

Jammu & Kashmir High Court - Srinagar Bench

Manzoor Ahmad Sofi vs Jameel Ahmad Bhat & Anr on 23 December, 2022

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 14.12.2022

Pronounced on: 23.12.2022

CRM(M) No.205/2020

CrIM No.716/2020

MANZOOR AHMAD SOFI

... PETITIONER(S)

Through: - Mr. Usman Gani, Advocate.

Vs.

JAMEEL AHMAD BHAT & ANR

... RESPONDENT(S)

Through: - Mr. I. Sofi, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged the complaint filed by the respondents against him alleging commission of offence under Section 138 of Negotiable Instruments Act (hereinafter referred to as the NI Act) as also the proceedings emanating therefrom. The impugned complaint is stated to be pending before the Court of Judicial Magistrate, 1st Class, Bandipora (hereinafter referred to as the trial Magistrate).

2) It appears that the respondents filed a joint complaint before the trial Magistrate alleging therein that they are contractors by profession and that the petitioner/accused by way of an agreement had allotted some work to them in partnership. It is further alleged in the complaint that an amount of Rs.17,00,000/ was outstanding against the petitioner Page |2 CRM(M) No.205/2020 CrIM No.716/2020 as cost of the work executed by the respondents. The petitioner is stated to have issued three cheques, out of which two cheques for an amount of Rs.6.00 lacs and Rs.5.00 lacs were issued in favour of respondent No.1-Jameel Ahmad Bhat whereas one cheque for an amount of Rs.6.00 lacs was issued in favour of respondent No.2-Mohammad Rafiq Bhat. These cheques, when presented for encashment by the respondents were returned unpaid for the reason of insufficiency of funds by the banker of the petitioner/accused and in this regard a joint memo of dishonor dated 14.11.2018 was issued by the bank. The respondents, through their counsel, served a joint legal notice of demand dated 28.11.2018 upon the petitioner but despite receipt of the same, the petitioner failed to discharge his liability within the stipulated period of time which prompted the respondents to file the impugned complaint before the trial Magistrate.

3) The only ground which has been urged by the petitioner for impugning the complaint and the proceedings emanating therefrom is that a joint complaint on behalf of two or more person is not maintainable because the same is not contemplated either under the provisions of the Criminal Procedure Code or under the provisions of the NI Act.

4) I have heard learned counsel for the parties and perused the record of the case.

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5) It is admitted case of the parties that the respondents/complainants have filed a joint complaint against the petitioner/accused in respect of three different cheques, out of which two cheques were issued in favour of respondent No.1 and one cheque was issued in favour of respondent No.2. The question whether a joint complaint on behalf of more than one person against an accused is maintainable has been a matter of discussion in a number of cases before various High Courts.

6) In Abdul Karim and Ors. Vs. Nangoo and Ors. AIR 192 Oudh 407, the High Court of Oudh has, while considering this question, observed that although there is no provision in the Code of Criminal Procedure that a complaint may be made by more than one person but there is no provision to the contrary as well. The Court went on to observe that there is no reason why a joint complaint should not be made by two persons who allege similar and connected offences against one or more persons committed in the course of the same occurrence. The Court after noticing the provisions contained in Section 13 of the General Clauses Act, which provides that words in the singular shall include the plural and vice versa, held that expression 'complainant' appearing in section 200 of the Cr. P. C would include 'complainants'.

7) Taking a contrary view, the High Court of Karnataka in the case of Parijanashram Swamiji vs. Kailaje, ILR 1986 Karnataka 417, while Page |4 CRM(M) No.205/2020 CrIM No.716/2020 answering the question whether a joint complaint is envisaged under the Code, observed as under:

"7. Sri. R. B. Deshpande, Learned Advocate appearing for the petitioners contended that the provisions under the Code do not envisage any joint complaint. In that view, he has submitted that the Magistrate has fallen into an error in accepting the joint complaint filed by two complainants and proceeded to take action against the accused, Sri Gopalaiah, Learned Advocate, appearing for the complainants submitted that there is no prohibition for entertaining a joint complaint under the Code. He has further contended that even if a joint complaint is not contemplated under the Code, the filing of a joint complaint and acting upon such a complaint would at best amount to an irregularity and not an illegality vitiating the proceedings. No provision in the Code has been brought to my notice to sustain the contention that a joint complaint is envisaged under the Code. A similar contention urged before the Madras High Court in Narayanaswamy v. Egappa, 1962 (2) Cr. L.J. 616 was accepted by his Lordship Sadashivam J Dealing with this question, this is what the learned Judge has observed in paragraph 2 of the judgment:

"Under Section 233 Cr. P.C. for each distinct offence of which any person is accused, there should be a separate charge and the exceptions are contained in the subsequent sections. There is no provision in the said section dealing with joinder of charges authorising two or more complainants to file a single complaint. If the authors of the Code of Criminal Procedure contemplated such filing of joint complaints, they would

have clearly made provision for them corresponding to Order 1 Rule 1 C.P.C. providing for joinder of plaintiffs in civil suits. On the other hand, the provisions like Section 247 I.P.C., in summons case and Section 259 Cr.P.C in warrant case as to the powers of the Court to dismiss the complaint in the absence of the complainant, clearly indicate that a complaint could be filed by only one person. It has been rightly pointed out by the Learned Advocate for the Page |5 CRM(M) No.205/2020 CrIM No.716/2020 petitioners that there would be difficulty even in the matter of compounding of the offences by the accused with every one of the complainants in the case of joint complaints."

8. With respect I fully agree with the view expressed by His Lordship Sadashivam, J. In that view of the matter, the objections raised by Sri Deshpande that a joint complaint is not envisaged under the Code has to be upheld.

8) The High Court of Punjab and Haryana in the case of Santokh and Ors. Vs. Gural Singh and Ors. MANU/H/107/1995, after taking note of the judgment of Oudh High Court in Abdul Karim's case (supra) and dealing with the argument that the expression "singular" will include "the plural", observed that the expression 'singular' will include "the plural" only if contrary does not appear from the context. It was further observed by the Court that from the scheme of the Code of Criminal Procedure it is clear that there has to be only one complainant and, as such, contrary appears from the context. The argument that "singular" will include "plural" was, accordingly, rejected by the Court.

9) A similar view has been taken by the High Court of Karnataka in the case of Haridas Naik and Ors. vs. Hanchinamane Gadriyapa and Ors. ILR 2010 Karnataka 3529, and the High Court of Madras in the case of Maheswari and Ors. vs. Jayanthi and Ors. MANU/TN/2179/2011.

10) However, Patna High Court in the case of Nazir Ahmad vs. State of Bihar and & Ors.(Criminal Miscellaneous No.2176 of 2014 decided Page |6 CRM(M) No.205/2020 CrIM No.716/2020 on 17th July, 2017), has taken a view that a complaint by more than one person is maintainable. It has been held that a complaint under Section 200 of the Code of Criminal Procedure can be made by more than one person with regard to the same cause of action and further the word 'complainant' referred to in Section 200 of the Code of Criminal Procedure would include plural as per Section 13 of the General Clauses Act.

11) Recently, this Court in the case of Mohammad Shafi Mir vs. vs. Haji Bashir Ahmad Dar & another (CRMC No.118/2018 decided on 1.04.2021), has, while dealing with a similar question, held that a joint complaint by two or more persons against the accused is not maintainable. The Court, after noticing various provisions contained in the NI Act and relying upon the judgment of the Karnataka High Court in Parijanashram Swamiji's case (supra), made certain observations, which are relevant to the context and the same are reproduced as under:

"17) The reference to the complainant as a "person" in Section 138 of the Act, prima facie, indicates that Section 138 too envisages a complaint by a single person.

Similarly, if we look at the provisions of Section 141 of the Act, which pertains to the offences by the companies, it also refers to a "person" committing an offence under Section 138.

18) Section 142, which lays down the procedure as to how the cognizance in a complaint filed under Section 138 of the Act is to be taken by the Court, also speaks of a complaint and not the complaints which would also indicate that it envisages only one complainant in a complaint and, therefore, rules out filing of a joint complaint by two or more than two persons.

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19) As is provided under Section 143 of the Act, the cases under Section 138 of the Act are required to be tried summarily by following the procedure laid down under the provisions of Sections 262 to 265 of the Code of Criminal Procedure. It is only when at the commencement of, or in the course of, a summary trial, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness that may have been examined and proceeded to hear or rehear the case in the manner provided by the Criminal Procedure Code. It is, thus, not correct to say that Chapter XVII is a complete Code in itself and exclude the applicability of the Criminal Procedure Code. In that view of the matter, I am not impressed with the argument of Mr. Shafqat Nazir that the legal position and the law cited by Mr. N. H. Shah, would only be applicable to the complaints under Section 200 of the Code of Criminal Procedure and would have no application even by analogy to the complaints under Section 138 of the Act. A conjoint reading of Sections 138, 141, 142 and 143 of the Act, undoubtedly, point towards one conclusion that even under Chapter XVII of the Act, a joint complaint by two or more persons against an accused is not maintainable."

12) From the foregoing discussion, it is clear that divergent views have been expressed by different High Courts on the question whether a joint complaint against an accused can be maintained. The view taken by the High Court of Oudh and Patna High Court that a joint complaint is maintainable is based on the reasoning that the expression 'complainant' appearing in Section 200 of the Code of Criminal Procedure would include its plural in view of the provisions contained in Section 13 of the General Clauses Act. It has to be noticed that Section 13 of the General Clauses Act would come into operation only Page |8 CRM(M) No.205/2020 CrlM No.716/2020 if the context does not provide to the contrary. These judgments have not taken into consideration the context in which the expression 'complainant' has been used in the provisions contained in the Code of Criminal Procedure. The provisions like Section 218 of the Code of Criminal Procedure which provide for separate charges for distinct offences and the fact that there is no provision in the Code of Criminal Procedure for joinder of charges that would authorize two more complainants to file a single complaint, have not been taken into consideration while rendering the opinion that a joint complaint is maintainable.

Similarly, provisions contained in Sections 256 and 257 of the Cr. P. C which provide for consequences for non-appearance or death of the complainant or withdrawal of the complaint respectively have also not been taken into consideration while rendering the opinion that a joint complaint is maintainable. In both these provisions expression used is 'complainant'. The situation where one of the two complainants dies or abstains from the proceedings has not been taken care of by any of the provisions of the Criminal Procedure Code, which clearly infers that a joint complaint by more than one person is not envisaged by the Code. Likewise, Section 249 of the Cr. P. C, which provides for a situation regarding absence of the complainant in warrant trial cases, also does not take care of a situation where one of the complainants' remains absent, meaning thereby that a joint complaint is not envisaged in the provisions of the Code.

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13) In view of what has been discussed hereinbefore, I am in respectful agreement with the view expressed by the Coordinate Bench of this Court in the case of Mohammad Shafi Mir (supra) that a joint complaint under the provisions of the Criminal Procedure Code or under the provisions of the NI Act is not maintainable.

14) It has been contended by learned counsel for the respondents that in the instant case, there is a joint memo of dishonor and a joint demand notice, as such, joint cause of action has arisen in favour of the respondents to file the complaint.

15) It is correct that in the instant case there is a joint memo of dishonour in respect of the cheques which are subject matter of the impugned complaint and there is also a joint demand notice but that does not alter the position of law, which, as already discussed hereinabove, is that there is no concept of joint complaint envisaged under the provisions of Section 200 of the Cr. P. C or under the provisions of the NI Act. The cause of action for filing a complaint in a prosecution under Section 138 of the NI Act not only includes the fact relating to dishonor of cheques and service of demand notice but it also includes issuance of cheques in favour of the complainant and their presentation to the banker within the period of validity of the cheques. In the instant case, the cheques have been issued by the petitioner in favour of two different persons. Therefore, each of these two persons had a separate cause of action against the petitioner that arose in their P a g e | 10 CRM(M) No.205/2020 CrlM No.716/2020 favour upon dishonour of these cheques and the failure of the petitioner to discharge the liability despite service of demand notice. A joint complaint by the respondents, therefore, is otherwise not maintainable against the petitioner.

16) In view of what has been discussed hereinabove, the next question which comes up for consideration is as to what should be the course of action available to the respondents. Merely because the respondents have filed a joint complaint against the petitioner in respect of three cheques which cannot be proceeded with, the petitioner cannot go scot free. The interests of justice would demand that whole of the proceedings should not be quashed. The complaint which is pending before the trial Magistrate can be proceeded ahead in respect of one of the two complainants whereas the other complainant can be given liberty to have recourse to other remedies under law.

17) Accordingly, the trial court is directed to proceed ahead with the impugned complaint to the extent of cheques issued in favour of respondent No.1-Jameel Ahmad Bhat and the proceedings to the extent of the cheque issued in favour of respondent No.2-Mohammad Rafiq Bhat shall stand quashed. It is provided that respondent No.2 shall be at liberty to avail appropriate remedy under law in respect of the cheque that has been issued in his favour.

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18) The above course of action is being ordered because of the fact that the value of the cheques issued in favour of respondent No.1 is more than the value of the cheques issued in favour of respondent No.2.

19) A copy of this order be sent to the trial court for information and compliance.

(SANJAY DHAR) JUDGE Srinagar, 23.12.2022 "Bhat Altaf, PS"

Whether the order is speaking: Yes/No Whether the order is reportable: Yes/No