applying the dictum of the Hon’ble Supreme Court in *NEPC –vs- Magma case and in Laxmi Dyechem v. State of Gujarat* the prima facie case of the complainant that the cheques were issued exceeding the arrangement with Bank satisfies the second contingency envisaged under Section 138 of NI Act. Therefore the complaint under Section 138 of Negotiable Instruments Act, 1881 as against these petitioners is maintainable.

39. In fine, *this Criminal Original Petition stands dismissed as devoid of merit.* Consequently, connected Miscellaneous Petitions are

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closed.  
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17.10.2024

Index:yes  
Internet:yes  
Speaking order:yes/no  
Neutral Citation:yes/no  
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To:

IV Fast Track Court, Metropolitan Magistrate at George Town, Chennai

DR.G.JAYACHANDRAN,J.

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delivery order made in  
CrI.O.P.No.21268 of 2024  
and  
CrI.M.P.Nos.12190 & 12191 of 2024

17.10.2024