IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CRR No.397 of 2018 (O&M)

Vishwanath Jha

.... Petitioner

Versus

State of Haryana and another

.... Respondents

(2) CRR No.398 of 2018 (O&M)

Vishwanath Jha

.... Petitioner

Versus

State of Haryana and another

.... Respondents

(3) CRR No.399 of 2018 (O&M)

Vishwanath Jha

.... Petitioner

Versus

State of Haryana and another

.... Respondents

(4) CRR No.400 of 2018 (O&M)

Vishwanath Jha

.... Petitioner

Versus

State of Haryana and another

.... Respondents

(5) CRR No.402 of 2018 (O&M)

Vishwanath Jha

.... Petitioner

Versus

State of Haryana and another

.... Respondents

(6) CRR No.404 of 2018 (O&M)

Vishwanath Jha

.... Petitioner

Versus

State of Haryana and another

.... Respondents

(7) CRR No.417 of 2018 (O&M)

Vishwanath Jha

.... Petitioner

Versus

State of Haryana and another

.... Respondents

(8) CRR No.421 of 2018 (O&M)

Vishwanath Jha

.... Petitioner

Versus

State of Haryana and another

.... Respondents

Date of Decision: 29.05.2018

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Shiv Kumar, Advocate for the petitioner.

Mr. Karan Sharma, Assistant Advocate General, Haryana for respondent No.1/State.

Ms. Seema Pasricha, Advocate for respondent No.2/complainant.

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MAHABIR SINGH SINDHU, J.

This order shall dispose off the aforesaid eight criminal revisions, filed by the present petitioner against the impugned judgments dated

03.10.2017, passed by the learned Sessions Judge, Faridabad, vide which eight separate appeals filed by the present petitioner were dismissed and affirmed the judgments and orders of conviction and sentence dated 21.04.2016 and 29.04.2016, respectively, passed by the learned Judicial Magistrate 1st Class, Faridabad, whereby the petitioner has been convicted under Section 138 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act') and sentenced in the following terms:-

CRR	***Complaint Number with date***	***Cheque Number, Date & Amount***	***Sentence***
397 of 2018	935 dated 07.07.2014	583128 dated 10.03.2014, Rs.50,000/-	Simple imprisonment for **six months** along with compensation amount of **Rs.75,000/-** within one month from the date of passing of the order i.e. 29.04.2016.
398 of 2018	926 dated 07.07.2014	928882 dated 01.03.2014, Rs.2,25,000/-	Simple imprisonment for **six months** along with compensation amount of **Rs.3,37,500/-** within one month from the date of passing of the order i.e. 29.04.2016.
399 of 2018	929 dated 07.07.2014	439079 dated 03.05.2014, Rs.1,00,000/-	Simple imprisonment for **six months** along with compensation amount of **Rs.1,50,000/-** within one month from the date of passing of the order i.e. 29.04.2016.
400 of 2018	934 dated 07.07.2014	439080 dated 05.05.2014, Rs.1,00,000/-	Simple imprisonment for **six months** along with compensation amount of **Rs.1,50,000/-** within one month from the date of passing of the order i.e. 29.04.2016.
402 of 2018	931 dated 07.07.2014	439082 dated 09.05.2014, Rs.1,00,000/-	Simple imprisonment for **six months** along with compensation amount of **Rs.1,50,000/-** within one month from the date of passing of the order i.e. 29.04.2016.
404 of 2018	932 dated 07.07.2014	439081 dated 07.05.2014, Rs.1,00,000/-	Simple imprisonment for **six months** along with compensation amount of **Rs.1,50,000/-** within one month from the date of passing of the order i.e. 29.04.2016.
417 of 2018	930 dated 07.07.2014	439078 dated 01.05.2014, Rs.1,00,000/-	Simple imprisonment for **six months** along with compensation amount of **Rs.1,50,000/-** within one month from the date of passing of the order i.e. 29.04.2016.
421 of 2018	933 dated 07.07.2014	439083 dated 12.05.2014, Rs.1,00,000/-	Simple imprisonment for **six months** along with compensation amount of **Rs.1,50,000/-** within one month from the date of passing of the order i.e. 29.04.2016.

It is also necessary to mention here that eight different criminal miscellaneous applications under Section 427 of the Cr.P.C. have also been filed for concurrence of the sentence awarded against the petitioner in all the cases.

With the consent of the parties and for the sake of convenience, the facts of the case have been taken from CRR No.397 of 2018.

Brief facts of the case are that complainant-Jaineesh Madaan (respondent No.2) is the Proprietor of M/s Perfect Alloys, Faridabad. Complainant had been dealing and trading in die and mould steels. As per the requirement of the petitioner, the complainant supplied material to him from time to time. The complainant also maintained an account for the said transactions. Petitioner/accused issued eight account payee cheques of different dates to the complainant being part payment to discharge his liability on account of payment of total outstanding amount of Rs.12,42,289/-, as per the ledger account w.e.f. 01.04.2011 to 13.05.2014, with the assurance that the said cheques, issued by him, will be honoured as and when the same are presented. The complainant presented one of the eight cheques bearing No.583128 dated 10.03.2014 amounting to Rs.50,000/-, drawn on Syndicate Bank, SME Branch, NIT, Faridabad, but the same was dishonoured with the remarks "*funds insufficient*", vide return memo dated 13.05.2014. Thereafter, the complainant sent a Legal Notice dated 23.05.2014 through registered post to the petitioner/accused calling upon him to make the payment of the cheque amount within 15 days on receipt of the said legal notice. The petitioner, on receipt of the same, admitted his liability towards the complainant and made part payment of Rs.2,02,000/- with the assurance to discharge his liability of the remaining amount of Rs.10,40,289/- including the cheque amount of Rs.50,000/- in short time. However, the petitioner/accused, instead of making the due amount, sent a frivolous reply dated 11.06.2014 (**Ex.D1**) to the aforesaid Legal Notice dated 23.05.2014 (**Ex.C6**), necessitating the complainant to file the complaint bearing No.935 dated 07.07.2014.

Complainant-Jaineesh Madaan himself appeared as CW-1 and tendered his affidavit as CW1/A and placed on record the following documents:-

Ex.C1	:	*Ledger Account*
Ex.C2	:	*Original Cheque of Rs.50,000/- bearing No.583128 dated 10.03.2014*
Ex.C3	:	*Bank Return Memo*
Ex.C4	:	*Ledger Account*
Ex.C5	:	*Account Reconciliation Letter*
Ex.C6	:	*Legal Notice dated 23.05.2014*
Ex.C7	:	*Postal Receipt*

Thereafter, the accused was summoned and consequently, notice of accusation was served upon him for an offence punishable under Section 138 of the N.I. Act, to which he pleaded not guilty and claimed trial and thereafter, his plea of defence under Section 263(g) Cr.P.C. was recorded.

An application under Section 145(2) of the N.I. Act was moved on behalf of the petitioner/accused for recalling the complainant and after cross-examination of the complainant, the case was fixed for evidence of the petitioner/accused. In defence, the petitioner/accused appeared as DW 1 and produced the following documents:-

Exhibits	***Documents***
Ex.D1	*Reply to Legal Notice*
Ex.D2	*Postal Receipt*

Exhibits	***Documents***
Ex.D3 to D5	*Debit Notes*
Ex.D6	*Ledger Account*

Learned trial Court, after taken into consideration the entire material of the case, convicted the petitioner under Section 138 of the N.I. Act and sentenced in the above terms.

Aggrieved against the same, an appeal was preferred by him, which was dismissed by the learned Sessions Judge, Faridabad. Hence, the present petition(s).

Learned Counsel for the petitioner has repeated the arguments, which were raised before both the Courts below and those are as under:-

1. That the cheque in question was never issued by the petitioner/accused in discharge of any legally enforceable debt or liability, rather the cheque in question was issued for the purpose of security;
2. That the material supplied by respondent No.2/complainant to the petitioner was of inferior quality and the same was rejected and in this regard, three Debit Notes dated 18.03.2014, 10.04.2014 and 21.05.2014 (**Ex.D3 to Ex.D5**) were prepared, but respondent No.2/complainant refused to reconcile the account and misused the security cheque, issued by the petitioner.
3. That the petitioner is still ready and willing to make the payment after reconciliation of the accounts and to show his *bona fide*, he has already made payment of Rs.2,02,000/- to respondent No.2/complainant after receiving of the letter dated 09.06.2014 (**Ex.C5**), relied upon by the complainant, which is a forged and fabricated document and signatures of the petitioner were obtained forcibly.

On the other hand, learned Counsel for respondent No.2/complainant has opposed the contentions, raised on behalf of the petitioner and submits that both the Courts below have concurrently held that the petitioner had issued the Cheque in question in discharge of legally enforceable debt/liability and the same was dishonoured and returned by the Bank, but despite the receipt of requisite Legal Notice, he failed in making the payment and thus offence under Section 138 of the N.I. Act has been successfully proved against the petitioner, while leading the cogent evidence and no interference is required by this Court by way of present revision(s).

Heard learned Counsel for the parties and perused the paper-book.

Perusal of the judgments, passed by both the learned Courts below, clearly reveal the business dealing between both the parties were going on since year 2009 to 16.11.2012 and reference in this regard can be made to Paragraph 20 of the judgment, passed by the learned Sessions Judge, Faridabad.

As per the case of respondent No.2/complainant, he supplied HCHCR Steel, EN 31 Steel, D-2 Steel, MS Plates to the petitioner from time to time as per his requirement and which is duly reflected in the running ledger account maintained by the complainant and as per the ledger account w.e.f. 01.04.2011 to 13.05.2014, an amount of Rs.12,42,289/- was outstanding against the petitioner. Further allegation is that in discharge of his debt and liability, the petitioner issued eight separate account payee cheques of different dates in favour of respondent No.2/complainant for payment of the abovesaid outstanding amount and an assurance was given that the cheques will be encashed after their presentation. Resultantly, out of the abovesaid eight cheques, cheque bearing No.583128 dated 10.03.2014 (**Ex.C2**) for an amount of Rs.50,000/-, drawn on Syndicate Bank, SME Branch, 1F 20, NIT, Faridabad was presented by respondent No.2/complainant for encashment through his Banker, but the same was returned back as unpaid with the remarks *"funds insufficient"*, vide memo dated 13.05.2014 (**Ex.C3**). Consequently, in terms of Section 138 (b) of the N.I. Act, Legal Notice dated 23.05.2014 (**Ex.C6**) under registered cover was issued to the present petitioner to make the payment of the cheque in question, but the petitioner only made a part payment of Rs.2,02,000/- against the total outstanding amount of Rs.12,42,289/- and he assured on 09.06.2014, vide Account Reconciliation Letter (**Ex.C5**) that he is liable to pay an amount of Rs.10,40,289/- up to 09.06.2014 and the same shall be cleared after few days, but no payment was made and that resulted into filing of eight complaints including the present one.

Signature on the cheque in question is not disputed by learned Counsel for the petitioner and the plea raised is that the same was issued as a security cheque and it has been misused. In view of the provisions of Section 139 of the N.I. Act, it shall be presumed, unless the contrary is proved, that the holder of the cheque received the same for discharge of any debt or liability as a whole or in part, in terms of Section 138 of the N.I. Act, therefore, the presumption under Section 139 of the N.I. Act can be rebutted by the drawer, but again in terms of Section 118 of the N.I. Act, a presumption is attached to a Negotiable Instrument that once signatures on the instrument are admitted then it can be legally inferred that the cheque in question was drawn for consideration on a date, mentioned therein and co-joint reading of Sections 139 and 118 of the N.I. Act give a presumption that holder of the cheque received it for discharge of legally enforceable debt or liability and burden is on the drawer to rebut the same.

Section 139 and Section 118 of the N.I. Act being relevant are reproduced herein:-

> ***Section 139. Presumption in favour of holder.****— It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.*
>
> ***Section 118 Presumptions as to negotiable instruments****. —Until the contrary is proved, the following presumptions shall be made:*
>
> *(a)* ***of consideration:*** *that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;*
>
> *(b)* ***as to date:*** *that every negotiable instrument bearing a date was made or drawn on such date;*
>
> *(c)* ***as to time of acceptance:*** *that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;*
>
> *(d)* ***as to time of transfer:*** *that every transfer of a negotiable instrument was made before its maturity;*
>
> *(e)* ***as to order of indorsement:*** *that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;*
>
> *(f)* ***as to stamp:*** *that a lost promissory note, bill of exchange or cheque was duly stamped;*
>
> *(g)* ***that holder is a holder in due course:*** *that the holder of a negotiable instrument is a holder in due course:*
>
> *Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by*

means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

The Ledger Accounts (**Ex.C1** and **C4)** pertain to the period from 01.04.2011 to 13.05.2014 and the last sale transaction between the parties had taken place on 16.11.2012 and that is regarding Bill No.3430 for an amount of Rs.14,185/-. As on 01.05.2014, an amount of Rs.12,42,289/- is outstanding against the present petitioner and out of that, he has paid an amount of Rs.2,02,000/- on the following dates:-

Date	***Amount***	***Mode***
06/06/14	*Rs.30,000/-*	*By cash*
07/06/14	*Rs.1,00,000/-*	*By Cheque No.77451, Canara Bank*
08/06/14	*Rs.72,000/-*	*By cash*

The remaining balance amount against the petitioner is Rs.10,40,289/- and these figures are duly reflected in Ledger Account (**Ex.C4**). The petitioner, while appearing as DW1, has admitted in his cross-examination that he is having the business dealing with the complainant since 2009. Although, the petitioner has placed on record his Ledger Account (**Ex.D6**), which pertains to the period from 01.04.2014 to 06.06.2014 regarding three Debits Notes dated 18.03.2014, 10.04.2014 and 21.05.2014 (**Ex.D3, D4** and **D5**), respectively, but no Ledger Account has been produced by the petitioner prior to 01.04.2014, despite the fact that admittedly, he is having the business dealing with the complainant since 2009. It is also necessary to be recorded here that the above said Debit Notes (**Ex.D3 to D5**) have been raised regarding the Bills, which are for the period from 26.07.2012 to 16.11.2012. The details of the Bills and all three

Debit Notes are as under:-

Bill No.2754	*dated 26.07.2012*
Bill No.2902	*dated 16.08.2012*
Bill No.2978	*dated 25.08.2012*
Bill No.3042	*dated 03.09.2012*
Bill No.3108	*dated 13.09.2012*
Bill No.3182	*dated 22.09.2012*
Bill No.3215	*dated 29.09.2012*
Bill No.3430	*dated 16.11.2012*

Perusal of the details of Bills and Debit Notes (**Ex.D3 to D5**) clearly reveal that last transaction had taken place between the parties on 16.11.2012, which is regarding Bill No.3430 and a Debit Note is raised on 21.05.2014 (**Ex.D4**) i.e. after 1 ½ years, therefore, all three Debit Notes are afterthought and not significant. Moreover, no evidence at all has been produced by the petitioner before the learned trial Court that so called Debit Notes were ever conveyed to the complainant; rather the petitioner himself, while appearing as DW1, specifically admitted that there is no proof with the petitioner that the Debit Notes were ever conveyed to respondent No.2/complainant.

The contention of the learned Counsel for the petitioner that the material supplied by the complainant was of inferior quality is only in the air and there is no evidence to substantiate the same. His submission that the material, which was received by the petitioner from the complainant, was supplied to one M/s Shivani Lock Company, but the same was rejected by that Company. However, again there is no evidence on record to substantiate the same, as neither anyone from the M/s Shivani Lock

Company has been produced as a witness; nor any material has been brought on record regarding such a rejection of material of being inferior quality by that Company. Even otherwise, such a plea of pure facts without any cogent evidence cannot be raised by the petitioner in these proceedings. Even in his reply dated 11.06.2014 (**Ex.D1**) to the Legal Notice dated 23.05.2014 (**Ex.C6**), there is no such a plea raised by the present petitioner and these are just lame excuses to deny the complainant/respondent No.2 his lawful claim. The argument that assurance dated 09.06.2014 (**Ex.C5**) is a forged and fabricated document is without any basis; rather the same is the candid admission for an outstanding amount of Rs.10,40,289/- by the petitioner and which reads as under:-

ACCOUNT RECONCILIATION

We are liable to pay Rs.10,40,289.00 (Ten lacs forty Thousand two hundred and eight nine rupees only) of PERFECT ALLOYS up to dated 09.06.2014 after comparing the statement of account of PERFECT ALLOYS.

We shall pay back the aforesaid amount to Perfect Alloys after few days.

Sd/-
Vishwanath

Account Reconciliation (**Ex.C5**) has been written on the Letter Pad of the Firm of the petitioner, meaning thereby, the petitioner has duly acknowledged the liability of Rs.10,40,289/- and the plea that the same is forged and fabricated document cannot be accepted and liable to be rejected. Moreover, neither any complaint was made to the police; nor any action has been taken in the Court of law regarding any forgery or fabrication of writing dated 09.06.2014 (**Ex.C5**) and even no such plea has been raised by the petitioner while leading his defence under Section 263(g) of the Cr.P.C.

and not even a suggestion has been given to the complainant (CW1). Consequently, the repeated arguments at the third stage in the present revisions are only reiteration of the plea raised before both the Courts below and the same are liable to be rejected and as such, this Court is of the opinion that the cheque in question was issued to discharge his legally enforceable debt/liability and that was not as a security cheque and the petitioner has failed to refute the presumption as contemplated under Section 139 of the N.I. Act.

In view of the above discussion, all the present eight criminal revisions are dismissed.

CRM No.18273 of 2018 in CRR No.397 of 2018;
CRM No.18271 of 2018 in CRR No.398 of 2018;
CRM No.18239 of 2018 in CRR No.399 of 2018;
CRM No.18272 of 2018 in CRR No.400 of 2018;
CRM No.18180 of 2018 in CRR No.402 of 2018;
CRM No.18689 of 2018 in CRR No.404 of 2018;
CRM No.18251 of 2018 in CRR No.417 of 2018 &
CRM No.18691 of 2018 in CRR No.421 of 2018

The petitioner has also filed above eight different criminal miscellaneous applications under Section 427 of the Cr.P.C. with the prayer that the imprisonment in all the cases may be ordered to run concurrently instead of consecutively.

The sole argument raised by the learned Counsel for the applicant/petitioner is that as per the Ledger Account w.e.f. 01.04.2011 to 13.05.2014, a sum of Rs.12,42,289/- was outstanding for the material supplied to him and all the eight cheques were issued on account of single transaction. Thus, the sentence should be ordered to run concurrently instead of consecutively/separately with main Complaint No.929 of 2014.

Upon notice of the applications, reply by way of CRM No.19530 of 2018 in CRM No.18272 of 2018 in CRR No.400 of 2018 has been filed by respondent No.2/complainant and learned Counsel for respondent No.2 states that the same be also read as reply in all other applications filed by the petitioner.

It is further submitted on behalf of respondent No.2/complainant that the material was supplied to the petitioner under different Invoice Bills on different occasions and the same are duly reflected in the Ledger Account (**Ex.C1** and **C4)**, which have been attached along with the reply to the application as **Annexure R-1,** and thus the transaction is not the single; rather these are different transactions. It is further contended that till date, not even a single rupee has been paid by the petitioner and as such, he does not deserve any concession of concurrent of sentence under Section 427 of the Cr.P.C.

Heard both sides.

Perusal of **Ex.C1** and **C4 (Annexure R-1)** makes it apparently clear that the material was supplied under various bills on more than 200 (two hundred) different occasions as per the requirement of the petitioner w.e.f. 01.04.2011 to 16.11.2012 and thus, the same cannot be construed as a single transaction; rather these are different transactions during the business dealings between the parties and the petitioner is neither inclined to make the payment of compensation; nor willing to undergo the total sentence, rather he wants to escape from the entire liability simply by undergoing the sentence of six months' simple imprisonment, which shows that the intentions of the petitioner are not *bona fide* and not in the interest of business dealings. Such incidents are increasing day-by-day and in case undue sympathy is shown to the persons like the petitioner, then the faith of the Society shall be eroded systematically and that will be too disastrous for the economy of the country.

Consequently, there is no merit in the present applications for making the sentence of the petitioner concurrent in all the cases and, therefore, all the above eight applications are also dismissed.

Photocopy of this order be placed on the connected case(s).

May 29, 2018 **(MAHABIR SINGH SINDHU)**
Gagan **JUDGE**

Whether speaking/reasoned	*Yes*
Whether Reportable	*Yes*