

\$~32

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

**DECIDED ON : 18<sup>th</sup> APRIL, 2017**

+ **CRL.M.C.4894/2016**

**DR. SURESH CHAND KUNTAL** ..... Petitioner

Through : Mr.Amitesh Gaurav, Advocate.  
versus

**THE STATE (GOVT. OF NCT OF DELHI) & ANR.....** Respondents

Through : Ms.Manjeet Arya, APP.

**CORAM:**  
**HON'BLE MR. JUSTICE S.P.GARG**

**S.P.GARG, J. (Oral)**

1. Present petition under Section 482 Cr.P.C. has been preferred by the petitioner with the prayer that sentences awarded to him under Section 138 Negotiable Instruments Act in three different complaint cases be ordered to run concurrently. Respondent No.2 did not opt to contest the petition despite service.

2. I have heard the learned counsel for the petitioner and have examined the file. The petitioner was convicted in Complaint Case Nos. 1496/2014, 1497/2014 & 1498/2014 under Section 138 Negotiable Instruments Act and was sentenced to undergo SI for six months with fine ₹1.50 lac; SI for four months with fine ₹1.10 lac; and, SI for six months with fine ₹1.50 lac respectively by a judgment dated 02.01.2016.

Crl.A.Nos.3/2016, 4/2016 & 5/2016 to challenge the conviction and sentence resulted in dismissal on 25.02.2016.

3. Nominal Rolls reveal that substantive sentences awarded to the petitioner in CC No.1496/2014 and CC No.1497/2014 have been served out by him; default sentence is yet to start. Nominal Roll dated 17.02.2017 in CC No.1498/2014 reveals that he has already undergone two months and twenty-seven days incarceration besides remission for one month and two days as on 15.02.2017.

4. It is not in dispute that property bearing No.150D/9, Kishan Garh, New Delhi was taken on a monthly rent of ₹84,500/- by the petitioner vide lease agreement dated 28.12.2012 executed with one Sada Ram Khatri. The petitioner did not pay the rental amount. He requested the complainant to make the payments to the landlord Sada Ram Khatri on his behalf. The complainant paid the rented amount and in discharge of the said liability the petitioner issued cheques bearing No.390125 & 390126 dated 11.11.2013 for a sum of ₹50,000/-, drawn on Canara Bank, Mehrauli Branch, New Delhi. The cheques on presentation were dishonoured for reasons "Funds insufficient". Similarly, cheques No.390127 and 390128 dated 12.12.2013 for a sum of ₹50,000/- each drawn on Canara Bank issued by the petitioner were dishonoured for the same reason. Same was the position with cheques No.390129 and 390130 dated 26.12.2013 for a sum of ₹35,500/- and ₹40,000/- respectively issued by the petitioner. It led to filing of three different complaint cases against the petitioner which finally resulted in conviction under Section 138 Negotiable Instruments Act.

5. On perusal of all the complaint cases, it reveals that the dispute was primarily between the two same parties. All complaint cases disposed

of together on the same day by the same Court had arisen out of successive transactions in a series between the same parties and had been tried together on the basis of almost same set of evidence. All the cheques issued in favour of the complainant in all the matters were towards payment of rent on his behalf on different dates. The materials on record leave no manner of doubt that the complaints filed by the respondent stem from three identical transactions between the same parties whereunder the respondent had paid rent on petitioner's behalf on different dates against which he had issued cheques to discharge his liability and the cheques on presentation were dishonoured.

6. Judgment of hon'ble Supreme Court in '*Shyam Pal vs. Dayawati Besoya & Anr.*', 2016 (10) SCC 761 is fully applicable to the facts and circumstances of this case. The facts pleaded and proved do unassailably demonstrate that the loans advanced had been in the course of a series of transactions between the same parties on same terms and conditions. There is, thus, an overwhelming identicalness in the features of the three cases permitting the three transactions though undertaken at different points of time, to be deemed as a singular transaction or two segments of one transaction.

7. The petitioner is in custody since 26.02.2016. He has undergone around fourteen months incarceration besides emission. Considering the duration of the appellant's custody, the nature of offence involved and the nature of transactions between the parties thereto, the petitioner is entitled to the benefit of the discretion contained under Section 427 of the Cr.P.C.

8. It is, thus, ordered that the substantive sentence of SI for six months each awarded to the petitioner in the three complaint cases referred to hereinabove would run concurrently. Needless to say, the petitioner would have to serve the default sentences, if the fine, as imposed, has not been paid by him.

9. The petition is allowed in the above terms. The petitioner would be entitled to all consequential reliefs with regard to his release from custody as available in law based on this determination.

10. Copy of the order be sent to the Superintendent Jail for information. Trial Court record be sent back forthwith with the copy of the order.

**(S.P.GARG)**  
**JUDGE**

**APRIL 18, 2017 / *tr***