

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Rev.P. No. 636/2010 & Crl.M.A. 7139/2011**

% Reserved on: 9th August, 2011

Decided on: 26th August, 2011

PANKAJ KUMAR Petitioner

Through: Ms. Purnima Maheshwari, Adv.

versus

SUNIL KUMAR VAID Respondent

Through: Mr. Ashok Kumar Arya, Mr. S.K. Walia, Mr. Rakesh K. Srivastava, Advs.

+ **Crl. Rev.P. No. 637/2010 & Crl.M.A. 7141/2011**

PANKAJ KUMAR Petitioner

Through: Ms. Purnima Maheshwari, Adv.

versus

GOPAL DASS VAID (DEAD) Respondent

Through: Mr. Ashok Kumar Arya, Mr. S.K. Walia, Mr. Rakesh K. Srivastava, Advs.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not Necessary |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MUKTA GUPTA, J.

1. These revision petitions arise out of a common impugned judgment passed by the Learned Additional Sessions Judge in two criminal appeals arising out of complaint cases under Section 138 of the Negotiable Instruments Act, 1881 (in short N.I. Act) relating to the dishonor of cheques issued in favour of the complainants Gopal Dass Vaid (since deceased) and his son Sunil Kumar Vaid in course of the same transaction.

2. At the outset it may be noted that the learned counsel for the Petitioner after some arguments confined her arguments only to the extent that despite the cheques were issued in the course of the same transaction and were dishonoured, the Learned Trial Court and Learned Appellant Court failed to direct that the sentences should run concurrently. The Petitioner has undergone almost the entire sentence in one case and it is thus prayed that the benefit of Section 427 IPC be granted to the Petitioner and the sentences be directed to run concurrently. Reliance in this regard is placed on *Shersingh Vs. State of M.P. 1989 Crl.L.J. 632*, *V. Venkateswarlu Vs. State of Andhra Pradesh 1987 Crl.L.J. 1621*, *Mani and Anr. Vs. State of Kerala 1983 Crl.L.J. 1262*.

3. Learned counsel for the Respondent on the other hand contends that no case for directing the sentences to run concurrently is made out as the cheques in question were distinct and thus distinct offences were committed. According to him, the Petitioner is liable to undergo the sentence consecutively and not concurrently. Reliance is placed on *Sukumaran Vs. State of Kerala and another*, 2008 CriLJ 2297, *Parthasarthy Vs. K.G. Sarangataran and Ors*(Crl.M.C. 3418/2007 decided by the High Court of Kerala on 15th November, 2007) and *O.J. Thomas v. M.C. Bavu & another* (Crl.M.C. No.2937/2008 decided by the Kerala High Court on 4th August, 2008).

4. I have heard learned counsel for the parties at length. Briefly the facts leading to filing of the two complaint cases by the Respondents are that the Petitioner herein on 16th May, 2005 sought money amounting to Rs. 5 lakhs for his business purposes from the Respondent/complainant Sunil Kumar Vaid who is his real maternal uncle. The complainant stated that he could give only Rs. 2,60,000/- and thus he gave a cash loan for 6/7 months on 16th May, 2005 in lieu of which the Petitioner issued two post-dated cheques bearing No. 240238 dated 4th March, 2006 for Rs. 1,00,000/- Ex.CW1/1 and cheque No. 240240 dated 4th April, 2006 for Rs. 1,60,000/- Ex.CW1/2. The Petitioner thereafter again approached the complainant on 27th May, 2005 and requested

for another Rs. 3,00,000/- to which he stated that he could give only Rs. 1,00,000/- and he could request his father to give him a loan of Rs. 90,000/- to which the Petitioner agreed. Thus, an amount of Rs. 1,90,000/- was given in lieu of which the Petitioner issued and delivered post-dated cheque bearing No. 240239 dated 24th April, 2006 for Rs. 1,00,000/- Ex.CW1/3 in favour of the complainant Sunil Kumar Vaid and another post-dated cheque No.758841 dated 6th April, 2006 for Rs.90,000/- in favour of complainant's father Gopal Dass Vaid . When all the four were presented for realization on 5th June, 2006 the said cheques were dishonoured for "insufficient funds" vide returning memo dated 1st June, 2006. A demand notice dated 8th June, 2006 was sent which was duly replied to. Since the Petitioner failed to make the payment despite demand notice, two complaint cases were filed being complaint case No. 5015/01/06 on the complaint of Sunil Kumar Vaid and complaint case No. 5014/01/06 on the complaint of his father Shri Gopal Dass Vaid.

5. The defence of the Petitioner in the complaint case was that the Petitioner had kept signed cheques and they were stolen whereafter the same were filled in the hand-writing of Shri Moti Lal the brother-in-law of the Complainant. Since there was a matrimonial dispute going on between the Petitioner and his wife the same were misused by the complainants and the

Petitioner was sent to jail. It is the admitted case that the body of the cheque was not filled up by the Petitioner.

6. After recording of the statement of the witnesses, the Learned Metropolitan Magistrate decided both the complaint cases by impugned judgments dated 28th May, 2010 imposing a sentence of Simple Imprisonment for a period of one year and to pay a fine of Rs. 7,20,000/- out of which Rs. 4,00,000/- was to be paid to the complainant Sunil Kumar Vaid in complaint case No. 5015/2001 and a sentence of Imprisonment for a period of one year and to pay a fine of Rs. 1,80,000/- out of which Rs. 1,00,000/- was to be paid to Sunil Kumar Vaid, son of the deceased complainant Gopal Dass Vaid in complaint case No. 5014/2001 as compensation and in default of payment of fine to undergo Simple Imprisonment for two months in each case.

7. Thus, the issue for consideration is whether in the facts of the present case the Petitioner can be granted the benefit of Section 427 Cr.P.C. and the two substantive sentences in the complaint cases can be directed to run concurrently.

8. In *Shersingh* (supra) the full Bench of Madhya Pradesh High Court and *Mani and Anr.* (supra) full Bench decision of the Kerala High Court held that the High Court under its inherent powers under Section 482 Cr.P.C. can

exercise the jurisdiction under 427 (1) Cr.P.C. even if the Trial Court, Appellate or Revisional Court has not exercised the same, if the facts of the case so warrant. This view was also taken in *V. Venkateswarlu (supra)* by the Division Bench of the Andhra Pradesh High Court. Thus, a common consensus which appears is that if the facts of the case warrant, then the Courts can exercise its Appellate, Revisional or inherent powers and grant the benefit of Section 427 (1) Cr.P.C.

9. In the present case the four cheques were issued on a demand raised by the Petitioner to his maternal uncle on two occasions and in one complaint cheques of both the demands have been impugned. Thus, even as per the Respondent the cheques issued were in the course of same transaction and the same demand, though done in installments. The parties are the same and are closely related to each other. The demands were made in quick successions of time and cannot be stated to be disjunctive demands even as per the complainant who has treated them to be in the course of one transaction between the same parties. In view of this fact in my opinion it is a fit case for directing the sentences to run concurrently.

10. The reliance placed by the Respondent on the decisions in *O.J. Thomas (supra)* is misconceived. In the said case the substantive sentence of Imprisonment till the rising of the Court as also directions for payment of

compensation were imposed in two different cases. The Petitioner therein had undergone a default sentence for S.I. for three months in both the cases. In the present case the Petitioner is in custody for nearly one year now. In *Parthasarthy* (supra) also the Court held that there was no common feature in the three cases for which the benefit of Section 427 (1) was sought.

11. For the reasons stated above, it is therefore directed that the sentences awarded to the Petitioner by the Learned Metropolitan Magistrate in complaint case Nos. 5014/2001 and 5015/2001 under Section 138 N.I. Act vide orders dated 29th May, 2010 shall run concurrently.

12. Petitions and the applications are disposed of.

13. Copy of this judgment be sent to the Superintendent, Tihar Jail, who will take action in accordance with law.

(MUKTA GUPTA)
JUDGE

AUGUST 26, 2011
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