



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 21ST DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL PETITION NO.102651 OF 2023

BETWEEN:

PUTTANAGOUDA
S/O. NISSIMAGOUD PATIL,
AGE: 52 YEARS, OCC: AGRICULTURE,
R/O: KADASHETTIHALLI
TQ: HANGAL,
DIST: HAVERI - 581 104.

...PETITIONER

(BY SRI. VIDYASHANKAR G. DALWAI, ADVOCATE)

AND:

KUBERGOUDA
S/O. SHEKARAPPA KOTAMBRI,
AGE: 50 YEARS, OCC: AGRICULTURE,
R/O: KADASHETTIHALLI,
TQ: HANGAL,
DIST: HAVERI - 581 104.

...RESPONDENT

(BY SRI. RAJASHEKHAR BURJI &
SRI. S.M.KOTAMBARI, ADVOCATES)



THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. SEEKING TO ALLOW THE CRIMINAL PETITION FILED U/SEC 482 CR.P.C. AND SET- ASIDE ORDER DATED 07/11/2022 ON APPLICATION U/SEC 219 OF CR.P.C. IN C.C.NO. 2215/2021 BY THE COURT OF SENIOR CIVIL JUDGE AND JMFC, HANAGAL AND FURTHER ORDER DATED 11/04/2023 IN CR.R.P. NO. 123/2023 PASSED BY THE COURT OF THE ADDL. DISTRICT AND SESSIONS JUDGE, FTSC -I HAVERI AND ALLOW APPLICATION U/SEC. 219 OF CR.P.C. WHICH FILED BY THE PETITIONER FOR JOINT TRIAL OF C.C.NO. 2216/2021 AND CC NO. 2215/2021 AND C.C.NO.2215/2021 BY THE TRIAL COURT IN THE INTEREST OF JUSTICE AND EQUITY.



THIS CRIMINAL PETITION, COMING ON FOR ADMISSION THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

ORAL ORDER

The petitioner is being prosecuted for an offence punishable under Section 138 of the Negotiable Instruments Act in two cases – C.C. No.2216/2021 and C.C. No.2215/2021 on the file of the Senior Civil Judge and JMFC, Hangal. Respondent is the complainant in C.C. No.2215/2021. Sri Channabasappa S/o Rudrappa Devihosur is the complainant in C.C. No.2216/2021. The petitioner moved an application before the trial Court under Sections 219 of the Code of Criminal Procedure (for short 'Code') for a single trial of the two cases, since according to the petitioner, the alleged offences in the two cases were committed within a span of one year. The learned Magistrate dismissed the application holding that the prayer made by the petitioner cannot be granted in the facts and circumstances of the case. The said order has been challenged by the petitioner in



Crl.R.P.No.123/2022 and same came to be dismissed as not maintainable. The present petition is filed praying to set aside the order dated 07.11.2022 passed in CC No.2215/2021 wherein the application filed by the petitioner under Section 219 of Cr.P.C. came to be rejected.

2. Heard learned counsel for the petitioner and also learned counsel for the respondent.

3. Section 219 postulates that when a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for any number of them not exceeding three. It is contended on behalf of the petitioner that the learned Magistrate ought to have allowed the application in view of the unambiguous provisions contained in Section 219 of the Code. It is submitted by the learned Counsel that the offence alleged against the petitioner in the two cases is



one and the same viz., under Section 138 of the Negotiable Instruments Act. Referring to the issuance of the two cheques in the two complaints, it is contended by the learned counsel that an offence of the same kind was allegedly committed by the petitioner within a space of 12 months. Though the complainants in the two cases are different, the offence being of the same kind, the learned Magistrate ought to have allowed the applications.

4. It is pertinent to note that the petitioner does not have a case that the two cheques in question were issued in connection with the same transaction or there was anything common between the two cases. On perusal of the averments made in the petition before this Court will clearly show that there is nothing in common between the two cases other than that the offence alleged in the two cases happens to be one and the same and the petitioner is the accused in both cases.

5. Section 219 of the Code only postulates that when a person is accused of more offences than one of the



same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with and tried at one trial for any number of them not exceeding three. The contention raised by the petitioner on the basis of the above provision, particularly in the factual matrix of this case, is wholly misconceived and untenable. The rule is that for every distinct offence there should be a separate charge, and every such charge should be tried separately (Section 218 of the Code). It is of course true that the Magistrate may try together all or any number of charges framed against the accused, if he so desires, and also if the Magistrate is of opinion that the accused is not likely to be prejudiced by such a course of action. But that does not mean that two cases involving an offence under Section 138 of the Act, which are being prosecuted by two different complainants arising from separate causes of action can be tried together only for the reason that the accused person is the same. A



complainant is the master of his prosecution. His interests and rights also have to be protected.

6. Equally untenable is the contention that the provisions contained in Section 220 of the Code are applicable in the case. What is contemplated in the above provision is a joint charge and one trial for more than one offence, if they are committed in one series of acts so connected together as to form the same transaction. It is inconceivable as to how the common accused in two complaints filed by two different complainants albeit alleging commission of the same offence (Section 138 of the Negotiable Instruments Act), under different circumstances, can seek the benefit of Section 219 or 220 of the Code. As rightly noticed by the learned Magistrate, the complainants and their witnesses have to be examined in both the cases. The documents in the two cases have to be marked separately and for all practical purposes the merit of the two cases has to be evaluated separately. It may be true that the offence in the two cases is of the



same kind. The common factor is only that the petitioner is the accused in the two cases. For that reason alone, it cannot be contended that the two complaints filed by two different complainants under different set of circumstances have to be tried at one trial. The learned Magistrate was therefore justified in dismissing the applications. The Hon'ble High Court of Kerala in the case of **Sidhardhan Vs. Prasannan**¹ considering similar case wherein challenge is made to the similar order in a revision petition has affirmed the order of the Magistrate and dismissed the revision petition. In the said case, the Kerala High Court in paragraphs 5 and 6 has observed thus:-

"5. Section 219 of the Code only postulates that when a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with and tried at one trial for any number of them not exceeding three. The contention raised by the petitioner on the basis of the above provision, particularly in the factual matrix of

¹ 2006 SCC OnLine Ker 26



this case, is wholly misconceived and untenable. The rule is that for every distinct offence there should be a separate charge, and every such charge should be tried separately (Section 218 of the Code). It is of course true that the Magistrate may try together all or any number of charges framed against the accused, if he so desires, and also if the Magistrate is of opinion that the accused is not likely to be prejudiced by such a course of action. But that does not mean that two cases involving an offence Sub-section 138 of the Act which are being prosecuted by two different complainants arising from separate causes of action can be tried together only for the reason that the accused person is the same. A complainant is the master of his prosecution. His interests and rights also have to be protected.

6. Equally untenable is the contention that the provisions contained in Section 220 of the Code are applicable in the case. What is contemplated in the above provision is a joint charge and one trial for more than one offence, if they are committed in one series of acts so connected together as to form the same transaction. It is inconceivable as to how the common accused in two complaints filed by two different complainants albeit alleging commission of the same offence (Section 138 of the Negotiable Instruments Act), under different circumstances, can



seek the benefit of Section 219 or 220 of the Code. As rightly noticed by the learned Magistrate, the complainants and their witnesses have to be examined in both the cases. The documents in the two cases have to be marked separately and for all practical purposes the merit of the two cases has to be evaluated separately. It may be true that the offence in the two cases is of the same kind. The common factor is only that the petitioner is the accused in the two cases. For that reason alone, it cannot be contended that the two complaints filed by two different complainants under different set of circumstances have to be tried at one trial. The learned Magistrate, in my view, was therefore justified in dismissing the applications.

7. Considering the above aspects, the order passed by the learned Magistrate does not suffer from any illegality or irregularity. There are no grounds to allow this petition.

8. In the result, the petition is dismissed.

**SD/-
(SHIVASHANKAR AMARANAVAR)
JUDGE**