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

*Judgment delivered on: 5<sup>th</sup> January, 2016*

+ CRL.M.C. 5124/2015

MUKESH BHATIA

..... Petitioner

Represented by: Mr. Gurmeet Singh, Adv.

versus

STATE & ANR

..... Respondents

Represented by: Mr. Mukesh Kumar, APP  
for State.

Mr. Nitin Sharma, Adv. for R2.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J. (Oral)**

1. Vide the present petition, petitioner seeks directions thereby setting aside the order dated 04.11.2015 passed by Id. MM, Tis Hazari Courts, Delhi in Complaint Case Nos. 5983/2011 and 5984/2011 filed under Section 138 of Negotiable Instruments Act, 1881.

2. Further seeks directions that the sentence awarded vide orders dated 15.05.2015 in the aforesaid cases shall run concurrently and not simultaneously / consecutively.

3. Admittedly, both the complaint cases were borne out of a single transaction and single agreement, due to which the aforesaid

two cases were commenced as is indicated in Para 4 of the Judgement dated 10.05.2013.

4. Ld. Counsel appearing on behalf of the petitioner submits that Mandate of Section 427 of Cr.P.C. is that if the transaction is one and the cases are registered against one accused and both were clubbed together and decided simultaneously, sentences awarded by the Trial Court shall run concurrently and not consecutively. To substantiate his arguments, ld. Counsel has relied upon a case of ***Ahsaan v. State of Delhi Through Moti Nagar Police Station*** in ***Crl. Appeal no. 1068/2009*** decided by Hon'ble Supreme Court on 14.05.2009 wherein it is held as under:

*“Having heard learned counsel for the respective parties and having further regard to the discretion which has been vested in the Court under Section 427 Cr.P.C. to direct the sentence to run concurrently, if found fit, we modify the order passed by the High Court in Crl. Appeal no. 823 of 2001 and direct that all the sentences in both the appeals shall run concurrently.”*

5. Also relied upon a case of ***V.K. Bansal v. State of Haryana and Anr. 2013 (7) Supreme Court Cases 211*** wherein sentences awarded in 8-9 cases were directed to run concurrently and not consecutively.

6. On the other hand, ld. Counsel appearing on behalf of the respondent no. 2 / complainant submits that it is not in dispute that transactions were one, however, the petitioner issued two separate

cheques accordingly, respondent no.2 filed two separate complaint cases and Id. Trial Judge has accordingly passed two separate judgments and has not directed to run the sentences concurrently. Therefore, this Court may not interfere in the orders passed by the Id. Trial Court.

7. Ld. Counsel further submits that in the case of **V.K. Bansal** (*Supra*) the Apex Court observed that the power under Section 427 Cr.P.C. may be used sparingly and not in a routine manner. There were two separate complaint cases and were decided by two separate judgments. Therefore, the present petition may be liable to be dismissed.

8. As noted above, transaction was one. The cases were instituted against one accused. Since, the petitioner has issued two cheques, the complainant has filed two separate complaint cases, which were separately dealt by the Id. Trial Court and awarded sentences separately. In such a situation, the Id. Trial Court ought to have passed the order to run the sentences concurrently, however, failed to do so.

9. The petitioner remained in custody since 16.12.2014 and vide judgment dated 04.11.2015, he was awarded total sentence of 11 months, which has already been completed.

10. Keeping in view the facts and legal position recorded above, I hereby direct to run the sentences mentioned above concurrently. Since, the petitioner has already undergone more than 11 months of

his sentence, I direct the Jail Authorities to release the petitioner forthwith.

11. Consequently, order dated 04.11.2015 is hereby set aside.
12. Accordingly, the petition is allowed.
13. A copy of this order be also sent to the Jail Authorities for compliance.
14. *Dasti.*

**SURESH KAIT, J**

**JANUARY 05, 2016**

*jg*