

234

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

**1. CRR No.4717 of 2017 (O&M)
Date of Decision: 24.01.2018**

**RAMA SHANKAR MISHRAPetitioner
Vs
ARPIT ADVERTISING THR ITS PROPRIETOR BHUPENDER
NAGPAL & ANRRespondents**

2. CRR No.4726 of 2017 (O&M)

**RAMA SHANKAR MISHRAPetitioner
Vs
ARPIT ADVERTISING THR ITS PROPRIETOR BHUPENDER
NAGPAL & ANRRespondents**

3. CRR No.4728 of 2017 (O&M)

**RAMA SHANKAR MISHRAPetitioner
Vs
ARPIT ADVERTISING THR ITS PROPRIETOR BHUPENDER
NAGPAL & ANRRespondents**

4. CRR No.4729 of 2017 (O&M)

**RAMA SHANKAR MISHRAPetitioner
Vs
ARPIT ADVERTISING THR ITS PROPRIETOR BHUPENDER
NAGPAL & ANRRespondents**

5. CRR No.4730 of 2017 (O&M)

**RAMA SHANKAR MISHRAPetitioner
Vs
ARPIT ADVERTISING THR ITS PROPRIETOR BHUPENDER
NAGPAL & ANRRespondents**

6. CRR No.4731 of 2017 (O&M)

**RAMA SHANKAR MISHRAPetitioner
Vs**

**ARPIT ADVERTISING THR ITS PROPRIETOR BHUPENDER
NAGPAL & ANRRespondents**

7. CRR No.4732 of 2017 (O&M)

**RAMA SHANKAR MISHRAPetitioner
Vs**

**ARPIT ADVERTISING THR ITS PROPRIETOR BHUPENDER
NAGPAL & ANRRespondents**

8. CRR No.4733 of 2017 (O&M)

**RAMA SHANKAR MISHRAPetitioner
Vs**

**ARPIT ADVERTISING THR ITS PROPRIETOR BHUPENDER
NAGPAL & ANRRespondents**

9. CRR No.4734 of 2017 (O&M)

**RAMA SHANKAR MISHRAPetitioner
Vs**

**ARPIT ADVERTISING THR ITS PROPRIETOR BHUPENDER
NAGPAL & ANRRespondents**

10. CRR No.4735 of 2017 (O&M)

**RAMA SHANKAR MISHRAPetitioner
Vs**

**ARPIT ADVERTISING THR ITS PROPRIETOR BHUPENDER
NAGPAL & ANRRespondents**

11. CRR No.4736 of 2017 (O&M)

**RAMA SHANKAR MISHRAPetitioner
Vs**

**ARPIT ADVERTISING THR ITS PROPRIETOR BHUPENDER
NAGPAL & ANRRespondents**

12. CRR No.4737 of 2017 (O&M)

**RAMA SHANKAR MISHRAPetitioner
Vs**

**ARPIT ADVERTISING THR ITS PROPRIETOR BHUPENDER
NAGPAL & ANRRespondents**

13. CRR No.4738 of 2017 (O&M)

RAMA SHANKAR MISHRAPetitioner

Vs

**ARPIT ADVERTISING THR ITS PROPRIETOR BHUPENDER
NAGPAL & ANRRespondents**

14. CRR No.4739 of 2017 (O&M)

RAMA SHANKAR MISHRAPetitioner

Vs

**ARPIT ADVERTISING THR ITS PROPRIETOR BHUPENDER
NAGPAL & ANRRespondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Aman Pal Advocate
for the petitioner.

Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Pratham Sethi, Advocate
for respondent No.1.

Mr. Deepender Brar, A.P.P. UT., Chandigarh
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. Vide this common order CRR Nos.4717, 4726, 4728, 4729, 4730, 4731, 4732, 4733, 4734, 4735, 4736, 4737, 4738 and 4739 of 2017 (O&M) are being decided. As common question of law is involved in all the petitions, therefore, facts are being taken from CRR No.4717 of 2017.

[2]. Petitioner has challenged the order dated 02.11.2017 passed by the Addl. Sessions Judge, Chandigarh whereby appeal against the judgement of conviction and order of

sentence dated 06.04.2016 passed by the Judicial Magistrate Ist Class, Chandigarh was dismissed. An application for running the sentences concurrently in all the present 14 revision petitions has also been filed on the ground that there was one financial transaction in all the 14 revision petitions. Petitioner has been convicted and sentenced by the Courts below for the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as 'the Act')

[3]. Complainant firm is running the business of advertising since the year 1991 and is accredited with the Indian News Society (INS). Advertisements were published after raising proper bills. There were different advertisements which the accused/petitioner was collecting and transmitting to the complainant Agency for its due publication. Cheques were issued for different advertisements.

[4]. On 19.12.2017, notice of motion was issued by the Co-ordinate Bench of this Court only on the basis of prayer made by the petitioner for running of sentences concurrently.

[5]. Learned counsel for the petitioner submitted that perusal of different complaints would reveal that there was only one transaction oriented around the performance of the petitioner, therefore, prayer in terms of Section 427 Cr.P.C. read with Section 482 Cr.P.C. for the issuance of direction to run the

sentences of imprisonment concurrently can be made in terms of para nos.14 and 15 of the judgment titled **V.K. Bansal vs. State of Haryana and others, 2013(3) R.C.R. (Criminal) 983 (SC).**

[6]. As against this, learned Senior counsel for respondent No.1 vehemently opposed the prayer made by learned counsel for the petitioner on the ground that reading of para no.17 of the **V.K. Bansal's** case (supra) would go against the petitioner inasmuch as that different cheques were issued for repayment of amount and the same were returned unpaid by the Banks with remarks 'Funds Insufficient'. The exercise of discretion in terms of Section 427 Cr.P.C. can only be made where the prosecution is based on a single transaction though in different complaints in relation thereto. In the instant case, different complaints are involved which are based on different cheques with different account numbers in different Banks.

[7]. Para No.17 of the **V.K. Bansal's** case (surpa) would give the following reading:-

“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.”

[8]. Learned Senior counsel by relying upon para nos.7, 8, 9 and 11 of **Nagpal Traders vs. Davinder Singh, (2017) 11 Supreme Court Cases 431** submitted that benefit of

concurrency cannot be granted as different cheques are involved in different transactions. Admittedly no amount has been paid. The amount covered by the cheques remained unpaid and it depends upon lookout of the trial Court that the offence under Section 138 of the Act should be of such nature as to give proper effect to the object of the legislation.

[9]. I have considered the submissions made by learned counsel for the parties.

[10]. Perusal of the material on record would show that different complaints were filed for different cheques and in all the complaints different cause of action was involved with reference to different dates of presentation of cheques and remarks by the Banks involved therein.

[11]. In **V.K. Bansal's** case (supra) different cheques were involved in different complaints. Each case depends upon its own facts. Involvement of the petitioner in number of cases is indicative of the fact that he is an habitual offender.

[12]. 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.

[13]. In view of parameters laid down in the aforesaid **Jang Singh's** case (supra) the petitioner is not entitled to the benefit of running of sentences concurrently in terms of Section 427 Cr.P.C. The transaction relating to the offences are not the same. The facts involved in the complaints are different in relation to different cheques, dates and Banks, therefore, the thumb rule is not applicable.

[14]. Petitioner is involved in 14 cases of dishonouring of cheques and this fact itself would make him more or less habitual offender, particularly in view of the fact that he never intended to pay any cheque amount to the complainant at any point of time.

[15]. In view of **Nagpal Traders's** case (supra), it will not be appropriate to advance benefit of concurrency to the petitioner. Imposition of flea-bite sentences on the accused in case under Section 138 of the Act cannot be awarded as amount covered by the cheques remained unpaid and in such circumstances, the view point of the trial Court to give effect to the object of the legislation should be preferred.

[16]. Taking into consideration the facts and circumstances of the case, I am not inclined to award benefit of running of sentences concurrently as no particular guidelines for exercising

the judicial discretion can be formulated or exhaustively enumerated as the discretion is totally dependent upon facts and circumstances of the case. The discretion in the said context would be governed by different considerations, depending upon facts of each case. Nature and character of offences involved viz.-a-viz. criminal background of the accused are the relevant considerations while making consideration at the time of exercising such discretion. In my considered view, discretion to make the sentences to run concurrently in such a situation would be against the very nature of provision.

[17]. For the reasons recorded hereinabove, I deem it proper to dismiss all the revision petitions. Ordered accordingly.

January 24, 2018

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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No