**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**1. CRR No.548 of 2015
Date of Decision: 06.04.2017**

**Gulshan Dhall ......Petitioner
Vs
Subhash Chander and another ....Respondents**

2. CRR No.715 of 2015

**Gulshan Dhall ......Petitioner
Vs
Ramji Dass Narang and another....Respondents**

3. CRR No.716 of 2015

**Gulshan Dhall ......Petitioner
Vs
Saroj Batra and another ....Respondents**

4. CRR No.555 of 2015

**Gulshan Dhall ......Petitioner
Vs
Smt. Neerja Vij and others ....Respondents**

5. CRR No.712 of 2015 (O&M)

**Gulshan Dhall ......Petitioner
Vs
Sat Lal and another ....Respondents**

6. CRR No.868 of 2015

**Gulshan Dhall ......Petitioner
Vs
Rajesh Kumar and another ....Respondents**

7. CRR No.1294 of 2015

Gulshan Dhall ......Petitioner

Vs

The Central Govt. & Semi Govt. Employees Co.op. Urban (SE) T&C Society Ltd., ...Respondents

8. CRR No.1295 of 2015

Gulshan Dhall ......Petitioner

Vs

The Lord Krishana Govt. & Semi Govt. Employees Co-op. Urban (S.E.) T&C Society Ltd. ....Respondents

9. CRR No.1297 of 2015

Gulshan Dhall ......Petitioner

Vs

Smt. Shanta Machanda and anr.....Respondents

10. CRR No.1298 of 2015

Gulshan Dhall ......Petitioner

Vs

Satbir Singh and another .....Respondents

11. CRR No.1299 of 2015

Gulshan Dhall ......Petitioner

Vs

Kanta Batra and another .....Respondents

12. CRR No.1668 of 2015

Gulshan Dhall ......Petitioner

Vs

Jagdish Batra and another .....Respondents

13. CRR No.1897 of 2015 (O&M)

Gulshan Dhall ......Petitioner

Vs

Satbir Singh and another .....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Manoj Makkar, Advocate

for the petitioner.

Mr. Anshuman Dalal, Advocate
for respondent No.1 in CRR No.548 of 2015.

Ms. Gaganpreet Kaur, A.A.G., Haryana.

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RAJ MOHAN SINGH, J.

[1]. Vide this common order the CRR Nos.548, 715, 716, 555, 712, 868, 1294, 1295, 1297, 1298, 1299, 1668 and 1897 of 2015 (O&M) are being decided as all the petitions involve the similar controversy.

[2]. In CRR No.548 of 2015, petitioner has assailed order dated 14.11.2014 passed by Additional Sessions Judge, Rohtak and judgment and order dated 07.12.2010/20.12.2010 passed by Judicial Magistrate, Ist Class, Rohtak, whereby the petitioner was held guilty under Section 138 of the Negotiable Instruments Act (hereinafter to be referred as 'the Act') and was sentenced to undergo rigorous imprisonment for a period 18 months. The judgment/order passed by the trial Court was affirmed by the lower Appellate Court.

[3]. Brief facts are that Complainant-Subhash Chander filed complaint under Section 138 of the Act and under Section 420 IPC against the accused with the allegations that the accused No.2 and 3 namely Gulshan Dhall and Vijay Ahuja had issued

cheque bearing No.599899 dated 10.03.2007 for a sum of Rs.79,000/- of Dena Bank in favour of the complainant from the account No.4619 of the accused No.1 namely The Shree Ganesh Co-op. (SE) Thrift and Credit Soceity Ltd. (for short 'the Society'). On presentation, the cheque was dishonoured vide memo dated 13.08.2007 with the remarks of insufficiency of funds. Legal notice dated 23.08.2007 was issued. However despite the receipt of notice, the accused did not pay the amount within the stipulated period. Faced with no option, the complainant filed the complaint under Section 138 of the Act, thereby impleading Gulshan Dhall as Treasurer and Vijay Ahuja as Hony. Secretary of the society/accused No.1.

[4]. On leading preliminary evidence, the accused were summoned by the trial Court. The trial Court ultimately after proceeding with the trial, concluded that cheque in issue was signed by accused No.2 and 3 for a sum of Rs.79,000/-. The account was maintained by accused No.1 with Dena Bank and the cheque was dishonoured on its presentation. Accused No.2 and 3 were the Treasurer and Hony. Secretary of the accused No.1-Society. Trial Court held the accused guilty under Section 138 read with Section 141 of the Act and sentenced the accused No.1-Society to pay the fine equivalent to the cheque amount within three months and in the event of default, accused

No.3 shall be produced before the Court to undergo sentence for 6 months of simple imprisonment. Accused No.2 and 3 were ordered to be sentenced to undergo rigorous imprisonment for a period of 18 months each.

[5]. In appeal, the judgment/order passed by Judicial Magistrate, Ist Class Rohtak was upheld. During pendency of the appeal, the petitioner gave a statement on 04.12.2012 to the effect that in view of the compromise between the parties, the petitioner would make the payment within a period of four months, otherwise, he would face the conviction. The petitioner made similar statement earlier also voluntarily. Later on, he made statement that he had no money to comply with the earlier undertaking. Faced with the situation, the lower Appellate Court on the basis of violation of undertaking dated 04.12.2012 and 11.11.2014 dismissed the appeal vide order dated 14.11.2014.

[6]. In **CRR No.715 of 2015**, the complainant-Ram Ji Dass Narang filed a complaint under Sections 138 to 142 of the Act with the allegations that the complainant had deposited some amount with the accused No.1-Society of whom accused No.2 Vijay Ahuja was Hony. Secretary and accused No.3 Gulshan Kumar Dhall was the Treasurer. Accused No.2 and 3 had issued cheque bearing No.599911 dated 10.02.2007 for a sum of Rs.64,750/- and cheque bearing No.599912 dated

10.03.2007 for a sum of Rs.64,750/- of Dena Bank in favour of the complainant from account No.4619 of accused No.1-Society. On presentation, the aforesaid cheques were dishonoured vide memo dated 10.07.2007 with the remarks of insufficiency of funds. After issuing legal notice dated 27.07.2007, the complaint came to be filed. The trial Court convicted and sentenced the accused for the offence under Section 138 read with Section 141 of the Act and sentenced accused No.1-Society to pay the fine equivalent to the cheque amount jointly and severally within a period of three months and in default thereof, accused No.2 and 3 i.e. Vijay Ahuja and Gulshan Kumar Dhall were held liable to undergo sentence of three months of simple imprisonment each. Accused No.2 and 3 were also sentenced to undergo rigorous imprisonment for a period of 18 months each. The judgment/order of the trial Court dated was upheld by the lower Appellate Court. During the proceedings before the lower Appellate Court, the petitioner made a statement on 04.12.2010 to the effect that in view of compromise between the parties, he would make the payment within a period of four months, otherwise he would face the conviction. Petitioner again made the similar statement on 11.11.2014 and thereafter did not comply with the undertaking given before the lower Appellate Court. Resultantly, the appeal was dismissed by the lower Appellate Court on 14.11.2014.

[7]. In **CRR No.716 of 2015**, complainant Saroj Batra filed complaint under Section 138 of the Act read Section 420 IPC with the allegations that accused No.2 Gulshan Dhall and accused No.3-Vijay Ahuja had issued cheque bearing no.599913 dated 10.02.2007 in a sum of Rs.32,000/- of Dena Bank in favour of the complainant from account No.4619. On presentation, the cheque was dishonoured on 22.06.2007 with the remarks of insufficiency of funds. Thereafter, legal notice was issued on 04.07.2007 and ultimately the complaint was filed. Trial Court convicted and sentenced the accused in the same manner as done in the aforementioned CRR No.548 of 2015. Similar Statement was made by the petitioner during the pendency of the appeal and the undertaking was not complied with. Consequently, the lower Appellate Court dismissed the appeal vide judgment dated 14.11.2014.

[8]. In **CRR No.555 of 2015**, complainant Smt. Neerja Vij filed complaint under Section 138 of the Act against the accused Nos.1 to 3 with the allegations that accused No.2 Vijay Kumar Ahuja and accused No.3 Gulshan Kumar Dhull had issued cheque bearing no.148194 dated 20.10.2006 in a sum of Rs.2,00,000/- of Dena Bank in favour the complainant from account no.4619 of accused No.1-Society. On presentation the

cheuqe was dishonoured on the ground of insufficiency of funds vide memo dated 27.10.2007. Legal notice dated 23.11.2007 was issued and thereafter the complaint was filed. The trial Court in due course convicted the accused in the same manner as done in the aforementioned CRR No.548 of 2015. The lower Appellate Court dismissed the appeal on 14.11.2014 on the basis of same statement of the petitioner and violation thereof.

[9]. In **CRR No.712 of 2015 (O&M),** the complainant-Sant Lal filed the complaint under Sectin 138 of the Act and under Section 420 IPC with the allegation that accused No.2 Vijay Kumar Ahuja and accused No.3 Gulshan Dhul had issued two cheques bearing nos.599373 and 599374 dated 10.11.2006 for a sum of Rs.3,68,018/- in favour of the complainant from account No.4619 of accused No.1-Society. The cheques were issued on account of deposition made by the complainant in a sum of Rs.2,29,000/- during the year 2003-04 with accused No.1-Society. It was stated that on 10.11.2006, both the accused requested the complainant to present the cheques after a period of one month. Since the complainant was to present the cheque on 10.12.2006, the accused again requested the complainant to present the same at a later stage. On presentation, the cheques were dishonoured with the remarks of insufficiency of funds vide memo dated 04.05.2007.

The accused again promised the complainant that they would put sufficient amount in the account after two months and the accused Nos.2 and 3 re-wrote the date on the cheque as 06.07.2007 after deleting the previous date 10.11.2006 by putting initials and also requested the complainant to present the same after six months. The cheques were accordingly presented on 02.01.2008, but the same were dishonoured on 03.01.2008. Legal notice dated 30.01.2008 was issued and thereafter the complainant was filed. The trial Court ultimately found the accused Nos.1 to 3 guilty of the offence and sentenced them in the same manner as done in CRR No.548 of 2015. Similar Statement was made by the petitioner during the pendency of the appeal and the undertaking was not complied with. Consequently, the lower Appellate Court dismissed the appeal vide judgment dated 14.11.2014.

[10]. In **CRR No.868 of 2015**, complainant Rajesh Kumar filed complaint under Section 138 of the Act and Section 420 IPC with the allegations that the accused No.1 Gulshan Dhall in order to discharge his liability had issued a cheque in a sum of Rs.6,00,000/- on 10.09.2007 of Union Bank of India in favour of the complainant on account of friendly loan taken by the accused from the complainant. The complainant presented the cheque with his banker State Bank of India, Rohtak, but the

same was dishonoured vide memo dated 11.09.2007 with the remarks 'No Account/Account Closed". Legal notice was issued on 10.10.2007 and thereafter complaint was filed. Trial Court convicted the accused under Section 138 of the Act and sentenced him to undergo rigorous imprisonment for a period of 12 months and also ordered compensation in favour of the complainant to tune of cheque amount under Section 357(3) Cr.P.C., failing which the petitioner was held liable to undergo simple imprisonment for a period of six months. Similar Statement was also made by the petitioner during the pendency of the appeal and the undertaking was not complied with. Consequently, the lower Appellate Court dismissed the appeal vide judgment dated 14.11.2014

[11]. In **CRR No.1294 of 2015**, complainant-The Central Govt. & Semi Govt. Employees Co.op. Urban (SE) (T&C) Society Ltd., through its Recovery Officer filed complaint under Section 138 read with Section 142 of the Act and under Section 420 IPC with the allegations that accused Gulshan Dhall after becoming member of the complainant-Society availed loan from the complainant-Society and thereafter did not pay the installments regularly. In order to clear the liability in part, he issued cheque bearing No.129552 dated 12.03.2009 for a sum of Rs.1,38,821/- of Indian Overseas Bank, Rohtak in favour of

the complainant-Society. On presentation, the cheque was dishonoured vide memo dated 14.03.2009 with the remarks of insufficiency of funds. Notice was issued on 26.03.2009. Thereafter complaint was filed before the trial Court. Trial Court in due course, held the accused Gulshan Dhall to be guilty under Section 138 of the Act and sentenced him to undergo rigorous imprisonment for a period of 12 months and to pay cheque amount as compensation to the complainant under Section 357(3) Cr.P.C. within a period of three months. In the event of default in making the payment of fine, the accused was to undergo simple imprisonment for a period of six months. Accused/petitioner filed an appeal before the lower Appellate Court. Appeal was dismissed on the basis of non-compliance of statement dated 04.12.2012 made by the accused/petitioner before the lower Appellate Court. For the intentional disobedience of the order, the application was also filed by the complainant for contempt of the court before the lower Appellate Court. Since the petitioner had promised to make the payments and only due to this reason, he was acquitted conditionally as he made statement on oath before the Court that if he failed to make the payment, the complainant would be within his right to get the case reopened. Since the accused/petitioner did not honour the commitment /statement before the lower Appellate

Court, the conditional acquittal dated 04.12.2012 was recalled and the appeal filed by the accused/petitioner was dismissed, thereby upholding the judgment of conviction and order of sentence passed by the trial Court.

[12]. In **CRR No.1295 of 2015**, complainant-The Lord Krishna Govt. & Semi Govt. Employees Co-op. Urban (S.E.) T&C Society Ltd. through its Recovery Officer filed complaint under Section 138 of the Act and under Section 420 IPC against accused Nos.1 to 3 with the allegations that accused No.2 Vijay Ahuja and accused No.3 Gulshan Dhall had issued cheque bearing no.711594 dated 20.01.2006 for a sum of Rs.2,55,625/- of Dena Bank in favour of the complainant from account No.4619 of the accused No.1-Society in lieu of amount of Rs.2,50,000/- deposited by the complainant with the accused No.1-Society. On presentation the cheque was dishonoured with the remarks of insufficiency of funds. After necessary notice, complaint was filed. Trial Court ultimately held the accused Nos.1 to 3 guilty under Section 138 read with Section 141 of the Act. Accused No.1-Society was sentenced to pay the fine equivalent to the cheque amount within a period of three months and in default of making the payment of fine, accused No.2 was to be produced before the Court to undergo sentence for six months of simple imprisonment. Accused Nos.2 and 3 were

sentenced to undergo rigorous imprisonment for a period of 18 months each. In appeal filed before the lower Appellate Court, accused/petitioner Gulshan Dhall was treated alike in terms of his undertaking and thereafter non-compliance in the same manner as done in CRR No.1294 of 2015.

[13]. In **CRR No.1297 of 2015**, complainant-Smt. Shanta Manchanda filed complaint under Section 138 of the Act and Section 420 IPC against accused Nos.1 to 3. Accused No.1/Gulshan Dhall was impleaded as Treasurer of the Society, whereas Vijay Ahuja was impleaded as Hony. Secretary of the Society and the Society itself was impleaded as accused No.3. In respect of cheque bearing No.599467 dated 04.01.2007 for a sum of Rs.49,000/- of Dena Bank proceedings under Section 138 of the Act were undertaken before the trial Court. In due course, trial Court convicted the accused Nos.1 to 3 for the offence under Section 138 read with Section 141 of the Act and sentenced the accused Nos.1 and 2 to undergo rigorous imprisonment for a period of 18 months each, besides sentencing the accused No.3 to pay the fine jointly and severally equivalent to the cheque amount within a period of three months. In the default of making the payment of fine, accused nos.1 and 2 were to undergo simple imprisonment for a period of three months. In appeal before the lower Appellate Court,

petitioner Gulshan Dhall on the basis of his undertaking was treated alike as in the same manner as done in CRR No.1294 of 2015.

[14]. In **CRR No.1298 of 2015**, complainant Satbir Singh filed complaint under Section 138 of the Act and Section 420 IPC against the accused Nos.1 to 3 in respect of cheque bearing No.599475 dated 25.01.2007 for a sum of Rs.20,000/- of Dena Bank issued in favour of the complainant, proceedings under Section 138 of the Act were undertaken before the trial Court. Petitioner along with co-accused was tried by the trial Court and ultimately accused were convicted and sentenced. Accused No.1-Society was sentenced to pay the fine equivalent to the cheque amount within a period of three months along with default mechanism. Accused No.2 and 3 were sentenced to undergo rigorous imprisonment for a period of 18 months each. In appeal filed before the lower Appellate Court, petitioner was similarly treated on the basis of his undertaking before the lower Appellate Court to make good the payment and thereafter on account of his default, the appeal was dismissed in the same manner as done in CRR No.1294 of 2015

[15]. In **CRR No.1299 of 2015**, complainant Kanta Batra filed complaint under Section 138 to 142 of the Act and under Section 420 IPC against the accused Nos.1 to 3. In respect of

cheque bearing No.599898 dated 10.04.2007 for a sum of Rs.1,70,500/- of Dena Bank issued in favour of the complainant. Proceedings under Section 138 of the Act were undertaken before the trial Court. Petitioner along with co-accused was tried by the trial Court and ultimately they were convicted and sentenced under Section 138 read with Section 141 of the Act. Accused No.1-Society was sentenced to pay the fine equivalent to the cheque amount within a period of three months along with default mechanism. Accused No.2 and 3 were sentenced to undergo rigorous imprisonment for a period of 18 months each. In appeal filed before the lower Appellate Court, petitioner was similarly treated on the basis of his undertaking before the lower Appellate Court to make good the payment and thereafter on account of his default, the appeal was dismissed and in view of non-compliance of the undertaking, the conditional acquittal of the petitioner was recalled in the same manner as done in CRR No.1294 of 2015.

[16]. In **CRR No.1668 of 2015**, complainant Jagdish Batra filed complaint under Section 138 to 142 of the Act and under Section 420 IPC against accused Nos.1 to 3. Accused Nos.2 and 3 had issued cheque bearing No.599898 dated 10.04.2007 for a sum of Rs.1,70,500/- of Dena Bank in favour of the complainant from account No.4619. On presentation, the

cheque was dishonoured vide memo dated 07.08.2007 with the remarks of insufficiency of funds. Legal notice was sent on 23.08.2007 and ultimately complaint was filed before the trial Court. Accused were tried by the trial Court and were ultimately convicted for the offence under Section 138 read with Section 141 of the Act. Accused No.1-Society was sentenced to pay the fine equivalent to the cheque amount within a period of three months along with default mechanism. Accused No.2 and 3 were sentenced to undergo rigorous imprisonment for a period of 18 months each. In an appeal before the lower Appellate Court, the petitioner was treated alike on the basis of his undertaking, which was not honoured. Consequently, the lower Appellate Court dismissed the appeal vide judgment dated 14.11.2014 in the same manner as done in CRR No.1294 of 2015.

[17]. In **CRR No.1897 of 2015 (O&M)**, complainant-Satbir Singh filed complaint under Section 138 of the Act and under Section 420 IPC against the accused nos.1 to 3 in respect of cheque bearing No.599363 dated 20.10.2006 for a sum of Rs.55,000/- of Dena Bank issued in favour of the complainant. Proceedings under Section 138 of the Act were undertaken before the trial Court. Accused were tried by the trial Court and ultimately they were convicted and sentenced under Section

138 read with Section 141 of the Act. Accused No.1-Society was sentenced to pay the fine equivalent to the cheque amount within a period of three months along with default mechanism. Accused No.2 and 3 were sentenced to undergo rigorous imprisonment for a period of 18 months each. In appeal filed before the lower Appellate Court, the petitioner on the basis of his undertaking and violation thereof was treated alike in the same manner as done in CRR No.1294 of 2015.

[18]. In all the aforesaid petitions, judgment of conviction and order of sentence passed by the trial Court and order of lower Appellate Court have been assailed on merits.

[19]. An application under Section 427 read with Section 482 Cr.P.C for issuance of direction to run the sentences of imprisonment concurrently has been filed vide CRM No.30066 of 2016 in CRR No.1897 of 2015. Earlier CRM No.17371 of 2015 was filed in the said petition with the similar payer. Petitioner pleaded therein that the transactions were similar in nature, therefore, the petitioner was entitled to the relief under Section 427 Cr.P.C.

[20]. This Court vide order dated 18.01.2016 dismissed the application. Petitioner filed SLP(Crl.) No.4392-4400 of 2016 before the Hon'ble Apex Court, which was disposed of vide

order dated 05.08.2016 with the following observations:-

> *"xx xx xx*
>
> *Having regard to the facts and circumstances of the case, we should not examine the correctness of the finding, therefore, we request the High Court to examine the same.*
>
> *High Court is requested to re-consider his request with regard to the Section 427 Cr.P.C. to run the sentence concurrently while hearing the criminal revision petition notwithstanding the order of rejection of the similar prayer earlier which is impugned in these proceedings.*
>
> *The High Court is further requested to dispose of the criminal revision petition pending before it within six months from today in view of the fact that the petitioner is in custody for last three years.*
>
> *xx xx xx"*

[21]. Perusal of the aforesaid order reveals that the correctness of the findings recorded in the order dated 18.01.2016 has not been commented upon by the Hon'ble Apex Court. The Hon'ble Apex Court has only remanded the case for reconsideration of request of the petitioner under Section 427 Cr.P.C., while hearing the criminal revision petitions on merit.

[22]. Since the prayer in terms of Section 427 Cr.P.C has been relegated by the Hon'ble Apex Court for re-consideration at the hands of this Court, while deciding the criminal revision petitions on merit, therefore, I proceed to decide the cases on

merits.

[23]. Section 427 Cr.P.C., deals with a situation where the person already undergoing sentence of imprisonment is also sentenced on a subsequent conviction to an imprisonment or an imprisonment for life, then such imprisonment of life shall commence at the expiration of the imprisonment, to which he has been previously sentenced, unless the Court directs that subsequent sentence shall run concurrently with such previous sentence. When the person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to an imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence. Apparently, date of sentence passed by the trial Court is the same in all these different complaints.

[24]. In ***Jang Singh vs. State of Punjab, 2008(1) RCR (Criminal) 323***, the full Bench of this Court held that, if the accused is habitual offender and is found guilty on various counts and it is suspected that he would be a menace to the society, if let loose, then the term of consecutive sentences should be given. The habitual offender should not be allowed for the relief given to normal offenders.

[25]. The aforesaid principle was based upon the ratio laid

down by the Hon'ble Apex Court in ***K. Prabhakaran vs. P. Jayarajan, 2005 (1) RCR (Civil) 667***. While exercising powers under Section 427 Cr.P.C., the Court has discretion to convert the consecutive running of sentences into the concurrent running of sentence. No particular guideline for exercising the judicial discretion can be formulated or exhaustively enumerated as the discretion is totally dependent upon facts and circumstances of each case.

[26]. Such discretion in the context of ordering sentences to run concurrently would be governed by different considerations depending upon the facts of each case. The nature and character of offences involved viz-a-viz. criminal history/ background of the accused, age and sex of the accused are the relevant considerations which are taken for consideration at the time of exercising the said discretion. The discretion to make the sentences to run concurrently can be exercised by the trial Court or by the lower Appellate Court or by the revisional Court at the time of exercising revisional jurisdiction. It will not be open for a person to seek such discretion by moving an application under Sections 427 and 482 Cr.P.C.

[27]. Concurrent sentences can be awarded in case of single transaction as a rule of thumb, but the same may not apply, if the transactions relating to the offences are different and the

facts constituting to offences are also different. The Court passing the sentence has to apply its mind and consider that would be an appropriate sentence in the given situation i.e. whether it should be concurrent or consecutive. If the accused is habitual of committing acts repeatedly and is found guilty on various counts and is found to be a menace to the society, then the term of consecutive sentences should be given as per the ratio of ***K. Prabhakaran's*** case (supra). The habitual offender should not be allowed to be given same treatment as in case of normal offender.

[28]. Since the exercise of discretion has to be undertaken in terms of Section 427 Cr.P.C. by the trial Court or by the appellate Court or by revisional Court at the time of exercising revisional jurisdiction, therefore, the Hon'ble Apex Court has referred the case to this Court for exercising its discretion at the time of deciding the criminal revision petitions on merits.

[29]. The only thing which has to be taken into consideration is that whether the petitioner having committed the offence is still at liberty to seek such discretion which is totally based on judicial discretion, if the petitioner is not a habitual offender. Taking into the number of cases in which petitioner is involved, wherein different complainants are aggrieved of the misconduct of the petitioner in different cheques. Petitioner has been

convicted and sentenced in different transactions in different complaints, therefore, the ratio as laid down in ***Jang Singh's*** case (supra) would squarely apply as the petitioner is found to be habitual offender.

[30]. In ***V.K. Bansal vs. State of Haryana and others, 2013(3) RCR (Criminal) 983 (SC)***, the Hon'ble Apex Court considered a case, wherein several cheques towards repayment of amount were issued in favour of the Haryana Financial Corporation, which on presentation were dishonoured by the Bank for want of sufficient funds. The Hon'ble Apex Court while interpreting the Section 427 Cr.P.C., held that the exercise of discretion to the benefit of accused can be given only where the prosecution is based on a single transaction, though in different complaints in relation thereto. However, in the instant case, even the complainants are different and different cheques were issued from different accounts in different Banks. The Hon'ble Apex Court in para No.17 of this aforecited judgment held in the following manner:-

> *"Applying the principle of single transaction referred to above to the above fact situations we are of the view that each one of the loan transactions/financial arrangements was a separate and distinct transaction between the complainant on the one hand and the borrowing company/appellant on the other. If different*

cheques which are subsequently dishonoured on presentation, are issued by the borrowing company acting through the appellant, the same could be said to be arising out of a single loan transaction so as to justify a direction for concurrent running of the sentences awarded in relation to dishonour of cheques relevant to each such transaction. That being so, the substantive sentence awarded to the appellant in each case relevant to the transactions with each company referred to above ought to run concurrently. We, however, see no reason to extend that concession to transactions in which the borrowing company is different no matter the appellant before us is the promoter/Director of the said other companies also. Similarly we see no reason to direct running of the sentence concurrently in the case filed by the State Bank of Patiala against M/s Sabhyata Plastics and M/s Rahul Plastics which transaction is also independent of any loan or financial assistance between the State Financial Corporation and the borrowing companies. We make it clear that the direction regarding concurrent running of sentence shall be limited to the substantive sentence only. The sentence which the appellant has been directed to undergo in default of payment of fine/compensation shall not be affected by this direction. We do so because the provisions of Section 427 of the Cr.P.C. do not, in our opinion, permit a direction for the concurrent running of the substantive sentences with sentences awarded in default of payment of fine/compensation."

[31]. In ***Shyam Pal vs. Dayawanti Besoya and Anr., 2016(4) R.C.R. (Criminal) 790***, the Hon'ble Apex Court has considered the case of two separate complaints arising from

identical transactions. Conviction was recorded in both the complaints and the Hon'ble Apex Court treated the same to be single transaction and applied the provision in terms of Section 427 Cr.P.C in running of sentences concurrently. However, in the instant case there are numerous complaints of different complainants in respect of different cheques issued from different accounts of different Banks. Though the complaints were decided by the same Court vide judgment and order of the even date, but the same cannot be treated to be of single transaction.

[32]. Involvement of petitioner in numerous complaints is indicative of the fact the he is habitual offender and in view of parameters laid down by the Full Bench of this Court in ***Jang Singh's*** case (supra), he is not entitled to the benefit of running of sentences concurrently in terms of Section 427 Cr.P.C.

[33]. The transactions relating to the offences in question are not the same and the facts are also different in relation to the complaints made by different complainants involving different cheques of different dates and the cheques were issued from different account number of different Banks. Therefore, the thum rule is not applicable.

[34]. The involvement of the petitioner in more or less 13

cases of dishonouring of cheques would make him more or less habitual offender, particulary when he has been convicted and sentenced in all the cases and he has specifically admitted the liability to pay the due amount in favour of the complainants during pendency of the first appeal before the lower Appellate Court.

[35]. In view of above, I am of the considered view that the petitioner cannot be granted benefit of Section 427 Cr.P.C., and the prayer is accordingly dismissed. Application stands disposed of.

[36]. During pendency of the appeal before the lower Appellate Court, petitioner undertook to make good the payment by giving specific undertaking before the lower Appellate Court, but ultimately failed to comply with the same and, therefore, the appeal before the lower Appellate Court resulted in dismissal.

[37]. In the light of aforesaid facts, there cannot be any worth in the stand of the petitioner. Once the statement was made by the petitioner before the lower Appellate Court, acknowledging the due payments towards him, thereafter, he cannot be allowed to breath hot and cold in the same breadth to allege that the judgment of the lower Appellate Court is illegal.

[38]. During course of arguments before this Court, learned

counsel for the petitioner admitted that the total liability of the petitioner comes out to be around Rs.21 lacs in different complaints filed by different persons, therefore, on merit, this Court does not find any substance in the cases and the petitions are accordingly dismissed on merit.

April 06, 2017 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No