



2026:KER:13892

Crl.M.C.No.4832/2020

-:1:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

WEDNESDAY, THE 18<sup>TH</sup> DAY OF FEBRUARY 2026 / 29TH MAGHA, 1947

CRL.MC NO. 4832 OF 2020

AGAINST THE ORDER DATED 24.09.2020 IN ST NO.143 OF 2019  
OF JUDICIAL MAGISTRATE OF FIRST CLASS -II (MOBILE), KOTTAYAM

PETITIONER/ACCUSED:

BALACHANDRAN,  
AGED 69 YEARS,  
S/O.KRISHNAN,  
ISHARA (B & B CHEMICALS),  
ELAVUMTHITTA, PATHANAMTHITTA.,  
PIN - 689641

BY ADVS.SHRI.S.RANJIT (K/250/1999)  
SRI.GOKUL DAS V.V.H.

RESPONDENTS/STATE & DE FACTO COMPLAINANT:

1 SAJAN MATHEW  
AGED 52 YEARS  
S/O.P.J. MATHEW,  
CHIRATHILETTU,  
VADAVATHOOR P.O,  
KOTTAYAM., PIN - 686010

2 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA,  
ERNAKULAM.,  
PIN - 682031

BY ADVS. SRI.LIJI.J.VADAKEDOM  
SRI.RAJEEV JYOTHISH GEORGE



2026:KER:13892

*Crl.M.C.No.4832/2020*

-:2:-

**SMT.REXY ELIZABETH THOMAS  
SMT.ANJU DAVIS K.  
SRI SUDHEER.G, PUBLIC PROSECUTOR**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
12.02.2026, THE COURT ON 18.02.2026 PASSED THE FOLLOWING:**



'CR'

**ORDER**

Can there be a criminal prosecution for the commission of offences under Section 138 of the Negotiable Instruments Act,1881(*in short, 'NI Act'*) in a single complaint for the dishonor of four cheques for which the complainant had issued a consolidated single notice under Section 138(b) of the NI Act? This is the precise legal issue to be resolved in this case.

2. The petitioner herein is being prosecuted by the first respondent under Section 138 of the NI Act for the dishonour of four cheques dated 10.02.2018, 10.03.2018, 25.02.2018 & 25.03.2018 for the amounts of Rs.25,000/-, Rs.25,000/-, Rs.1,25,000/- & Rs.1,00,000/-, respectively. The aforesaid cheques were said to have been issued by the petitioner, along with another cheque dated 10.01.2018 for an amount of Rs.25,000/-, towards repayment of an amount of Rs.3,00,000/- which he owed the first respondent. Though all the above cheques were dishonoured due to insufficiency of funds in the account of the petitioner, the petitioner is said to have paid Rs.25,000/- after the receipt of the consolidated legal notice issued by the first respondent under Section 138(b) of the NI Act, calling upon him to make payment of



the amounts covered by all the five cheques. In respect of the remaining four cheques, the first respondent instituted S.T.No.143/2019 before the Judicial First Class Magistrate Court-II, Kottayam. In the aforesaid case, the petitioner herein took up the contention that the criminal prosecution is prima facie not maintainable, since there cannot be a consolidation of four offences under Section 138 of the NI Act in a single complaint. The dictum laid down by a learned Single Judge of the Gujarat High Court in ***Vani Agro Enterprises v. State of Gujarat & Anr.* [2010 (1) KHC 504]** which was upheld by the Hon'ble Supreme Court in **(2021) 16 SCC 132**, has been relied on by the petitioner in support of the challenge against the maintainability of the criminal prosecution against him. By the order dated 24.09.2020, the learned Magistrate refused to accept the above challenge stating the reason that, since a single consolidated notice had been issued by the complainant for the dishonour of all the cheques, a single offence is constituted when the petitioner failed to make payment in accordance with the demand in the aforesaid notice, and hence the criminal prosecution upon a single complaint is maintainable. It is aggrieved by the aforesaid order of the learned Magistrate that the petitioner is here with this petition filed under



Section 482 of the Code of Criminal Procedure, 1973(*in short, 'Cr.PC'*) to set aside the above order, and to quash the said complaint.

3. Heard the learned counsel for the petitioner, the learned counsel for the first respondent and the learned Public Prosecutor representing the State of Kerala.

4. Section 218 of the Code of Criminal Procedure deals with the general law that for every distinct offence of which any person is accused, there shall be a separate charge which is to be tried separately. The proviso to the aforesaid Section gives an exemption when the accused person himself opts the consolidation of more than one charge, and the Magistrate is of the opinion that such person is not likely to be prejudiced by the joint trial of all those charges. For the sake of convenience and easy reference, Section 218 Cr.PC is extracted hereunder:

**"218.** Separate charges for distinct offences.—(1) For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately:

Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.



(2) Nothing in sub-section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223.”

5. As stated in Sub-Section 2 of Section 218 Cr.PC., Sections 219, 220, 221 & 223 are exemptions to the above general rule contained in Section 218 Cr.PC.

6. Section 219 Cr.PC deals with the consolidation of trial of not more than three offences of the same kind committed by a person within the space of 12 months from the first to the last of such offences. Since the present case relates to the commission of four offences, Section 219 Cr.PC is not extracted hereunder, since it is apparently not applicable to the facts and circumstances of the case.

7. Section 220 Cr.PC deals with the consolidation of charges in a single trial of more offences than one committed by the same person, if such offences arose out of one series of acts so connected together as to form the same transaction. For the sake of convenience and easy reference, the aforesaid Section is extracted hereunder:

“**220.** Trial for more than one offence.—(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) xxx xxx xxx



- (3) xxx xxx xxx
- (4) xxx xxx xxx
- (5) xxx xxx xxx

8. Now, the question to be looked into is whether the act of the petitioner executing and issuing four cheques to the first respondent towards repayment of the amount of Rs.2,75,000/-, and its dishonour on presentation, and the failure to make payment of the amounts covered by those cheques within a period of 15 days from the date of receipt of a single consolidated notice under Section 138(b) of the NI Act, could be termed as one series of acts so connected together as to form the same transaction. The vexed question as to the criteria to be adopted to ascertain what constitutes a 'series of acts so connected together as to form the same transaction' has been considered by the Hon'ble Supreme Court in **Balbir v. State of Haryana [(2000) 1 SCC 285]** and **Mohan Baitha & Ors. v. State of Bihar & Anr. [(2001) 4 SCC 350]**. In **Balbir** (supra), the Hon'ble Supreme Court held as follows in paragraph No.12 of the said decision:

**"12.** *For several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where*



*there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction".*

9. In **Mohan Baitha** (supra), the observation of the Hon'ble Supreme Court on this point is extracted hereunder:

*"It may be noticed that under Section 220 of the Code of Criminal Procedure, offences more than one committed by the same persons could be tried at one trial, if they can be held to be in one series of acts, so as to form the same transaction. The expression "same transaction" from its very nature is incapable of an exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be in one transaction. It is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. But the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not. Therefore a series of acts whether are so connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria."*

10. Going by the parameters dealt with by the Hon'ble Supreme Court for the term 'series of acts so connected together as to form the same transaction', there is absolutely no room for any doubt as to the



applicability of Section 220 Cr.PC in the present case. Therefore, the challenge against the maintainability of the criminal prosecution launched against the petitioner in a single complaint in connection with the dishonour of the four cheques is legally unsustainable.

11. An identical issue came up for consideration before a learned Single Judge of this Court in ***Mohamed v. State of Kerala [2004 KHC 1129]***. There also the case related to six cheques issued by the accused as part of the same transaction and the prosecution was launched by the institution of a single complaint after the accused failed to make payment of the cheque amount as demanded in a consolidated single notice. By relying on the law laid down by the Hon'ble Supreme Court in ***Mohan Baitha*** (supra), this Court had held in that decision that the prosecution is perfectly maintainable since the offences involved were constituted out of one series of acts so connected together as to form the same transaction as dealt with in Section 220 Cr.PC. The same view has been adopted by the Delhi High Court in ***Pawan Dhanpatrai Malhotra v. Mahender Khari [2024 SCC Online Del 3951]***, wherein also the issue related to the dishonour of four cheques, and the prosecution launched upon a single complaint after sending a single legal notice.



12. The argument advanced by the learned counsel for the petitioner by relying on **Vani Agro Enterprises** (supra) cannot be accepted since the factual matrix of that case as well as the provision of law dealt with are totally different. In the aforesaid case, though a common notice was sent in connection with the dishonour of four cheques, the complainant had filed four separate complaints under Section 138 of the NI Act. The question of law dealt with by the Gujarat High Court in that case was whether there could be the consolidated trial of all the above four cases by invoking Section 219 Cr.PC. It is in that context that the Gujarat High Court held that a consolidated trial was not possible since Section 219 Cr.PC dealt with the joint trial of a maximum number of three cases which arose out of offences of the same kind committed by a person within a space of 12 months from the first to the last of such offences. It is true that the Hon'ble Supreme Court in Crl.A.Nos.587 to 590/2010, upheld the above verdict of the Gujarat High Court. But, what has been laid down by the Hon'ble Apex Court was that, since there was no provision for consolidation of cases in the Code of Criminal Procedure, the prayer for joint trial of the four separate cases, cannot be allowed.



13. In this context, it is pertinent to note that the Hon'ble Supreme Court in ***Expeditious Trial of Cases under Section 138 of NI Act, 1881, In re [(2021) 16 SCC 116]*** has upheld the applicability of Section 220 Cr.PC for the conduct of a single trial for the dishonour of several cheques issued by an accused in one series of acts so connected together as to form the same transaction. Paragraphs Nos.14 & 15 of the judgment rendered by the Hon'ble Supreme Court in the aforesaid case is extracted hereunder:

*"14. The learned Amici Curiae pointed out that the judgment of this Court in Vani Agro Enterprises v. State of Gujarat [Vani Agro Enterprises v. State of Gujarat, (2021) 16 SCC 132] needs clarification. In Vani Agro [Vani Agro Enterprises v. State of Gujarat, (2021) 16 SCC 132], 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 [Vani Agro Enterprises v. State of Gujarat, (2021) 16 SCC 132] 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 Curiae 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 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 A.P. v. Cheemalapati Ganeswara Rao, 1963 SCC OnLine SC 38 : (1964) 3 SCR 297 : AIR 1963 SC 1850] . 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.*

(Emphasis supplied)



14. It is pertinent to note that in the aforesaid landmark decision rendered by the Hon'ble Apex Court, reference has been made about the dictum laid down in **Vani Agro Enterprises** (supra). Thus, it has to be concluded that the applicability of Section 220 Cr.PC. in the case of a single complaint relating to the dishonour of multiple cheques issued by the accused in one series of acts so connected together as to form the same transaction, has been upheld by the Hon'ble Supreme Court in the aforesaid decision.

15. In the light of the settled position of law in the above regard, the present petition filed by the petitioner/accused under Section 482 Cr.PC, assailing the maintainability of S.T.No.143/2019 on the files of the Judicial First Class Magistrate Court-II, Kottayam, is devoid of merits.

Resultantly, the petition is hereby dismissed.

(sd/-)

**G. GIRISH, JUDGE**



2026:KER:13892

*Crl.M.C.No.4832/2020*

-:14:-

**APPENDIX**

**PETITIONER ANNEXURES**

- ANNEXURE I** TRUE COPY OF THE NOTICE DATED 02.05.2018  
ISSUED BY THE 1ST RESPONDENT.
- ANNEXURE II** TRUE COPY OF THE COMPLAINT DATED 14.06.2018  
AS S.T. NO.143/2019 BEFORE THE JUDICIAL  
FIRST CLASS MAGISTRATE COURT-II, KOTTAYAM.
- ANNEXURE III** CERTIFIED COPY OF THE ORDER DATED  
24.09.2020 IN S.T. NO. 143/2019 BEFORE THE  
JUDICIAL FIRST CLASS MAGISTRATE COURT-II,  
KOTTAYAM.