

(2001) 10 AP CK 0162

In the Andhra Pradesh High Court

Case No : Criminal Petition No"s. 2666 of 2001 & Criminal Petition No"s. 2666 of 2001 and Batch

City Automobiles and Another

APPELLANT

Vs

J.K. Industries Limited and Another

RESPONDENT

Date of Decision : 30-10-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Criminal Procedure Code, 1973 (CrPC) — Section 210, 211, 212, 213, 214
Negotiable Instruments Act, 1881 (NI) — Section 138, 142, 142(b)
Penal Code, 1860 (IPC) — Section 109, 120B, 304B, 406, 409

Citation : (2001) 1 CriminalCC 553

Hon'ble Judges : T.Ch. Surya Rao, J

Bench : Single Bench

Advocate : P.V. Ramasarma and P. Anand Seshu, for the Appellant; C. Kodandaram for Respondent No. 1 in all CrI. Petitions and Public Prosecutor for Respondent No. 2 in all CrI. Petitions, for the Respondent

Final Decision : Dismissed

Judgement

T.Ch. Surya Rao, J.—Since the parties are same and as common questions of law are involved in all these petitions, they can be disposed of together.

2. The factual matrix necessary for better understanding of the matter and for an effective adjudication of the same may be set forth herein below thus :

The first respondent herein is the complainant and the petitioners herein are the accused in as many as ten cases in C.C.Nos.60,61,63, to 69 and 108 of 2001 filed u/s 138 of the Negotiable Instruments Act ("the" Act" for, brevity) before the VIII Metropolitan Magistrate Vijayawada. The complainant is a Registered Company having been, registered under the provisions of the Companies Act, 1956. It manufactures and sells automobiles tyres, tubes and flaps. The first accused is a partnership firm and the second accused is its Managing Partner. It is alleged, inter alia, in the complaint that the accused purchased tyres, tubes

and flaps from time to time from the complainant-Company on credit basis under various invoices and issues cheques in discharge of the amounts due under the said invoices. As many as 30 cheques drawn on Bank of Baroda, had thus been issued against the invoices on various dates as detailed, inter alia, in the complaints in a tabulai form. Those cheques were presented for Collection on 15.5.1999 with Bank, of India, Governor pet, Vijayawada, the complainant's banker. However, under a single intimation dated 17.5.1999, the Bank informed the complainant about the dishonour of the cheques with the endorsement "payment stopped by drawer". The complainant, therefore, got a single, legal notice dated 26.05.1999 issued to the accused, informing, inter alia, the dishonour of all the cheques and demanded the payment within 15 days from the dated 7.6.1999 issued to the Counsel of the complainant. The defence set forth in the reply is not germane for the present purposes. Thereafter, the complainant, as aforesaid, filed ten complaints limiting three cheques per each complaint specifying, inter alia, that since the purchases were made by the accused under different invoices and since separate cheques were issued in discharge of the liability under each of the invoices, complaints were filed for dishonour limiting three cheques per complaint.

3. Pursuant to the summonses issued in the criminal cases, the accused appeared before the Court. The trial in the cases was commenced and P.W.I was examined on behalf of the complaint in chief. After having taken time for cross-examination of the witness, the accused filed 9 petitions, u/s 258 of the Code of Criminal Procedure ("the Code" for brevity) seeking discharge from nine out of ten cases mentioning, inter alia, that inasmuch as a single cause, of action had arisen in respect of all the 30 dishonoured cheques and as all of them arise out of the same transaction, filing different complaints would cause grave prejudice to the accused besides harassment.

4. The trial Court dismissed all those petitions. The revisional Court going by the fact that the accused were examined u/s 251 of the Code and thereafter one witness was examined on the side of the complainant in chief, the accused should not plead for discharge at that stage, dismissed all the revision petitions. The petitioners as aforesaid are assailing those orders.

5. Sri P.V.R. Sarma , learned Counsel appearing for the petitioner? contends, that there has been a single cause of action for all the 30 cheques and one complaint ought to have been filed in respect of all the 30 cheques: The learned Counsel contends further that series of cheques have been given in the course of the same transaction and, therefore, even if more offences than one are alleged to have been committed, the accused can be charged with and tried at one trial for all such offences. The learned counsel further contends that 10 cases have been filed only to harass the accused and in each case if the accused were to be convicted and should be sentenced separately he would have to undergo ten years of imprisonment as the maximum sentence of imprisonment extends upto one year u/s 138 of the Act. The learned Counsel appearing for the first

respondent. On the other hand, contends that there is no illegality in having filed 10 different complaints and it is in accordance with the Section 219 of the Code.

6. In view of the said contentions the following points would arise for my determination:

(1) Whether a single cause of action has arisen in respect of all the cheques and, therefore, they together constitute a single transaction?

(2) Whether all the alleged offence have been committed in the course of same transaction?

(3) Whether conducting separate trials is an illegality and would result in serious prejudice to the accused?

7. Apropos the first point it is appropriate for brevity and better understanding of the matter to consider Sections 138 and 142 of the Act, the relevant provisions in the context. They may be extracted in so far as is relevant for the present purposes hereunder thus :

138. Dishonour of cheque for insufficiency etc, of funds in the account:- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both :

Provided that nothing contained in this section shall apply unless :

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation :- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

142. Cognizance of offence:

(1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973
(2 of 1974)

(a).....

(b) such complaint is made within one month of the date on which the cause of action arise wider clause (c) of the proviso to section 138.

(c).....

(Emphasis is mine)

8. A perusal of both the provisions shows that when a cheque is drawn by a person on his account for the discharge of any debt or liability and if the cheque is dishonoured by the bank for want of sufficient funds, the drawer shall be deemed to have committed an offence. Although the dishonour of the cheque by the bank itself is an offence, the offence becomes complete only when the essential requisites enjoined under the clauses (a) to (c) of the proviso appended to the Section-138 of the Act are complied with when the cause of action is said to have arisen. Vide *Sadanandan Bhadran Vs. Madhavan Sunil Kumar*, In para 5 of its Judgment, the Apex Court held thus :

On a careful analysis of the above section it is seen that its main part creates an offence when a cheque is returned by the bank unpaid for any of the reasons mentioned therein. The significant fact, however, is that the proviso lays down three conditions precedent to the applicability of the above Section and, for that matter, creation of Such offence.....

9. Further a complaint in writing should be filed by complainant within one month from the date on which the cause of action has arisen under clause (c) of the proviso appended to Section 138 of the Act. It is not germane in the context to consider the limitations contained in clauses (a) and (c) of Section 142 of the Act. The following essential ingredients would emerge from the above provisions - (1) The cheque is drawn on an account maintained by the drawer; (2) It is issued by the drawer in discharge of the debt or other liability; (3) It is a legally enforceable debt of liability; (4) It is presented by the payee within the period of six months or its validity, whichever is earlier; (5) That cheque is dishonoured for want of sufficient funds in the account of it exceeds the arrangement; (6) A requisite legal notice in writing is issued demanding payment covered by the said cheque within 15 days from the date of receipt of the said notice; (7) There is default on the part of the drawer to pay the amount within 15 days from the date of receipt of the demand notice; and (8) The complaint is filed within 30 days from the date of cause of action. The above essential ingredients shall be discernible from the complaint in one form or the other. All the necessary ingredients set forth supra together constitute the bundle of facts, which are necessary to be proved in order to maintain the claim by the complaint, although it is said that the cause of action arise under clause (b) of the sub-section (1) of

Section 142 of the Act, when the drawer of the cheque fails to make the payment within 15 days of the receipt of the requisite legal notice issue by the complainant.

10. It is well settled by now that a cause of action is a fasciculus of essential facts which the party seeks relief is obliged to prove in order to claim the relief against the opposite party. In other words, the party gets a right to sue the other party for the relief. It means every fact, which if traversed would be necessary for the party to prove in order to support his right or claim. Vide Nagumilli Narayanamurthy Vs. Gudimetla Gangaraju, , and A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, . In Sadanandan Bhandran's case (referred to Supra) in para 7, the Apex Court held thus :

In a generic and wide sense (as in Sec. 20 of the Civil Procedure code, 1908) cause of action means every fact which it is necessary to establish to support a right or obtain a judgment. Viewed in that context, the following facts are required to be proved to successfully prosecute the drawer for an offence u/s 138 of the Act:

(a) that the cheque was drawn for payment of an. amount of money for discharge of a debt/liability and the cheque was dishonoured; "

(b) that the cheque was presented within the prescribed period;

(c) that the payee made a demand for payment of the money by giving a notice in writing to the drawer within the stipulated period; and.

(d) that the drawer failed to make the payment within 15 days of the receipt of the notice.

If we are to proceed on the basis of the generic meaning of the term "cause of action" certainly each of the above facts would constitute a part of the cause of action.

11. The question arose for determination in that case was to whether dishonour of cheque on each occasion of its presentation gives rise a fresh cause of action within the meaning of Section 142(b) of the Act. The Apex Court held that clause (b) of Section 142 gives a restrictive meaning and, therefore, no successive cause of action would arise, as and when the cheque is represented.

12. In view of the presumption engrafted u/s 138 of the Act, of course., of burden is upon the accused to show that the cheque is issued not in discharge of the debt or other liability. Among the bundle of facts to be proved, the existence of a legally enforceable debt is a sine qua non for maintaining the claim. Having regard to the facts, the complainant in these cases must in variably establish the purchase of tyres tubes and flaps under each invoice, the existence of debt under it and its enforceability legally. Obviously, the purchase transactions under each invoice is separate having taken place of different dates. There has been no inter-connection whatsoever in between one invoice and the other. Therefore, the

transaction under each invoice is separate, a fortiori separate cheque having been issued in discharge of the debts under each invoice. It may be that some of the facts like that presentation of the cheques on one date dishonour of the same on one date, intimation of the same by the bank under a single memo of the complaint, and the complainant issuing a single notice demanding payment under all the dishonoured cheques are common in all these cases. Nonetheless, the purchase transaction under each invoice and issual of the cheque in discharge of the debt under the said invoice must invariably be proved separately in each case. Therefore all these separate transactions cannot be lumped together which might embarrass the accused in this defence and consequently result in serious prejudice to the accused. Under the circumstances, there is every force in the contention of the complainant that the cause of action could not be one and the same for all the cheques inasmuch as the cause of action does not alone mean the failure on the part of the accused to make the payment covered by the dishonoured cheques within 15 days of the receipt of the requisite legal notice issued by the complainant and it in invariably includes all other essential ingredients that need be proved by the complainant to sustain the claim as set forth supra, It cannot, therefore, be heard to say that a single cause of action has arisen and all the cheques together constitute a single transaction under the facts and circumstances of these cases. For the above reasons, I am of the considered view that each transaction under each invoice being separate, issual of cheque in discharge of the debt under the said invoice constitute a separate offence.

13. Turning to the second point the learned Counsel appearing for the petitioners seeks to place reliance upon a Judgment of the Madras High Court in K.Govindaraj v. Aswhin Barai, 1(1999) CCR 294, to drive home the point that one complaint should have been filed. That was a case where the respondent filed a private complaint for an offence u/s 138 of the Act on the basis of six dishonoured cheques given on various dates in different months but within a period of 12 months. As requested by the accused all the cheques were presented in the Bank together on one date and they were returned on one date with an endorsement "payment stopped". When it was sought to be contended that the complaint was filed in violation of Section 219 of the Code, the Madras High Court was of the view that although different cheques were given on different dates, the presentation of all the cheques formed same transaction and inasmuch as demand was made by the respondent for the payment of the amount by giving one lawyer's notice, the accused might be charged and tried at one trial for several offences because the series of acts are so inter-linked or inter-connected together so as to form the same transaction of dishonouring the cheques on a single day.

14. The learned counsel further seeks to place reliance upon a judgment of the Punjab and Haryana High Court in Anitha v. Anil K.Mehra,1996(1)Crimes 412 (HC). That was again a case where a single complaint was filed 10 cheques were issued for Rs.2,066.66 paise per each cheque in discharge of debt of Rs.20,6667-

on account of the loan advanced. A single notice was issued calling upon to pay the amount covered by the cheques when they were bounced with endorsement "exceeds arrangement". On identical facts, another person by name Santosh Kumari preferred another criminal complaint in respect of 9 cheques each for Rs.2,066.66 paise against the respondent. A third complaint was also filed by one Mr. Sangita against the respondent in respect of 10 cheques each for Rs. 1,550/-. It was urged in each of the complaints more than 3 cheques are alleged to have been issued while Section 219 of the Code shows that when a person is accused of more offences than one of the same kind committed within the space of 12 months, he can be charged and tried at one trial for any number of them not exceeding three. It was held that because as per the allegations specific amount was due although different cheques were given, it was on transaction and to state that there has to be a separate complaint with respect to each cheque that was dishonoured will not be correct and Section 219 of the Code, therefore, would not be a bar to the peculiar facts of the case.

15. In *Swarnalatha v. Chandramohan*, 1996(3) Crime's 283, a Division Bench of Kerala High Court held that when three cheques were drawn on different dates and for different amounts but presented together for payment and were dishonoured, a single notice was sent by the complainant to the drawer, the general rule is that every distinct offence of which a person is accused, there shall be a separate charge and every charge shall be tried separately and that Section 219 of the Code is an exception to the general rule and u/s 219 even the cheques had been issued for different amounts which might entail different punishments as other conditions laid down in sub-section (2) thereof are satisfied, the cases in respect of three cheques could be tried jointly. The Bench was of the view that because it is a procedure law, the main question to be considered is whether the accused is seriously prejudiced by that and by adopting that procedure, the accused is not likely to be prejudiced as it would avoid multiplicity of cases.

16. In *Tiruchandoor Muruhan Spinning Mills.(Private) Ltd. v. Madan Lal Ram Kumar Cotton and General Merchants*, 2001 (3) All India Criminal Law Reporter 390, a single Judge of the Karnataka High Court held that the provisions of Section 219 of the Code are not applicable to the proceedings u/s 138 of the Act. That was a case where a single complaint was filed in respect of dishonour of 10 cheques where one notice was issued, the Karnataka High Court held that a cause of action arose only after the service of notice and, therefore, it was advantageous to the accused if a single complaint is lodged against him.

17. Following the Judgment of the Madras High Court in *K.Govinda Raj's* case (referred to supra) a learned single Judge of this Court held in *N.Lakshmanan and others V. M/s. Sri Shanmukha Cotton Traders*, 1998(2) ALT(Crl.494 (A.P.)), that even though six cheques were given by the accused to the complainant on different dates, all those acts of giving cheques were emerged together to form the same transaction, namely, the presentation of all these cheques together on

one particular day as requested by the accused and as the demand was also made by the complainant on the dishonouring of the cheques by giving one lawyer's notice, the provisions of Section 220 of the Code would attract, repelling the contention that the complaint was hit by Section 210 of the Code. That was again a case where as many as six cheques were given for different amounts towards the part payment of the amount due under a katha of Rs. 63,32,782.20 paise.

18. In view of the above cleavage of opinion it-needs an intrinsic and critical examination of the law on the point. There is no gain saying that the principles of Secs. 218 to 223 apply not only to warrant cases but even to summons cases also. Notwithstanding the same it is expedient to examine the law on the point in *Emperor v. San Dun*, Vol. 2 CrL. L. J 739 (F.B.) it has been held thus:

The word "Charge" is not defined in the code. In Section 242 the word "accused" is used in connection with the particulars of the offences being stated to the accused person, but it is used in the same sense as the word "charged" in the ordinary parlance. Possibly the explanation of the use of the former instead of the latter word is that it was considered that the former would emphasize the fact that no formal charge was necessary. The concluding words of the section appear to contemplate that in a summons trial there is a charge of an offence, although it is not necessary to embody it in writing in accordance with the provisions of Sections 221,222 and 223 of the Code.

I would say in answer to the question referred that section 233 of the Code of Criminal Procedure and the sections mentioned in it apply/to trials of summons cases under Chapter XX of the Code.

19. Following the said judgment, in *U.N.Biswas v. Emperor*, AIR 1914 Cal.603, it was held as follows:

"The fact that the trial has taken place as in a summons case does not exclude the application of S. 233, Criminal P.C."

20. In *Indramani Pradhan and others v. Chanda Bewa*, AIR 1956Orissa 191 it was, held in para 4 thus :

Though in a summons case there is no formal charge, it is now well settled that the accusation made against the accused and intimated to him during his examination under S. 242, Cr.P.C. takes the place of formal charge. It is also well settled that the principles of Secs. 233 to 239, Cr.P.C. apply not only to warrant cases, but also to summons cases.

21. The Orissa High Court followed *King Emperor's* case (referred to supra).

22. It is thus obvious that the provisions contained in Para-B of Chapter XVII of the Code would also apply to the cases where the trial should be conducted by adopting summons procedure.

23. It would be expedient in this context to look at the scheme of Chapter XVII

of the Code. This Chapter is split up into two sub-heads, namely, form of charges and joinder of charges. Sub-head "A" which deals with form of charges comprises of Sections 211 to 217 and sub-head "B" which deals with joinder of charges comprises of Sections 218 to 224. Since sub-head "A" mainly deals with the form and contents of charges, we are not concerned with the same in this case. Sub-head "B" which deals with joinder of charges is germane in the context for consideration. Section 218 provides that every distinct offence of which any person is accused; there shall be a separate charge. It thus lays down the normal rule to be followed in every case. But it also provides that this would be subject to the exceptions contained in 219, 220, 221 and 223. The first three provisions relate to the framing of charges against a single person. Section 219 deals with the trial of a person for the offences of the same kind not of such offences. Sub-section (2) thereof elucidates the expression "offences of the same kind". Section 220 permits trial of a person for more offences than one if they are so connected together as to form the same transaction. It is therefore hedged with a limitation that the offences shall be committed in the course of the same transaction. Thus, under this provision if the connection between the various offences is established, the limitation engrafted under sub-section (1) of Sec. 219 both as regards the number and period during which the offences are alleged to have been committed will not apply. Sub-section (2) of Section 220 deals with the cases of criminal breach of trust or dishonest misappropriation of property and falsification of accounts. Sub-section (3) thereof deals with the cases where an offence falls within two definitions. Sub-section (4) thereof deals with an act in which number of acts are alleged against an accused person, different combinations of which may constitute different offences. But under sub-section (5) thereof the provisions of Section 71 of the Indian Penal Code have been specifically saved. Section 221 deals with the cases where the nature of the acts complained are such that it is doubtful that what offence has been committed. Section 222 "deals with the major and minor offences. All these sections, as aforesaid, deal with the various offences committed by a single person. Section 223, however, deals with plurality of persons who can be tried together. In other words, joint trial of more than one person. We are not concerned with this section in this case.

24. While Section 218 speaks of distinct offences, Section 219 speaks of offences of the same kind. Section 220, however, speaks of more offences than one committed in the course of the same transaction. The expression "distinct offence" has been succinctly elucidated by the Apex Court in *Banwari Lal Jhunjhunwala and Others Vs. Union of India (UOI) and Another*, must have a different content from the expression "every offence" or "each offence". A separate charge is required for every distinct offence and not necessarily for each separate offence.

The question is, what is meant by "every distinct offence"? "Distinct" means "not identical". It stresses characteristic that distinguish "two things not being the same". Two offences would be distinct if they be not in any way inter-related. If

there be some inter-relation, there would be no distinctness and it would depend on the circumstances of the case in which the offences were committed whether there be separate charges for those offence or not.

25. The expression "offences of the same kind" has been sought to be elucidated in Section 219 itself under sub-section (2) thereof. If the offences are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any special or local law, they are the offences of the same kind.

26. The expression "Same transaction" has not been defined u/s 220, sub-section (2) thereof, which pertains to the offences of criminal breach of trust or dishonest misappropriation of property and falsification of accounts of accounts however elucidates the same. The section reads that if a person commits more offences of criminal breach of trust or dishonest misappropriation of property and also commits for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence. It is obvious thus each of the offences of criminal breach of trust is a separate offence and it is distinct and separate from the offence of falsification of accounts although the person commits one or more offences of criminal breach of trust which are of the same kind, he commits in the same transaction the other offences of falsification of accounts for the purpose of facilitating or concealing the commission of former offences. Therefore, the expression "same transaction" shall have to be understood in that view of the matter. The illustrations given under the section would exemplify the instances. It is thus obvious that it is not plurality of offences that are committed, which are of the same kind, is the criterion but those offences shall have to be committed in the course of the same transaction. Whether or not the series of acts are so connected as to form the same transaction would depend upon the facts and circumstances of each case.

27. In C.N.Krishna Murthy v. Abdul Subban, AIR 1965 Mysore 128 at page 136, in para 29 it has/been held thus :

The expression "the same transaction" very wisely, is not defined in the Code. In the very nature of things it is incapable of definition.....In order that a series of acts by regarded as same transaction, they must be connected together in some way as for instance by proximity of time, unity of place, unity or community of purpose or design and continuity of action. Proximity of time and unity of place are not essential though they furnish" good evidence of that unites several facts. The main test must really be continuity of action by which is meant the following up of some initial act through all its consequences and incidents until the series of acts or group of connected acts come to and end either by attainment of the object or by being put an end to or abandoned. If any of these things happens and the whole process is begun over again, it is not the same transaction but a new one in spite of the fact that the same general purpose may. continue. The vinculum juris which interlinks a series of acts so intimately as to form the same transaction is different in each case.....Mere doing the same thing or similar

things continuously or repeatedly does not amount to a same transaction. There is a clear distinction between a same transaction and a similar transaction.

28. In *N.M.Narayana Setty v. Court of Munsif*, AIR a 1966 Mysore 243. it has been held thus :

The principal test laid down is unity of purpose or design and the continuity of action. The series of acts committed must be connected together in one way or the other.

29. In *Sohani's Code of Criminal Procedure 19th Edition*, Vol.3, at Page 2582 a passage has been mentioned, which maybe extracted hereunder thus :

The words "same transaction" connote that the acts are so related to one another in point of purpose, or as cause and effect, or as principal and ancillary that they constitute one transaction or a continuous action. This continuity of action is not in the sense that one act follows the other without any connection, but in the sense of intimate connection between the different acts. There must be a community of purpose and a concert.

Accused persons committing offences of the same kind but separately, may not be regarded as having committed those offences in the course of the same transaction.

30. In *Aftab Ahmad Khan Vs. The State of Hyderabad*, , the Apex Court held thus:

Section 233 embodies the general law as to the joinder of charges and lays down a rule that for every distinct offence there should be a separate charge, and every such charge should be tried separately. There is no doubt that the object of S. 233 is to save the accused from being embarrassed in his defence if distinct offences are lumped together in one charge or in separate charges and are tried together but the Legislature has engrafted certain exception upon this rule contained in Ss. 234, 235 and 239.

Held that the incidents related in the evidence left no manner of doubt that from the moment the accused started from the Police Station, he committed a series of acts involving killing, injuring people unlawfully confining others and extorting money from one of them. As the series of acts attributed to the accused constituted one transaction in which the offences were committed case fell squarely within the purview of S. 235. The fact that the offence of extortion was committed at a different place and at a different time did not any the less make the act as one committed in the course of the same transaction and therefore the misjoinder of the alleged distinct offences of murder, extortion and wrongful confinement was permitted by the exception contained in S. 235.

31. In *State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and Another*, , the Apex Court in para 27 thus:

According to this provision there must thus be a connection between a series of acts before they could be regarded as forming the same transaction. 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 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 act. 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. The connection between a series of acts seems to us to be an essential ingredient for those" acts to constitute the same transaction.....Now a transaction may consist of an isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently they would not form part of the same transaction but would constitute a different transaction or transactions.

32. That was a case where the first accused was charged with the offences punishable under Sections 120-B, 409, 477-A and 471 read with 467 of the Indian Penal Code and the second accused was tried for the offences punishable under Sections 120-B, 409 read with 109,477-A and 471 read with 467 of the Indian Penal Code. When it was sought to be contended that it was a case of misjoinder of charges, it was held by the Apex Court at page 1864 that it was not the case of misjoinder of charges or multiplicity of charges.

33. In Banwarilal's case (referred to supra) in para 12 the Apex Court held thus:

The obtaining of money for each bill supported by false inspection note, amounted to the offence of cheating in pursuance of the conspiracy. All such individual offences, on the basis of the various bills, were of the same kind as the single offences of obtaining the total amount as a result of the presentation of the various bills and in view of Sec. 71 , I.P.C., the accused could not be punished for more than one of such offences...."

34. The Apex Court upheld a single charge for the offence of cheating in view of the conspiracy alleged in the case to commit such offence.

35. This Court in *G.Latchanna v. G.Ramamurthy*, (1979) II An.W.R.355, has also said down the similar indicia.

36. Following *Balbair Vs. State of Haryana and Another*, , in para 12 held thus:

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 of different offences "committed in the course of the same transaction.

37. That was a case in connection with murder of one person two different cases, one pursuant to police investigation and the other pursuant to a private complaint accusing two different persons as perpetrators of the crimes were put before the Sessions Court, it was held that the offence alleged in the two cases cannot be said to have been committed in the course of the same transaction., the Apex court field thus:

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

39. In that case the offences punishable under Sections 406 and 304 -B of the Indian Penal Code are held to have been committed in the course of the same transaction.

40. The following indicia would emerge from the conspectus of the decisions referred to supra:

(1) In order that a series of acts to be regarded as same transaction, they must be connected together in some way as for instance by proximity of time, unity of place, and unity or community of purpose or design.

(2) There must be continuity of action, namely, following up of some initial act through all its consequences or incidents until the series of acts or group of connected acts come to an end either by attainment of the object or by being put at an end to or abandoned.

(3) Merely doing of same thing or similar thing, continuously or repeatedly, does not amount to same transaction.

(4) The facts must relate to one another in point of purpose or as cause and effect or as principal and, ancillary to constitute one transaction or continuous transaction.

41. In fact, there can be no rigid or straitjacket formula than can be evolved to apply uniformly in all cases, Having regard to the fact that the Code is as not defined the expression "the same transaction", it is an indication that it is a pure question of fact, to be decided with reference to the facts and circumstances of each case. The above indicia would be of some help or guidance to be considered after having had the, holistic view of the facts of a particular case. It is, however, not necessary that every one of these elements shall co-exist for a transaction to be regarded as the same transaction.

42. As discussed by me supra, the series of offences committed in this case which are of the same kind, cannot be said to have been committed under the facts and circumstances of this case is the course of the same transaction. One is neither the cause nor the effect of the other. One is neither the principal nor the ancillary of the other. Although the cheques have been dishonoured on one and the same day and one notice was issued demanding payment of the amounts covered by the dishonoured cheques, those two acts cannot make, in my considered view, what are otherwise independent transactions as the same transaction. As dishonour of each cheque by itself is an offence by issuing a common notice, all such offences of the same kind cannot be construed as a one single offence or as offences committed in the course of the same transaction. There is no charge of conspiracy in this case. No connection whatsoever can, therefore, be established in between various transactions. For these reasons the cheques issued in these cases cannot be said to have been issued in the course of the same transaction.

43. As regards the third point, there is no mandatory provision of law laying down that where separate trials can be held under the general rule, the Court must hold joint trial if the accused does not fall within one of the provisions that permit holding joint trial. The rule of framing charges is that unless otherwise indicated every distant offence should be subject matter of separate charge unless the accused is covered by one or the other of the four Sections vide *In re Osaman Ali*,

44. The object of Section 218 of the Code is to save the accused from being embarrassed in his defence if distinct offences are lumped together in one charge or in separate charges and are tried together but the Legislature has engrafted certain exceptions upon this rule contained in Sections 219, 220, 221 and 223 vide *Aftab Ahmad v. Hakim Mohamad Yar Khan* (referred to supra).

45. However, in *Ranchhodlal Vs. State of Madhya Pradesh*, , a three Judge Bench of the Apex Court held at page 1250 in paras 15 and 16 thus:

(15).....This again is an enabling provision and is an exception to S. 233, Cr.P.C. If each of the several offences is tried separately, there is nothing illegal about it. It may also be mentioned that the total number of items charged in the four cases exceeded three.

(16) Lastly reference was made, on behalf of the appellant to S. 235, Cr.P.C. and it was urged that all the same offences were committed in the course of the same transaction, and therefore, they should have been tried together. Assuming, without deciding, that these offences could be said to have been committed in the course of the same transaction, the separate trial of the appellant for certain specific offences is not illegal. This section too is an enabling section.

46. That was a case of criminal breach of trust. According to the facts, the various acts of criminal breach of trust, which formed the basis of the convictions, took place within a period of few months from November 19, 1955

to February 23, 1956. When it was urged that the appellant should have been charged for committing criminal breach of trust with respect to the total amount he had misappropriated and the appellant should have been awarded only one sentence, the Apex court repelled the said contention and in para 19 it was held thus:

We are therefore, of opinion that there had been no illegality in the Court's trying the appellant in four cases and in not ordering the various sentences awarded indifferent Sessions Trials to run concurrently with the sentences awarded in sessions Trial No. 35 of 1961.

47. This Judgment has been followed by the Apex Court in *V.N. Kamdar and Another Vs. Municipal Corporation of Delhi*, and in para 10 it has been held thus :

The normal rule under the Criminal Procedure Code is to try each accused separately when the offence committed by him is distinct and separate. The provisions of Sections 233 to 239 would indicate that joint trial is the exception. In *State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and Another*,] this court said that separate trial is the normal rule and joint trial is an exception when the accused have committed separate offences.

48. In view of the authoritative pronouncement of a three Judge Bench of the Apex Court, there is nothing illegal in trying the cases separately although the offences are said to have been committed in the course of the same transaction. All this is meant to save the accused from embarrassment and the provisions contained in Part B of Chapter XV are only enabling provisions. The infraction thereof is neither illegal nor would vitiate the trial.

49. The learned counsel for the petitioners contends that if the accused were to be convicted in all these cases separately, 10 years imprisonment should be inflicted upon them in 10 cases as the maximum sentence u/s 138 of the Act to be awarded is one year as against the sentence of one year to be awarded, should be tried for all these offences in one case in a single trial. In fact, such a contention has been repelled by the Apex Court in *Ranchhod Lal's case*, (referred to supra) inasmuch as sentence shall depend upon the nature of the offence and the gravity of the same.

50. For the forgoing reasons, there is nothing illegal in having filed ten different complaints and, therefore, these petitions must fail and are dismissed.