

CRM No. M-35119 of 2016(O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-35119 of 2016(O&M)
Date of Decision : 18.09.2017

Kuldip Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. H.S. Bajwa, Advocate for the petitioner.

Ms. Rajni Gupta, Senior Deputy Advocate General,
Punjab.

Anupinder Singh Grewal, J.(Oral)

This petition under Section 427 read with Section 482 of the Code of Criminal Procedure (for short "the Cr.P.C.") has been filed for directing that sentences awarded to the petitioner in three complaints should run concurrently.

The petitioner is stated to have purchased Poultry Feed from respondent No. 2 and in discharge of his liability, he had issued several cheques, which were dishonoured on account of 'Insufficient Funds'. Respondent No. 2 sent a notice to the petitioner and upon his failure to make the payment within the stipulated period, three complaints were filed against him. The petitioner was convicted in all the three complaints by judgments and orders dated 12.10.2015. The details of the complaints including the dates of their institution, cheques and the dates of judgments and orders convicting and sentencing the petitioner are set out hereunder :-

<i>Sr. No.</i>	<i>Complaint Case No./Year</i>	<i>Date of Institution</i>	<i>Details of Cheques</i>	<i>Date of Decision</i>	<i>Sentence</i>
1	22768 of 2013	16.04.2013	741526 dated 30.12.2012 741527 dated 30.12.2012	12.10.2015	Rigorous Imprisonment for one year, fine of ₹3000/- and in default of payment of fine, to further undergo simple imprisonment for 03 months
2	22769 of 2013	16.04.2013	741528 dated 30.12.2012 741529 dated 03.01.2013 741530 dated 05.01.2013	12.10.2015	As above
3	22770 of 2013	16.04.2013	425749 dated 05.01.2013 425750 dated 08.03.2013 425754 dated 08.03.2013	12.10.2015	Rigorous Imprisonment for one year, fine of ₹5000/- and in default of payment of fine, to further undergo simple imprisonment for 03 months

Learned counsel for the petitioner contends that all the three complaints pertain to various cheques issued by the petitioner in discharge of his liability to respondent No. 2 and, therefore, would form part of same transaction and all the sentences should be directed to run concurrently. In support of his contention, he has cited judgments of the Supreme Court in the cases of *State of Punjab Vs. Madan Lal*, (2009) 5 SCC 238, *V.K. Bansal Vs. State of Haryana*, (2013) 7 SCC 211 and *Shyam Pal Vs. Dayawati Besoya*, (2016) 10 SCC 761.

Section 427 of the Cr.P.C. is set out hereunder :-

“427. Sentence on offender already sentenced for another offence. - (1) 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:

Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."

The Supreme Court in the case of ***State of Punjab Vs. Madan Lal(supra)***, which pertained to different cheques issued by the respondent therein to the complainant for which separate complaints were filed, had directed all the sentences in three different convictions to run concurrently. In the case of ***V.K. Bansal Vs. State of Haryana(supra)***, the accused had obtained loan from various financial institutions and it was held by the Supreme Court that the cases pertaining to issuance of cheques by the accused to State Financial Corporation were to be regarded as a single transaction while issuance of cheques to

other financial institutions were to be regarded as separate cases. The conviction and sentences recorded in complaints filed by the State Financial Corporation being single transaction were directed to run concurrently.

Similarly, in the case of *Shyam Pal Vs. Dayawati Besoya(supra)*, which pertained to two separate loans taken by the accused and issuance of separate cheques for discharging liability, which were dishonoured and two complaints were filed with regard thereto, it was held by the Supreme Court that the sentences in two different complaints being part of the same transaction would run concurrently. It has also laid down the principles to be followed by the Courts while exercising discretion to direct the sentences to be run concurrently which are reproduced hereunder :-

(13) Though this provision has fallen for scrutiny of this Court umpteen times, we can profitably refer to one of the recent pronouncements in V.K. Bansal vs. State of Haryana and Another (2013) 7 SCC 211 where it was held that though it is manifest from Section 427 (1), that the Court has the power and discretion to issue a direction that a subsequent sentence shall run concurrently with the previous sentences, the very nature of the power so conferred, predicates that the discretion, would have to be exercised along judicial lines or not in a mechanical or pedantic manner. It was underlined that there is no cut and dried formula for the Court to follow, in the exercise of such power and that the justifiability or otherwise of the same, would depend on the nature of the offence or offences committed and the attendant facts and circumstances.

It was however postulated, that the legal position favours the exercise of the discretion to the benefit of the prisoners in cases where the prosecution is based on a single transaction, no matter even if different complaints in relation thereto might have been filed. The caveat as well was that such a concession cannot be extended to transactions which are distinctly different, separate and independent of each other and amongst others where the parties are not the same.

(14) The imperative essentiality of a single transaction as the decisive factor to enable the Court to direct the subsequent sentence to run concurrently with the previous one was thus underscored. It was expounded as well that the direction for concurrent running of sentence would be limited to the substantive sentence alone."

(15) In a more recent decision of this Court in Benson V. State of Kerala arising from the conviction of the appellant from his prosecution on the offences proved, this Court in the singular facts as involved and having regard to the duration of his incarceration and the remission earned by him, extended the benefit of such discretion and directed that the sentences awarded to him in those cases would run concurrently. It was noticeably recorded that the offences in the cases under scrutiny had been committed on the same day. The benefit of the discretion was accorded to the appellant therein referring as well to the observation in V.K. Bansal that it is difficult to lay down any straitjacket approach in the matter and that a direction that the subsequent sentence would run concurrently or not, would essentially depend on the nature of the offence or offences and the overall fact situation. Understandably, the appellant was required to serve

the default sentence as awarded with the direction that if the fine imposed had not been deposited, the default sentence or sentences would run consecutively."

Applying the aforementioned principles to the facts of the instant case, it is apparent that all the cheques were issued by the petitioner in discharge of his liability to respondent No. 2 and thus the parties are the same. The various cheques were issued in close proximity in time. All the three complaints were, in fact, instituted on the same day on 16.04.2013. They were all decided on 12.10.2015.

Therefore, it can indubitably be regarded as a single transaction and all the three sentences awarded to the petitioner should run concurrently.

Consequently, the petition is allowed. The three sentences awarded to the petitioner under Section 138 of the Negotiable Instruments Act in the three complaints i.e. Complaint Nos. 22768 of 2013, 22769 of 2013 and 22770 of 2013 shall run concurrently.

(ANUPINDER SINGH GREWAL)
JUDGE

September 18, 2017
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<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>