

109

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

**CRM-M-38702-2017
Date of Decision: 17.02.2018**

Subhash Chand

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Surinder S. Siao, Advocate and
Mr. Sunil Kumar Rana, Advocate,
for the petitioner.

SUDIP AHLUWALIA J. (ORAL)

Notice of motion.

[2]. On the asking of the Court, Mr. Manish Bansal, Deputy Advocate General, Haryana, accepts notice on behalf of the respondents. Let copies of the paper-book be supplied to him during the course of the day.

[3]. This is a petition under Section 427 read with Section 482 of the Cr.P.C. praying for concurrent running of various sentences awarded to the petitioner by the Court of Ld. Judicial Magistrate First Class, Faridabad in five different complaint cases, bearing Complaint Nos.128/04.02.2013, 766/28.05.2014, 1400/07.10.2014, 1572/29.10.2014 and 1573/29.10.2014. In the first complaint after the petitioner was found guilty of the offences under Section 138 of the Negotiable Instruments Act (in short 'NI Act'). He was convicted by the Ld. Trial Court on 20.05.2015, and thereafter, was sentenced to suffer simple imprisonment for one year, and to pay a

compensation amount of ₹3,57,250/- to the complainant in default of which he was sentenced to further undergo simple imprisonment for three months, on 26.05.2015. In the remaining four complaint cases already mentioned, he was similarly found guilty of the same offence and was awarded imprisonment of six months in each case apart from imposition of various compensation amounts to the concerned complainant.

[4]. The contention of the petitioner before this Court is that in the circumstances the total period of sentence awarded to him would come to much above three years if they were to run consecutively, and therefore, prays for a direction that the sentences so awarded to him to run concurrently against him.

[5]. In this regard, reliance has been placed on a decision of Hon'ble Rajasthan High Court in which, relying upon various earlier decisions of Hon'ble Supreme Court in "State of Punjab Vs. Madan Lal", AIR 2009 SC (Supp) 2836, "V.K. Bansal Vs. State of Haryana and others", 2013 Cr.L.J. 3986, "Shyam Pal Vs. Dayawati Besoya and another" AIR 2016 SC 5021 and "Ammavasai and another Vs. Inspector of Police and others", AIR 2000 SC 3544, the sentences awarded to the concerned petitioner in as many as 32 cases were ordered to be run concurrently by observing *inter alia* :-

"Having considered the facts and circumstances of the present case, offence involved, sentences awarded, period of detention of the petitioner as on date and the law laid down by the Hon'ble Supreme Court in State of Punjab Vs. Madan Lal, V.K. Bansal vs. State of Haryana & Ors., Shyam Pal vs. Dayawati Besoya & Anr. and Ammavasai & Anr. vs. Inspector of Police & Ors. (supra), I am of the considered view that it would

*not be inconsistent with the administration of criminal justice if the petitioner is allowed the benefit of discretion contained in section 427 of the Code to meet the ends of justice. However, as per the law laid down by the Hon'ble Supreme Court in **V.K. Bansal vs. State of Haryana and Ors. and Shyam Pal vs. Dayawati Besoya and Anr.** (supra), the direction for concurrent running of sentences would be limited only to the substantive sentences alone.*

In such circumstances, the present misc. petition is allowed and it is ordered that the substantive sentences awarded to the petitioner in the above referred 32 cases would run concurrently, however, the petitioner will have to serve default sentences as the provisions of section 427 of the CrPC do not permit a direction for concurrent running of substantive sentences with the sentences awarded in default of payment of fine/compensation. The sentences, which the petitioner has been directed to undergo in default of payment of fine/compensation shall not be effected by this direction and if the petitioner has not paid the fine/compensation as directed by the trial courts, the said sentences would run consecutively. Needless to say, if the petitioner pays the fine/compensation now, he is not required to undergo default sentences (sentences awarded by the trial courts in default of payment of fine/compensation)."

[6]. In "**Anil Kumar Vs. State of Punjab**" 2017(1) R.C.R. (Criminal) 691, the Hon'ble Apex Court had similarly allowed an appeal for concurrent running of sentences in two different cases against the appellant after he was first convicted under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act'), and thereafter, subsequently under Section 27(b)(ii) and Section 28 of the Drugs and Cosmetics Act, 1940 after observing *inter alia* :-

“7. After referring to V.K. Bansal's case, in *Benson v. State of Kerala, 2016(4) R.C.R. (Criminal) 602 : (2016) 10 SCC 307 : 2016 (9) Scale 670*, this Court directed the substantive sentences imposed on the appellant Benson to run concurrently. The appellant therein was convicted for the offences punishable under Section 379 and Section 414 read with Section 34 I.P.C. in at least eleven cases. By a separate judgment, the appellant was convicted and sentenced in each of the aforesaid cases and total length of sentences in aggregate was around nineteen years.

8. In the present case, the appellant was earlier convicted under section 22 NDPS Act and subsequently convicted under Section 27(b)(ii) and Section 28 of the Drugs and Cosmetics Act, 1940. Considering the nature of the offences for which the appellant was convicted and the facts and circumstances of the case, we deem it appropriate to direct that the sentences imposed on the appellant in FIR No.37 and Complaint No.638 shall run concurrently. However, the fine amount and the default sentence or sentences are maintained. If the fine amount is not paid, the default sentence will run consecutively and not concurrently.

9. The substantive sentences imposed on the appellant are ordered to run concurrently and the appeal is thus allowed.”

[7]. In the present case, it is seen that last four sentences against the present petitioner were awarded on one single date (05.11.2015), after he was already undergoing the sentence earlier awarded to him in Complaint Case No.128 dated 04.02.2013. It further transpires that complainant in the last three cases was the same and the concerned transactions which resulted

in issuance of the concerned cheque which subsequently led to conviction of the petitioner was also on the basis of the same nature of transaction *re*: mortgage of three vehicles by the petitioner which was executed between the parties on the same date (20.03.2013).

[8]. In this view of the matter, the offences committed by the petitioner were virtually at an identical time in identical circumstances and even his conviction and award of sentence was also done simultaneously by the Ld. Trial Court. Ld. Counsel for the petitioner further submits that even otherwise this is a fit case for intervention by this Court in view of the tragic situation which the petitioner's family has had to face up during the period of his confinement, as seen from the documents (Annexures P-11 to P-30). The petitioner's father had already died on 19.11.2013, followed by the petitioner's wife on 06.06.2014 on account of which his two minor sons born on 05.02.2006 and 05.04.2010, respectively, are left altogether unattended and face a virtually destitute life.

[9]. In the given circumstances and relying on the ratio of the decision of the Hon'ble Supreme Court in *Anil Kumar's case (supra)*, the present petition praying for concurrent running of sentences awarded to the petitioner for the offences under Section 138 of the NI Act is allowed. The sentences awarded in the last four complaint cases on 05.11.2015 would thereafter be treated as having started after completion of his earlier sentence in Criminal Complaint No.128 of 2013 and to run concurrently. Further, the default clause in the event of non-payment of fine/compensation by the petitioner in terms of the directions of the Trial Court in each case shall also stand, and in such eventuality the default imprisonment awarding to him shall run consecutively and not concurrently.

[10]. Disposed off.

17.02.2018

Bhumika

**(SUDIP AHLUWALIA)
JUDGE**

- 1. Whether speaking/reasoned: Yes/No
- 2. Whether reportable: Yes/No