

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

Date of Decision : August 19th, 2016

+ CRL.M.C. 820/2016

M/S U TURN HOUSING PVT LTD & ANR Petitioner

Through: Mr.Hemant Singh and Mr.Tarun
Khanna, Advs.

versus

STATE OF (GNCT) OF DELHI & ANR Respondents

Through: Mr.G.M.Farooqui, APP.

WITH

+ CRL.M.C. 832/2016

M/S U TURN HOUSING PVT LTD & ANR Petitioner

Through: Mr.Hemant Singh and Mr.Tarun
Khanna, Advs.

versus

STATE OF (GNCT) OF DELHI & ANR Respondents

Through: Mr.G.M.Farooqui, APP.

WITH

+ CRL.M.C. 833/2016

M/S U TURN HOUSING PVT. LTD & ANR Petitioners

Through: Mr.Hemant Singh and Mr.Tarun
Khanna, Advs.

versus

STATE OF (GNCT) OF DELHI & ANR Respondent

Through: Mr.Izhar Ahmad, APP.

AND

+ CRL.M.C. 834/2016

M/S U TURN HOUSING PVT LTD & ANR Petitioners

Through: Mr.Hemant Singh and Mr.Tarun
Khanna, Advs.

versus

STATE OF (GNCT) OF DELHI & ANR Respondents

Through: Mr.Izhar Ahmad, APP.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. As all these petitions have been filed challenging the common order dated 19.09.2015 passed by the Court below, therefore, all these petitions are decided together.

2. The present petitions have been filed by the petitioners, under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as Cr.P.C.) for reduction of simple imprisonment awarded to the petitioner no.2 separately in case of

default of payment of compensation and to release the petitioner no.2 on the period of custody already undergone by him.

3. The factual matrix emerging from the record is that the M/s Velocis Systems Pvt. Ltd. (respondent no.2 herein) is a private company dealing in computer business. The petitioner no.2 on behalf of petitioner no.1-company contacted the respondent no.2 for buying computer peripherals i.e. server and desktops etc. The petitioner no.2 had issued four cheques bearing no.238717 dated 20.08.2009 for a sum of Rs.2,50,000; cheque no.238719 dated 31.08.2009 for a sum of Rs.2,00,000/-, cheque no.238718 dated 26.08.2009 for a sum of Rs.2,00,000; and cheque no.238720 dated 05.09.2009 for a sum of Rs.1,06,488/- to the respondent no.2. All the said four cheques were dishonoured on their presentation for encashment due to which the respondent no.2 had filed four complaints under Section 138 of the Negotiable Instruments Act, 1881 vide complaint nos.740/11, 741/11, 743/11 and 744/11.

4. The petitioner no.2 was convicted vide judgment dated 08.05.2014 for offence punishable under Section 138/141 of the N.I. Act in all the four complaint cases. Vide order on sentence dated 16.05.2014, the petitioner no.2 was sentenced to undergo simple imprisonment of five months and also directed to pay the compensation under Section 357(3) of the Cr.P.C. and in case of default of payment of compensation to further undergo simple imprisonment of six months each. The appeals filed by the petitioners were withdrawn vide order dated 28.01.2015 on the ground that they wish to avail the opportunity to file an application

under Section 427 Cr.P.C. Thereafter, the petitioners had moved an application under Section 427 Cr.P.C. before the Trial Court with the prayer for issuance of direction to run the sentences concurrently in default of payment of compensation and the same was dismissed vide common order dated 19.09.2015.

5. Feeling aggrieved by the order dated 19.09.2015, the present petitions have been preferred by the petitioners.

6. Arguments advanced by the counsel for the petitioners as well as Additional Public Prosecutor for the State were heard.

7. During the course of arguments, the learned counsel for the petitioners has restricted his arguments to the quantum of sentence awarded by the Trial Court i.e. imprisonment for a period of five months and to pay the compensation and in default of payment of compensation to further undergo imprisonment for a period of six months. He has submitted that a lenient view may be taken in the matter and sentence awarded to the petitioner no.2 may be reduced. It is argued that if the sentences awarded in default of payment of compensation shall run consecutively, then they shall run for two years. It is further argued that the maximum sentence awarded for the offence under Section 138 of the N.I. Act is of two years and the petitioner has already undergone prolonged incarceration of more than one year. It is further submitted that the family of the petitioner no.2 is having no proper source of income as he is the only bread earner of his family. It has been prayed to reduce the simple imprisonment of six months in the case of default of payment of compensation and to release the petitioner no.2 on the

period of custody already undergone by him.

8. Perusal of record shows that all the four complaints filed by the respondent no.2/complainant were decided by the Court below vide judgments dated 08.05.2014 and order on sentence was passed on 16.05.2014. The petitioner no.2 was sentenced to undergo simple imprisonment for five months and to pay fine as compensation to the complainant within 30 days. In case of default of payment of compensation, the petitioner no.2 was further directed to undergo simple imprisonment of six months. Though the amount of compensation was different in all the four cases, but the default sentence awarded is same.

9. Section 427 reads as under :

“When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.”

As per Section 427 Cr.P.C., it is the discretion of the Court to direct the running of sentences concurrently or consecutively in one or more criminal cases. In the case in hand, the petitioner no.2 was convicted in four different complaint cases under Section 138 of the N.I. Act. Section 427 Cr.P.C. confers power upon a Court to direct the running of sentence of imprisonment concurrently or

consecutively in two or more criminal cases, but it does not in any way give any power to the Court for issuance of direction for running of substantive sentences with the sentences awarded in default of payment of fine or compensation. The sentences awarded to the petitioner no.2 in default of payment of compensation are the substantive sentences and there is no ground to order the same to run concurrently.

10. It would be approved to quote Section 429 Cr.P.C. which reads as under:

“(1) Nothing in section 426 or section 427 of the Code shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment and the person undergoing the sentence is after its execution to undergo a further substantive sentence or further substantive sentences of imprisonment, effect shall not be given to the award of imprisonment in default of fine until the person has undergone the further sentence or sentences.”

11. Section 429 of the Cr.P.C. clearly provides that the sentence of imprisonment in default of payment of fine or compensation shall run subsequent to the substantive sentence. In the present case, no case is made out to run the sentences awarded to the petitioner no.2 in default of payment of compensation concurrently

as the same are to run substantively.

12. In view of the above mentioned facts and circumstances and the discussion, this Court is of the considered opinion that no ground is made out to direct the running of sentences concurrently awarded to the petitioner no.2 in default of payment of compensation. However, the sentence of imprisonment awarded in default of payment of compensation is reduced to five months which shall run consecutively.

13. With the above modification in the order on sentence, all the petitions are disposed of.

AUGUST 19, 2016
dd

(P.S.TEJI)
JUDGE

