IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

(1) Criminal Revision No. 4740 of 2017 (O&M)

(2) Criminal Revision No. 4741 of 2017 (O&M)

(3) Criminal Revision No. 4742 of 2017 (O&M)

(4) Criminal Revision No. 4743 of 2017 (O&M)

(5) Criminal Revision No. 4744 of 2017 (O&M)

(6) Criminal Revision No. 4745 of 2017 (O&M)

(7) Criminal Revision No. 4746 of 2017 (O&M)

(8) Criminal Revision No. 4747 of 2017 (O&M)

Date of Decision: October 15, 2018.

RANJIT SINGH

......PETITIONER(s).

VERSUS

M/S SARAF ELECTRICALS PVT LTD AND ANOTHER

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Paramjit Singh Kureel, Advocate
for the petitioner (s).

Mr. Abhinav Gupta, Advocate
for respondent No.1.

Mr. Sandeep Kumar, D.A.G., Punjab
for respondent No.2.

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SURINDER GUPTA, J.

Petitioner Ranjit Singh was convicted in the complaint filed by M/s Saraf Electricals Private Limited of Rampura Phul for offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short-the Act) and was sentenced to undergo rigorous imprisonment for two

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years and to pay compensation to the tune of ₹15 lakhs in terms of Section 357 Code of Criminal Procedure, failing which to further undergo rigorous imprisonment for two months. The petitioner filed appeal against the judgement of conviction and order of sentence which was dismissed.

The case of complainant, in brief, is that complainant company is manufacturer and distributor of transformers and carrying on Turnkey projects work of PSPCL of shifting/installing of electric meters. The accused firm M/s HSG Associates is a partnership firm consisting of partners Harinder Singh and Ranjit Singh as per partnership deed dated 12.06.2008, who are managing the affairs of the firm. They approached the complainant company for work of shifting and installation of electric meters within the area of Malerkotla Division. As the work of installation of electric meters had been allotted to the complainant, the contract of work of shifting and installation of electric meters in the area of Malerkotla Division was given to M/s HSG Associates under an agreement dated 09.11.2010, which was executed by one of the partners Harinder Singh. In furtherance of contract, he submitted 10 undated cheques bearing serial Nos. 680201 to 680210 drawn on Punjab National Bank, Branch Dhanasu, Ludhiana of ₹10 lakhs each for carrying out the contract work of shifting and installing electric meters within the area of Malerkotla Division. Complainant used to supply the material for the job to be carried out by the accused firm, who submitted bills of work done by them. They were supplied the material worth ₹2,28,22,022.66 by the complainant and material of ₹5,99,100/- was supplied to them directly by the manufacturer. On 26.02.2012, accused persons were called to the factory premises of the complainant for reconciling the material supplied by the complainant and the work

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performed by them. The accused returned some material worth ₹4,96,810.67 at Badrukhan Store. On accounting a sum of ₹83,43,134.29 was found due against the accused for which Harinder Singh with his free will, sound disposing mind instructed the complainant to submit 8 cheques bearing No.680203 to 680210 dated 26.02.2012 to the bank for payment. He also agreed to make payment of ₹3,43,134.29 in cash by 29.02.2012 and remaining two cheques with the complainant bearing No.680201 and 680202 of ₹10 lakhs each were cancelled. Accused did not pay the amount of ₹3,43,134.20 in cash by 29.02.2012. The cheques when presented to the bank were also dishonoured. Thereafter, a notice was sent to the accused but they failed to make the payment and 8 separate complaints were filed against the petitioners.

On filing of complaint, accused namely Harinder Singh and Ranjit Singh (petitioner) were ordered to be summoned. Both the petitioners had put in appearance and were charge-sheeted for the offence punishable under Section 138 of Negotiable Instruments Act. During the pendency of the trial, presence of both the accused was exempted, however, after the conclusion of evidence of complainant, when the case was fixed for recording statements of accused under Section 313 Cr.P.C., Harinder Singh accused did not appear and was declared proclaimed offender.

Learned counsel for the petitioner has argued that petitioner was a sleeping partner of M/s HSG Associates, as such, was not liable for day to day working of the firm. The entire business was being looked after by his son Harinder Singh. Petitioner was having only 5% share in the partnership. He had not signed the agreement between the complainant and

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the firm M/s HSG Associates. The cheques were also not signed by him. As such, he is not liable for dishonour of the cheques issues by Harinder Singh, his other partner. He has relied on the observations of Hon'ble Apex Court in case of ***Standard Chartered Bank Vs. State of Maharashtra and others 2016(6) SCC 62***, wherein it has been observed in para 24 of the judgment as follows:-

> "24. Be it noted, the observations made in ***Saroj Kumar Poddar Vs. State (NCT of Delhi) and another 2007(1) R.C.R. (Criminal) 741*** and clarification given in ***SMS Pharmaceuticals Ltd Vs. Neeta Bhalla and another 2007 (2) R.C.R. (Criminal) 126*** and ***Everest Advertising (P) Ltd. Vs. State Govt. of NCT of Delhi and others 2007(2) R.C.R. (Criminal) 575*** were taken note of in ***K.K. Ahuja v. V.K. Vora and Anr 2009(3) R.C.R. (Criminal) 571***. In the said case, the Court explaining the position under Section 141 of the Act has stated thus:-
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> > "The position under Section 141 of the Act can be summarised thus:
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> > (i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix "Managing" to the word "Director" makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.
> >
> > (ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the

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company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(iii) In the case of a Director, secretary or manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence."

Learned counsel for the petitioner has further argued that admittedly, these cheques were given as security and at the time of giving

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these cheques, there was no liability against the petitioner. Complainant had misused the cheques by presenting the same to the bank. The witnesses of the complainant have admitted that cheques were given as security.

Learned counsel for the revision petitioner has further argued that it was incumbent on the complainant to prove that at the time of issuance of cheque, revision petitioner was Incharge of and responsible for the conduct of business of the accused firm M/s HSG Associates. There is no evidence on record that petitioner was managing and responsible for the conduct of business of the accused firm, as such, both the Courts below have committed grave error while recording his conviction. The cheques issued in this case were given to the complainant as security and there was no existing liability at that time, as such, no offence under Section 138 of the Act is made out. In support of his contention, he has relied on the observations of Andhra Pradesh High Court in case of ***Laxminivas Agarwal Vs. Andhra Semi Conductors Pvt. Ltd. Hyderabad and others 2006(3) R.C.R. (Criminal) 844.*** He has argued that trial Court and Appellate Court have awarded sentence to petitioner in eight cases for dishonour of cheques which as per complainant were issued for one transaction but have not ordered the sentence awarded in all the cases to run concurrently. The judgment of Courts below suffer from legal infirmity on this score.

Learned counsel for complainant-respondent No.1 has argued that in the complaint, there is specific averment that revision petitioner and his son Harinder Singh were managing the business and affairs of accused firm actively. After the dishonour of the cheque, notice was issued to both the partners including the revision petitioner and it was replied by both the partners. In reply, the revision petitioner has nowhere alleged that he is not

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managing the affairs of the partnership firm. This plea now taken by the revision petitioner is just an after-thought. It is immaterial as to whether the share of a partner in the business of partnership firm is 5% or 50%. Sometimes, a person having lesser share, is found actively looking after the business of the firm. Being partner, the revision petitioner is equally liable with his son Harinder Singh, who had issued the cheques under his signatures. This plea of the revision petitioner that the cheques were issued as security, was rightly rejected by the Courts below as these cheques before presentation were duly filled up and were presented before the bank for payment. As such, the argument of learned counsel for the revision petitioner that the cheques were given as security, is without any basis.

I have perused record of lower court record with the assistance of learned counsel for the parties.

Firstly, I take the submission of learned counsel for the petitioner that sentence awarded to the petitioner in all the 8 cases separately filed by the complainant for the cheques issued for one transaction, should be ordered to run concurrently and the Courts below while not passing order in this regard.

Learned counsel for the respondent has argued that each of the cheque issued in this case is having separate cause of action and dishonour of each cheque constitutes separate offence, as such, sentence awarded to the petitioner in 8 separate cases cannot be ordered to run concurrently.

The petitioner has been awarded sentence of rigorous imprisonment for a period of 2 years and has also been directed to pay the compensation in each case. Admittedly, all the cheques which were 8 in number, as per case of the complainant, were consented to be presented to

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bank by Harinder Singh partner of M/s H.S.G. Associates for outstanding sum of ₹83,43,134.29p.

Hon'ble Apex Court in case of ***V.K. Bansal Vs. State of Haryana and others 2013(7) SCC 211***, wherein it was observed in para 15 and 17 as follows:-

> "15. In conclusion, we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor.
>
> 16. ....
>
> 17. 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

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> 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."

Similar observations were recorded by Hon'ble Apex Court in case of ***Shyam Pal Vs. Dayawati Besoya & Anr 2016(4) R.C.R. (Criminal) 790***, has observed in para 13 and 14 as follows:-

> "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

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> 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.
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> 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.

In view of settled proposition of law, I have no hesitation while observing that separate sentences awarded to the petitioner in all the 8 complaints/appeals are due to dishonour of cheques issued in one transaction, as such, shall run concurrently.

Before proceeding further and appreciating the submissions of learned counsel for the parties, it will be relevant to have a look at the averments in the complaint filed by respondent-complainant. The complainant had filed 8 separate complaints on similar facts relating to one transaction, as such, the facts have been taken from the complaint bearing No.19 of 2012 (CIS No.COMA/168/2013). As per the complaint, complainant company was allotted work of installation of electric meters and the accused approached the complainant for shifting and installing the meters within Malerkotla Division. After settling the terms, accused

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Harinder Singh (since proclaimed offender) furnished 10 undated cheques bearing serial Nos. 680201 to 680210 of ₹10 lakhs each drawn on Punjab National Bank Branch Dhanasu, Ludhiana as security. The accused submitted the bills of contract work done by them and for settlement, were called to the factory premises of complainant on 26.02.2012. On settlement, an amount of ₹73,53,021.20p on account of balance material lying unused at site with the accused and another sum of ₹14,99,263/- was due out of which after adjusting ₹5,09,150/- i.e. 10% security deducted from bills, total ₹83,43,134.29p was found due which was admitted as payable by the accused.

The complainant has alleged that after above adjustment, accused Harinder Singh with his free will, sound disposing mind, without any coercion or undue influence in presence of Sh. Rajesh Kumar Garg MD, Sh. Deepak Kumar Garg Director, Sh. Rakesh Garg Project Co-ordinator at site and Sh. Rakesh Kumar Bansal, Field Officer at site, instructed the complainant to put the date as 26.02.2012 on 8 security cheques bearing No.680203 to 680210 drawn on Punjab National Bank, Branch Dhanasu (Ludhiana), amounting to ₹10 lakhs each with promise to honour the cheque whenever presented by the complainant to encash the same through clearing house to the accused banker and further promised/agreed to make the balance payment of ₹3,43,134.29 in cash by 29.02.2012 after cancelling the remaining undated cheque Nos. 860201 & 860202 of ₹10 lakhs each by his (accused Harinder Singh) own hand.

(i) The first question which arise for consideration is as to whether the complainant has proved the above settlement on file and that a sum of ₹83,43,134.29p was found due against the firm of petitioner-accused M/s

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H.S.G. Associates? In case, the complainant-respondent succeeds in proving the amount due as alleged in the complaint, the next issue which will arise for consideration as to whether revision petitioner is actually involved in managing affairs of firm M/s H.S.G. Associates?

(ii) Whether 8 cheques, which was given as security, were agreed to be tendered to the bank by filling the date as 26.02.2012 in those cheques?

To find answer to the first question, learned counsel for the respondent-complainant was asked to assist by going through the lower Court's record and the statements of the parties as to how this fact is proved that a sum of ₹83,43,134.29p was due against the petitioner at the time of presenting the cheques in question before the bank.

After taking adjournments to assist on this issue, he fairly conceded that this fact was not proved on record and from the documents on record, he was not in a position to make out as to how the sum of ₹83,43,134.29p was found due on 26.02.2012.

Though in due course, inference can be drawn that the cheques have been issued in lieu of the outstanding liability/loan etc., but keeping in view the peculiar facts of this case, where the cheques in question were admittedly given to the complainant as security cheques, the settlement of the account and finding of balance of ₹83,43,134.29p assumes importance. The complainant has alleged that he was asked by accused Harinder Singh to present 8 out of 10 security cheques before the bank with the assurance that the same will be honoured. To support the plea of complainant to this effect, it was incumbent upon him to place on file some document, agreement, settlement deed or anything of this sort to prove that a settlement

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had taken place under which accused Harinder Singh admitted the outstanding amount of ₹83,43,134.29p. Except the oral statement in the shape of affidavit of complainant Rajesh Garg, no evidence to this effect has come on record and averments in the affidavit are not supported by any documentary evidence. Though it will be a repetition but require to be mentioned at this stage that counsel for the complainant-respondent despite toiling hard could not make out from the bulky documents on file as to how the amount of ₹83,43,134.29p could be made out as due on 26.02.2012 against accused firm M/s H.S.G. Associates.

This plea of the petitioner that Harinder Singh had admitted the outstanding balance of ₹83,43,134.29p is also not proved on file from any document. In case, the accounts have been settled, some writing must have taken place. The respondent-complainant except producing a plethora of documents has not produced any calculation sheet to make out that the settlement did take place. In this statutory notice, issued before the filing of complaint(Ex.C14), complainant has alleged that aforesaid amount was found due and Harinder Singh of his free will, sound disposing mind, without any coercion or undue influence instructed the complainant to put date on 8 cheques and present the same for clearance to the bank. The above contention appears to be improbable on the face of it as in case amount of ₹83,43,134.29p had been found due and agreed by Harinder Singh, he would have been asked to give one cheque of this amount or at least would have been asked to put the date on the cheques in his own handwriting instead of asking the complainant to do so. All this shows that story put forth by the complainant is a made up story, which is highly improbable. The complainant taking the benefit of the fact that 10 security cheques of

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₹10 lakhs each have been given by Harinder Singh utilised 8 cheques. Notice Ex.C14, was sent on March 2, 2012 and in reply petitioner and his son Harinder Singh had categorically denied that amount in question was due against them. They rather alleged that a sum of ₹4,50,000/- was outstanding towards the complainant. When this amount was demanded, the complainant refused to make the payment and threatened that they will present the security cheques lying with them, for payment. The reply clearly shows that complainant had never admitted the alleged settlement and the outstanding amount of ₹83,43,134.29p. It is also evident that on 29.02.2012, M/s H.S.G. Associates had filed suit against the complainant seeking the relief of mandatory injunction directing the complainant to return 10 undated cheques of ₹10 lakhs each given as security. It was after this suit that complainant deposited 8 security cheques for payment with their banker. This flattens the plea of complainant that due balance of ₹83,43,134.29p was stuck in an amicable manner with the consent of Harinder Singh.

From the above discussion, it is amply proved that firstly cheques in question were given as security cheques and secondly at the time of issuance of these cheques, no amount was outstanding against the firm M/s H.S.G. Associates. These cheques were never issued or agreed to be presented to the bank for payment of the amount of ₹80,00,000/- rather the complainant-respondent had cleverly used these security cheques, which were lying with him.

The entire dealing of the complainant was with Harinder Singh. The partnership deed of M/s H.S.G. Associates dated 12.06.2008 was within the knowledge of complainant and find mention in para 3 of the

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complaint. Complainant has taken specific plea in para 3 of the complaint as follows:-

> "3. That the accused firm is partnership firm consisting of partners Shri Harinder Singh and Shri Ranjit Singh as per partnership deed dated 12.06.2008 and are managing the affairs and business of accused firm actively regarding installation and shifting of electricity meters."

It is evident from the above plea that partnership between Harinder Singh and petitioner-Ranjit Singh, was as per partnership deed dated 12.06.2008 and they were managing the affairs and business of the accused firm as per terms of the above partnership deed, which shows that Harinder Singh was having 95% share while petitioner Ranjit Singh was having only 5% share in the firm. It is, however, not proved on file that petitioner was not active partner or was not dealing with affairs and business of M/s H.S. G. Associates. Even no such plea has been taken in the reply to the statutory notice.

As a sequel of my above discussion, it is apparently proved that both the Courts below have not looked into the vital issue which arise for consideration in this case while recording the conviction of the petitioner. The plea of the complainant that an amount of ₹83,43,134.29p was settled and security cheques were permitted to be presented before the bank was believed without any basis rendering the judgement of both the Courts below perverse, illegal and not sustainable in the eyes of law.

Consequently, all these revision petitions are accepted. The judgements of the Courts below are set aside and the petitioner is acquitted of the charge framed against him. The petitioner, who is in custody, is

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ordered to be set free, if not required in any other case.

(SURINDER GUPTA)
JUDGE

October 15, 2018
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

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