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

\+ **CRL.REV.P.391/2015**

Date of Reserve: 07.09.2015
Date of Decision: 18.09.2015

DEEPAK BHATIA ..... Petitioner
Through: Mr.Randhir Jain and Mr.Dhananjai Jain, Advocates.

versus

VIRENDER SINGH ..... Respondent
Through: Mr.Medhanshu Tripathi and Mr.Satish Rana, Advocates.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. The revisionist has challenged the judgment and order of conviction dated 20.5.2014/28.5.2014 passed by the Metropolitan Magistrate whereby he has been convicted under Section 138 of the Negotiable Instruments Act and has been sentenced to undergo Rigorous Imprisonment for four months and has been directed to pay compensation under Section 357(3) of Cr.P.C amounting to Rs.1,35,000/- to the respondent and in default of payment of compensation, to suffer Simple Imprisonment of 15 days. The petitioner has also assailed the judgment and order passed in C.A. No.06/15 passed by the ASJ-01, Patiala House Courts, New Delhi by which the Trial Court Judgment has been confirmed and upheld.

2. The respondent has filed as many as 23 complaint cases against the petitioner for his prosecution for the offence under Section 138 of the Negotiable Instrument Act. In the aforesaid 23 complaint cases various cheques were said to have been issued which were dishonoured on presentation. They are extracted as hereunder:-

Cheque No.	Date of Cheque	Amount (in Rs.)
000048 000047 002375	10.12.2008 14.12.2008 01.09.2008	10,000/- 1,10,000/- 42,000/-
000001 000002 000003	09.08.2008 08.09.2008 10.09.2008	30,000/- 18,000/- 18,000/-
002423 007582 120184	24.09.2008 24.09.2008 26.11.2008	44,000/- 24,000/- 6,667/-
000032 000050	14.11.2008 26.12.2008	7,500/- 10,000/-
121334 121335 121336 121340 207659	06.01.2009 10.01.2009 14.01.2009 02.01.2009 05.10.2008	10,000/- 10,000/- 10,000/- 1,00,000/- 26,700/-
000039 000041 000049	08.11.2008 02.12.2008 18.10.2008	1,00,000/- 10,000/- 10,000/-
000033 000034 000036 000038	21.11.2008 28.11.2008 11.11.2008 26.11.2008	7,500/- 7,500/- 7,500/- 7,500/-
002419	16.09.2008	12,000/-
000044 000045 000046	21.11.2008 28.11.2008 07.12.2008	1,00,000/- 1,00,000/- 1,00,000/-
007583 007584	25.09.2008 29.09.2008	24,000/- 48,000/-

007585	27.09.2008	30,000/-
002412 002413 002414	04.09.2008 05.09.2008 05.09.2008	40,000/- 40,000/- 40,000/-
000007 000008 000009	12.09.2008 13.09.2008 17.09.2008	48,000/- 12,000/- 12,000/-
207697 207698 007581	15.12.2008 25.12.2008 23.09.2008	10,000/- 10,000/- 36,000/-
000004 000005 000006	09.09.2008 10.09.2008 11.09.2008	48,000/- 48,000/- 36,000/-
000025 000042 000043	03.10.2008 07.11.2008 14.11.2008	7,500/- 1,00,000/- 1,00,000/-
002424 207677 207696	25.09.2008 24.10.2008 28.12.2008	40,000/- 16,500/- 10,000/-
000018 000026 000027 000037	28.10.2008 11.10.2008 20.10.2008 20.11.2008	7,500/- 7,500/- 7,500/- 7,500/-
000010 000012 000014	18.09.2008 25.10.2008 26.10.2008	18,000/- 11,000/- 14,000/-
002418 002422 002420	15.09.2008 23.09.2008 19.09.2008	12,000/- 40,000/- 24,000/-
007591 007593 007594	20.09.2008 02.10.2008 02.10.2008	10,000/- 40,000/- 40,000/-
007586 007587 007588	28.09.2008 09.09.2008 01.10.2008	30,000/- 42,000/- 30,000/-
000019 000021 000023	30.10.2008 03.11.2008 08.10.2008	30,000/- 16,500/- 1,00,000/-

007595	01.10.2008	40,000/-
216765	04.10.2008	21,000/-
216776	11.10.2008	10,500/-
008778	26.09.2008	24,000/-

3. In all such complaints, the petitioner was earlier acquitted by the Metropolitan Magistrate on the ground that the respondent was in the business of money lending when he did not possess any license for the same. It was thus held by the Metropolitan Magistrate that the complaints were barred under Section 3 of the Punjab Money Lenders Act, 1938 (hereinafter referred to as the Act of 1938).

4. The aforesaid judgment and orders of acquittal were challenged by the respondent by preferring separate sets of appeal before the High Court of Delhi. All such leave of appeals were granted and there was a direction for registration of the Criminal Appeals Nos.461 to 483/2013. Thereafter, analysing Section 3 of the Act of 1938 this Court held that the learned Metropolitan Magistrate was in error in holding that the complaints were barred under the provisions of the Act of 1938. Thus all the cases were remanded to the Court of the Metropolitan Magistrate for writing out a fresh judgment in accordance with law.

5. The aforesaid orders of this Court in Crl.L.P. No.491 to 513/2011 were challenged by the petitioner before the Supreme Court. The Supreme Court gave the liberty to the petitioner to raise all such issues before the Trial Court.

6. After the remand, no evidence was led by the respondent. The petitioner examined two witnesses apart from himself as DW-2 and DW-2A (himself being DW-1). By separate judgments the petitioner was convicted and sentenced under Section 138 of the Negotiable Instruments Act.

7. Thus 23 appeals came to be filed before the Sessions Court by the petitioner, all of which were dismissed and the judgment and sentence of the Trial Court was confirmed.

8. This has given rise to 23 revision petitions which are being dealt with separately in 23 revision petitions.

9. The respondent (complainant) lodged a complaint against the petitioner alleging that the petitioner approached him sometimes in the year 2006 and sought financial assistance for running his business. An agreement was entered into between the petitioner and the respondent that the respondent would provide financial assistance to the petitioner for which he would charge interest at the rate of 20% per month. Petitioner agreed and accepted money from the complainant time to time and also issued cheques towards repayment. For some time, the cheques were honoured but later, the petitioner failed to make payments. When confronted by the respondent (complainant), the petitioner promised to pay the entire balance amount by December, 2008. A request was made to the respondent (complainant) that the cheques which were given to him be not presented before the bank till 25.12.2008. The cheques were later presented which were dishonoured. After complying with the requirements/formalities

under Section 138 under the Negotiable Instruments Act, a complaint was lodged with respect to three cheques namely:-

Cheque no.	Drawn on (Bank)	Dated	Amount
007593	Centurion Bank of Punjab Limited	02.10.2008	40,000/-
007594	Centurion Bank of Punjab Limited	02.10.2008	40,000/-
007591	Centurion Bank of Punjab Limited	20.09.2008	10,000/-

10. At the trial the respondent (complainant) examined himself as CW-1. The statement of the petitioner was recorded under Section 313 of the Code of Criminal Procedure. The petitioner also examined Ashvin Dwivedi of HDFC Bank as DW-2 and another witness by the name of Mahesh Kumar from Indian Overseas Bank (DW-2A). The petitioner has examined himself as DW-1 and has filed his affidavit (Ex.D-1).

11. The respondent (complainant), at the trial proved the acknowledgement of the petitioner dated 12.9.208 whereby the petitioner accepted his existing liability and assured that the money would be paid by December, 2008. In his cross-examination, the respondent (complainant) deposed that he owns two firms namely M/s.V.N.Traders and M/s.Shivam Capitals. He also admitted that the loan amount which was given to the petitioner carried interest at the rate of 20% per month. There was a specific denial that Ex.CW-1/1, the undertaking referred to above was a blank document which was signed by the petitioner (accused) at the time of taking of the loan. He

has also denied that the cheques were accepted as security. There was a specific denial of his having taken Rs.65 lakhs approximately from the accused.

12. The petitioner in his 313 statement has admitted of taking financial help from the respondent (complainant) and has also accepted that cheques were issued by him. However, it was clarified that the cheques were towards security and instead of being returned, the same were presented in the bank. He has categorically stated that the loans which he had taken from the complainant had been repaid and more than Rs.65 lakhs was paid to the respondent (complainant).

13. In his deposition before the Court as DW-1, he has stated that he first took loan from the respondent (complainant) in September, 2006 for running business of electronic equipment after entering into an agreement with him. The copy of the agreement, it has been stated, was never given to the petitioner. The petitioner is said to have continuously paid the loan till July, 2008 through cash and cheque both. He has also admitted that many a times, he returned the loan at the rate of 20% in cash. It was also stated by the petitioner that the respondent (complainant) has floated two companies which deal with illegal money lending activities.

14. Ashwin Diwedi, Branch Manager, HDFC Bank appeared before the Court as DW-2 with the statement of account of the accused. He has deposed that there are no restrictions as per RBI guidelines on the number of account a person can hold in a particular branch. Usually, if a customer would like to open another account in the same name, it is

discouraged unless the need is expressed.

15. Mahesh Kumar, record clerk of Indian Overseas Bank, Greater Kailash Part-II did not know anything about the case and only produced the documents from the bank records.

16. The learned Magistrate convicted the petitioner under Section 138 of the Negotiable Instruments Act and sentenced him to undergo Rigorous Imprisonment for four months and a compensation under Section 357(3) Cr.P.C to the tune of Rs.3,11,250/- and in default of payment of compensation a Simple Imprisonment of 15 days. In the appeal filed by the petitioner, the conviction and sentence was upheld.

17. The petitioner submits that from the evidence on record, the respondent (complainant) has not been able to make out the existence of a legal liability in discharge of which the cheques were issued. That being the basic requirement of law, and the same not having been done by the respondent (complainant), the conviction of the petitioner is unwarranted. It has been submitted, on the other hand, that the petitioner has been successful in negativing the existence of any such liability for which cheques had been issued. The other ground urged by the petitioner is that the undertaking (Ex.CW-1/A1) dated 12.9.2008 is for a consolidated amount of Rs.24 lakhs and odd. But the cheques in question are all of subsequent dates and of smaller amounts. It was argued that such smaller amount of cheques, issued by the petitioner, defy the natural course of conduct. It is not expected of anybody to issue many cheques of such amount especially when the outstanding loan amount is as high as 24 lakhs and odd. This only

implies, that no such transaction as stated in the notice or the complaint ever took place.

18. A grievance has been laid that in the complaint, the exact loan amount has not been stated. The figure of 24,73,867/- has been arrived at only on the basis of an undertaking and by calculating the amounts in different cheques which were purportedly issued by the petitioner. There is no mention of such amounts in the Income Tax returns of the complainant. In that view of the matter, it was argued, the case of the respondent (complainant) becomes highly doubtful and ambiguous and is not fit to be accepted.

19. The petitioner in his 313 statement has admitted issuance of cheques and its subsequent dishonour on presentation in the bank for insufficiency of funds.

20. The ground of the respondent (complainant) indulging in money lending without a license does not come handy and beneficial to the petitioner. Any repayment of loan by cheque would not be covered by Punjab Registration of Money Lending Act, 1938.

21. The statement of accounts furnished by DW-2 and DW-2A also do not show that the respondent (complainant) was lending money to various people. Otherwise also the bar of Section 3 of the Punjab Registration of Money Lending Act, 1938 would not be applicable in case of return of any loan through a negotiable instrument like cheque.

> ***"3. Suits and applications by money-lenders barred, unless money-lender is registered and licensed.*** *Notwithstanding anything contained in any other enactment for the time being in force, a suit by a money-*

lender for the recovery of a loan, or an application by a money-lender for the execution of a decree relating to a loan, shall after the commencement of this act, be dismissed, unless the money-lender-

(a) At the time of the institution of the suit or presentation of the application for execution-

- *(i) is registered; and*
- *(ii) holds a valid licence, in such form and manner as may be prescribed; or*
- *(iii) holds a certificate from a Commissioner granted under section 11, specifying the loan in respect of which the suit is instituted, or the decree in respect of which the application for execution is presented; or*
- *(iv) if he is not a registered and licensed money-lender, satisfies the Court that he has applied to the Collector to be registered and licensed and that such application is pending; provided that in such a case, the suit or application shall not be finally disposed of until the application of the money-lender for registration and grant of license pending before the Collector is finally disposed of."*

22. The contention of the petitioner that the cheques were offered as security which was meant to be returned after the loan was repaid, is not acceptable. The deposition of the petitioner is categorical that he met the respondent (complainant) in the year 2006 and had taken a loan from him. The loans were being repaid, according to the petitioner, till 2008. Thus, the acknowledgement contained in Ex.CW-1/1A which the petitioner made on 12.9.2008, thereby admitting receipt of Rs.24 lakhs and odd demonstrates that the loan was taken by the petitioner. The aforesaid acknowledgement also admits of the fact that many cheques of different amounts were issued on various dates

and an assurance was given vide that acknowledgement that the total amount would be paid by the last week of December, 2008.

23. The appellant as DW-1 has admitted that each of the cheque was of different amount which included the amount of interest. The fact that cheques were issued for the amount which included the interest clearly demonstrates that the cheques were not security cheques. It is not expected that payment of the dues would be made by anybody without taking the cheques back from the party.

24. Though interest at the rate of 20% per month, (240% per annum) on the face of it, appears to be unconscionable, but, when there is extreme/urgent need of money and loan is taken for a short period, it is not unknown in the mercantile world that bigger rate of interest is charged. In such an event, higher rate of interest cannot, ipso facto, lead to the conclusion that the cheques were only security cheques and not issued in discharge of any existing liability of the payer. The revisionist has admitted that such amounts were being paid regularly i.e. principal amount along with 20% interest from 2006 to 2008. The petitioner would, therefore, be estopped from raising the plea that such rate of interest was on the excessive side, and therefore the prosecution case is doubtful.

25. In the cross examination, the petitioner has admitted that the cheques were filled up by him in his own handwriting. The dates also were filled by him. Only the name of the drawer was left blank.

26. Thus the argument that the cheques being of smaller amounts and for a short period of time is reflective of the same being in the

nature of security is untenable.

27. The appellate Court, therefore, upheld the conviction and sentence of the petitioner.

28. This Court finds no fault with both the orders of the Courts below.

29. An alternative plea has been taken by the petitioner that in 23 complaints, separate sentences and compensation has been awarded to the petitioner and there is no stipulation that those sentences will run concurrently.

30. It is submitted that since the transaction was between the same parties, though each loan transaction was separate and distinct, the sentences should have been directed to run concurrently. It was suggested by the petitioner that the legal position favours the exercise of discretion for the benefit of an accused in cases where prosecution is based on a single transaction even if different complaints thereof may have been filed for dishonour of different cheques. The transactions forming the basis of prosecution relate to the same parties i.e the petitioner and the respondent and therefore the sentences ought to have been ordered to run concurrently.

31. In **Mohd.Akhtar Hussain vs. Assistant Collector of Customs** (1988) 4 SCC 183, the Supreme Court recognized and justified the principle of concurrent running of sentences. It has been held by the Supreme Court that "the basic rule of thumb over the years has been the so called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments

generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relates to offences which are not same or the facts constituting the two offences are quite different."

32. In **State of Punjab vs. Madan Lal**, 2009 (5) SCC 238, the Supreme Court relied upon the aforementioned decision in Akhtar Hussain's case (Supra) and affirmed the direction of the High Court for sentences to run concurrently.

33. Incidentally, Madan Lal's case also was under Section 138 of the Negotiable Instruments Act.

34. In **V.K.Bansal vs. State of Haryana and Ors**, AIR 2013 SC 3447, the Supreme Court again took note of the aforestated decisions and put its seal of approval over the proposition of concurrent running of sentences in cases relating to same transaction.

35. However, in **O.M.Cherian @ Thankachan vs. State of Kerala and Ors**, (2015) 2 SCC 501, the Supreme Court had the occasion to refer to the decision in Mohd.Akhtar and Madan Lal (Supra).

36. In the aforesaid decision, a reference was made to Section 31 of the Code of Criminal Procedure which reads as hereunder:-

> *"31. Sentences in cases of conviction of several offences at one trial.*
> *(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the*

several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.
(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:
Provided that-
(a) in no case shall such person be sentenced to imprisonment for longer period than fourteen years;
(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.
(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence."

37. A reading of Section 31 Cr.P.C, it was argued before the Supreme Court, would make it obvious that the normal rule is to inflict sentences which would run consecutively and only when specially directed, concurrently.

38. The Supreme Court after analyzing the provisions of Section 31 of the Code of Criminal Procedure clarified that the section deals with quantum of punishment which may be legally passed when there is (a) one trial; and (b) the accused is convicted of "two or more offences." Section 31 Cr.P.C. says that subject to the provisions of Section 71 I.P.C., the Court may pass separate sentences for two or more

offences, but the aggregate punishment must not exceed the limits fixed in proviso (a) and (b) of sub-section (2) of Section 31 Cr.P.C. The ambit of Section 31 is wide, covering not only a single transaction constituting two or more offences but also offences arising out of two or more transactions. Thus in Mohd.Akhtar Hussain and Madan Lal (Supra), the issue that fell for consideration was imposition of sentences for two or more offences arising out of single transaction. It was in that context that sentences were directed to run concurrently.

39. In O.M.Cherian (Supra) the Supreme Court at para 20 and 21 clearly laid the formulation as under:-

> *"20. Under Section 31 Cr.P.C. it is left to the full discretion of the Court to order the sentences to run concurrently in case of conviction for two or more offences. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. By and large, trial courts and appellate courts have invoked and exercised their discretion to issue directions for concurrent running of sentences, favouring the benefit to be given to the accused. Whether a direction for concurrent running of sentences ought to be issued in a given case would depend upon the nature of the offence or offences committed and the facts and circumstances of the case. The discretion has to be exercised along the judicial lines and not mechanically.*
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> *21. Accordingly, we answer the Reference by holding that Section 31 Cr.P.C. leaves full discretion with the Court to order sentences for two or more offences at one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances. We do not find any reason to hold that normal rule is to order the sentence to be*

> *consecutive and exception is to make the sentences concurrent. Of course, if the Court does not order the sentence to be concurrent, one sentence may run after the other, in such order as the Court may direct."*

40. In the case in hand what the Trial Court and the appellate Court lost sight of was the provision of Section 31(2) of Cr.P.C and Section 71 of the IPC.

41. Section 71 of the IPC reads as hereunder:-

> "*71. **Limit of punishment of offence made up of several offences**.—Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.*
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> *[Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.]*
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> *Illustrations*
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> *(a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.*
>
> *(b) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily*

causing hurt to Z, and to another for the blow given to Y.”

42. The sentence of four months if added up in 23 complaints would make it 92 months which makes the sentence approximately of eight years. In such an event, the judgment of the Trial Court and the appellate Court, therefore, reflect lack of proper exercise of discretion. Though in the operative part of the sentence of the Trial Court there is no reference of sentences imposed under the various complaints to run concurrently, the Trial Court allowed the application under Section 389 Cr.P.C of the petitioner for suspension of sentence till the filing of the appeal. This obviously, is lack of sight on the part of the Court to assess that the sentences in 23 complaints were not to run consecutively; or else the prayer under Section 389 Cr.P.C would not have been allowed.

43. The nominal roll of the petitioner shows that the sentences are to run consecutively in all the cases. This is because, there is no clarification with respect to whether the sentences in all the complaints would run consecutively or concurrently.

44. The Appellate Court also lost sight of this fact.

45. Thus on the basis of the aforesaid discussion, the sentences imposed upon the appellant in all the cases is directed to run concurrently and not consecutively.

46. In case the appellant has served the sentence of four months in all, he will be released from jail forthwith.

47. It has been argued that while sentencing the appellant the Trial Court directed the appellant to pay compensation under Section 357(3) Cr.P.C to the complainant to the tune of Rs.1,43,250/- and further directed that in default of payment of compensation, the convict shall undergo imprisonment for 15 days.

48. In **Ahammedkutty vs. Abdullakoya**, 2009 (6) SCC 660, the Supreme Court has categorically held that compensation can be directed to be paid both in terms of sub Section (1) of Section 357 of Cr.P.C and under sub Section (3) thereof. However, while exercising jurisdiction under sub-Section (3) of Section 357, no direction could be given that in default to pay the amount of compensation, the accused shall suffer Simple Imprisonment.

49. The Supreme Court has held that such an order could have been passed only in terms of Sub Section (1) of Section 357. If the compensation directed to be paid by the Court in exercise of its jurisdiction under sub Section (3) of Section 357 is not deposited, the same can be realised as fine in terms of Section 421 of the Code of Criminal Procedure.

50. Thus the default clause inserted in the sentences requiring the appellant to suffer Simple Imprisonment for 15 days in case of non payment of the compensation amount cannot be sustained in the eyes of law and therefore that part of the sentence is set aside.

51. It is made clear that no interference is being made with respect to the quantum of compensation which the petitioner has been directed to pay to the complainant.

52. The revision petition is thus disposed of in terms of the above namely the sentences in all the complaints would run concurrently and there shall no imprisonment for non payment of the compensation amount, which amount could be realised under Section 421 of the Code of Criminal Procedure.

Crl.M.B No.7302/2015

1. In view of the petition having been disposed of, no order is required to be passed in the instant application.

2. Dismissed as infructuous.

ASHUTOSH KUMAR, J

SEPTEMBER 18, 2015
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