
(1997) CriLJ 2122

Madras High Court

Case No: Criminal Revision Case No. 320 of 1991

M/s Printo Stick and
another

APPELLANT

Vs

M.L. Oswal

RESPONDENT

Date of Decision: Feb. 2, 1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 219#Negotiable Instruments Act, 1881 (NI)
" Section 138, 142

Citation: (1997) CriLJ 2122

Hon'ble Judges: M. Karpagavinayagam, J

Bench: Single Bench

Advocate: Mr. S. Sundaragopal, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

M. Karpagavinayagam, J.

The grievance of the petitioner in this revision is that more than three instances have been clubbed together in a

single transaction, which is contrary to the mandate u/s 219, of the Cr.P.C.

2. The respondent filed a complaint for the offence under Sections 138 r/w 142 of the Negotiable Instruments Act, before the VIII Metropolitan

Magistrate, George Town, in C.C. No. 7561 of 1990, against the petitioner, stating that the complainant sold and delivered fancy papers etc. on

credit to the accused for Rs. 45,812-16, for which the accused gave four cheques to the complainant viz.

(1) dated 25-5-1990 for Rs. 5,000/-, (2) dated 5-6-1990 for Rs. 4570- 85, (3) dated 25-6-1990 for Rs. 5,000/- and (4) dated 5-7-1990 for

Rs. 3588-36, totalling to the tune of Rs. 18,159-21, and that after due dates, the complainant presented the said cheques for realisation and the

same have been dishonoured by the bank with the endorsement ""exceeds arrangement"" and that in spite of the statutory notice, the accused did not

make the payment in time.

3. This was taken on file by the learned VIII Metropolitan Magistrate, for the above said offences, and questioned the accused on 14-12-1990.

The accused pleaded not guilty. The question put by the learned Metropolitan Magistrate is as follows :-

This order is under the challenge in this revision, contending that the four cheques relating to the four instances have been clubbed together in a

single case and thereby, Section 219, Cr.P.C., has been violated. For substantiating the above contention, learned counsel for the petitioner has

cited a decision reported in, 1994 (1) MLW (Cri.) 34 M/s. Ruby Leather Exports Rep. by its Proprietor, Baskar v. K. Venu, Rep. Vandhana

Chemicals Etc. In paragraph 37 of the above referred judgment, Arunachalam, J, has held as follows :-

Second ground, that there is patent violation of the provisions under S. 219 of the Code of Criminal Procedure, in that more than three transaction

within a year from part of this prosecution, will have to be upheld. On that ground, the impugned prosecution cannot be quashed. However, the

respondent will have to choose on which of these five cheques, he would have the prosecution maintained. That shall be stated before the

concerned Magistrate. Subject to this limited observation, on the second ground, this petition, shall stand dismissed.

4. I am entirely in agreement with this observation and accordingly. I direct the learned VIII Metropolitan Magistrate, to comply with the provision

of Section 219, Cr.P.C., by asking the complaint to choose, on which of these four cheques, he would have the prosecution maintained, and then

go on with the trial and dispose the same as expeditiously as possible.

5. For the foregoing reasons, the order of the learned VIII Metropolitan Magistrate, George Town, Madras, dated 14-12-1990, in C.C. No.

7561 of 1990 is set aside and the matter is remanded with a direction to put a fresh question u/s 219, Cr.P.C., to the complainant to State, which

of the three cheques out of the four cheques mentioned in the complaint, he is going to choose to maintain the prosecution and then proceed the

trial. I also direct the Metropolitan Magistrate to dispose the matter as expeditiously as possible. The Registry is directed to send back the records

forthwith.

6. Order accordingly.