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## **Romesh Power Products and Another Vs Jaipur Conductors Pvt. Ltd.**

### **Criminal Revision Petition No. 385 of 2011**

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**Court:** Rajasthan High Court

**Date of Decision:** June 15, 2011

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) &” Section 204(2)#Negotiable Instruments Act, 1881 (NI) &” Section 138

**Citation:** (2012) 1 RCR(Criminal) 812

**Hon'ble Judges:** Prashant Kumar Agarwal, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Prashant Kumar Agarwal, J.

The accused petitioners have preferred this Criminal Revision Petition against the impugned order dated

22.03.2011 passed by the trial court in Cr. Regular Case No. 3431/2010 by which an application filed on behalf of the accused petitioners was

dismissed. The brief relevant facts for the disposal of this revision petition are that the complainant non-petitioner filed a criminal complaint for the

offence u/s 138 of Negotiable Instruments Act against the accused petitioners before the trial court and on behalf of them an application was filed

on 15.03.2011 with a prayer that the complaint filed by the complainant non-petitioner is liable to be dismissed on the grounds stated in the

application. The first ground taken by the accused petitioners in this application was that in the light of the view expressed by the Supreme Court in

the case reported in Damodar S. Prabhu Vs. Sayed Babalal H., , the complaint is liable to be dismissed as the complainant non-petitioner has also

filed some other complaints for the offence u/s 138 of the Negotiable Instruments Act against the accused petitioners in other courts and although

all these complaints relate to the same transaction the non-petitioner has not filed any affidavit and thus he has not complied the mandate given by

the Hon"ble Supreme Court. The other ground taken in the application was that the complainant non petitioner has not filed the list of witnesses

and thus the learned trial court has committed illegality in issuing process to the accused petitioners.

2. The complainant non-petitioner did not file written reply to the application and the learned trial court after hearing the parties, dismissed the

application by passing impugned order. Feeling aggrieved, the accused petitioners by means of this revision petition have challenged the impugned

order.

3. The learned trial court in the impugned order has held that the mandate of the Hon"ble Supreme Court is not applicable to the facts of the

present case due to the reason that it is not revealed that the different complaints filed on behalf of the complainant non-petitioner relate to the same

transaction. The learned trial court on the basis of the facts available on the record came to the conclusion that the various complaints which have

been filed by the complainant non-petitioner in different courts relate to different transactions and the several cheques were issued by the accused

petitioners for different bills. The learned trial court has also held that in compliance of the order of cognizance, in the complainant non-petitioner

filed list of witnesses with process fees and after that trial court has issued process to summon the accused petitioners. The learned trial court

rejected this contention of the accused petitioners, that the trial court issued process although the complainant has not filed list of witnesses.

4. The learned counsel for the accused petitioners has submitted that the learned trial court has not properly considered the observations made by

Hon"ble Apex Court in the above case and has wrongly held that the various complaints filed on behalf of the complainant non-petitioner in

different courts do not relate to the same transaction. The learned counsel has also submitted that it is essential that the list of witnesses should be

filed alongwith the complaint and it is an admitted fact that no list of witnesses was filed alongwith the complaint, thus the trial court was wrong in

issuing the process on the basis of a list of wetness which was filed after the order of cognizance. In support of his submission, the learned counsel

for the accused petitioners has relied upon the following cases :

1. Damodar S. Prabhu Vs. Sayed Babalal H., .

2. 1998 CrI L.J. 2164 (Kar) A.K. Suresh v. Rajendra Peter & Anr.

3. 2001 CrI. L.J. 295 (Bom) Bhiku Yaswant Dhangat & Ors. v. Bahan Murti Borate & Anr.

4. 2002 (1) R.C.R. (Cri) 735 : 2002 (1) Civil CC 275 (Kant) : 2002 (1) Cri.C.C. 689 (Kant) : 2002 CrI L.J. 1926 Fakirappa v. Shidda Ungappa & Ors.

5. On the other hand, the learned counsel for the complainant non-petitioner by supporting the impugned order has submitted that both the grounds

taken by the accused petitioners are not tenable in the facts and circumstances of the case by the reason that the different complaints made on

behalf of the complainant in different courts relate to different transactions and the list of witnesses was filed in the trial court after the order of

cognizance was passed in accordance with the provisions of Section 204(2) Cr.P.C.

6. I have heard learned counsel for the respective parties, perused the impugned order and also went through the case law cited before me. I have

also perused the record made available to me.

7. I am in agreement with the findings of the learned trial court. None of the grounds raised on behalf of the accused petitioners is tenable in law in

the facts and circumstances of the present case.

8. So far as the mandate of the Hon'ble Apex Court in the above case is concerned, it is applicable only when it is shown that different complaints

relating to the same transaction have been filed by the same complainant in different courts. In the present case, nothing is available on record from

which it can be inferred that the different complaints which have been filed by the complainant non-petitioner in different courts situated at Jaipur

City relate to the same transaction. The learned trial court on the basis of material available on the record has come to the conclusion that the

accused petitioners purchased goods under different bills from the complainant non petitioner on different dates and different cheques were issued

by them on different dates towards cost of the goods purchased and thus the cheques relates to different transactions. The learned counsel for the

accused petitioners has miserably failed to show that the different cheques on the basis of which the complainant non-petitioner has filed different

complaints relate to the same transaction.

9. So far as the filing of the list of witnesses is concerned, according to Section 204(2) Cr.P.C. no summons or warrant shall be issued against the

accused under sub-section (1) until a list of prosecution witness has been filed. According to this provision, if cognizance order is made for an

offence by a court, then it is necessary for the complainant to file a list of witnesses and unless such list is filed, process could not be issued against

the accused. The stage of filing of list of witnesses does not arise unless the order of cognizance is passed by the court. It is not required that the list

of witnesses should be filed along-with the complaint. In the present case, complainant non-petitioner is compliance of the order of the trial court

filed a list of witnesses and after that process was issued to summon the present accused petitioners. For the reasons stated above, it cannot be

said that the learned trial court by passing the impugned order has committed any irregularity or illegality requiring interference of this Court.

Consequently, the revision petition being devoid of any force is, hereby, dismissed.