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

**1. CRR No.493 of 2018 (O&M)
Date of Decision: 14.02.2018**

VIJAY KUMARPetitioner

Vs

VIJAY SHARMA & ANRRespondents

2. CRR No.494 of 2018 (O&M)

VIJAY KUMARPetitioner

Vs

SANDEEP SINGLA & ANRRespondents

3. CRR No.495 of 2018 (O&M)

VIJAY KUMARPetitioner

Vs

DR VIJAY SHARMA AND ANRRespondents

4. CRR No.498 of 2018 (O&M)

VIJAY KUMARPetitioner

Vs

VED PARKASH AND ANRRespondents

5. CRR No.500 of 2018 (O&M)

VIJAY KUMARPetitioner

Vs

RAM MURTI AND ANRRespondents

6. CRR No.503 of 2018 (O&M)

VIJAY KUMARPetitioner

Vs

HARI CHAND SHARMA AND ANR
.....Respondents

7. CRR No.505 of 2018 (O&M)

VIJAY KUMARPetitioner

Vs

SURINDER NATH GOEL AND ANR
.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rakesh Gupta, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Vide this common order CRR Nos.493, 494, 495, 498, 500, 503 and 505 of 2018 (O&M) are being decided. Since facts involved in all the cases are somewhat on the same pattern, therefore, for brevity the facts are being taken from CRR No.493 of 2018.

[2]. Petitioner has challenged the order dated 06.12.2017 passed by the Addl. Sessions Judge, Patiala whereby appeal against the judgement of conviction and order of sentence dated 23.08.2014 passed by the Judicial Magistrate Ist Class, Patiala

was dismissed. While parting with the judgment, the Addl. Sessions Judge, Patiala has observed in the following manner:-

“7. *In the light of above discussion, this court is of considered view that the sentence imposed upon the convict-appellant Vijay Kumar had to be treated as concurrent only in case of Dr. Vijay Sharma of both the complaints, whereas the other sentences are required to be treated as consecutively and not concurrently, which are pertaining to different people and different cheques, which also proves that he is a habitual offender, therefore, normal treatment has not to be given, otherwise it would sent a wrong signal in the society and faith would be eroded from the system. Accordingly, all the appeals brought by appellant are hereby dismissed with these observations. Copy of judgment be placed in the connection appeals. Accordingly, intimation be sent to jail authorities. Record of learned trial Court be returned along-with a copy of this judgment, whereas, file of this Court be consigned to Record Room after due compilation.”*

[3]. A specific application was filed by the petitioner before the first Appellate Court for running of sentences concurrently. The trial Court after noticing and considering the material on record came to the conclusion that the notice issued by the complainant was not adverted to or refuted by the accused and the accused/petitioner could not prove that he did not receive any legal notice or had no knowledge about the same. Had the accused/petitioner not received the notice, he

could have come in the Court within the prescribed time of receipt of summons along with payment of the amount covered by the cheques in question. The exercise was not done by the accused/petitioner. Even the accused/petitioner could not rebut that the address mentioned in the complaint was not his right address. At the fag end of the trial, raising of such a plea without leading any incriminating evidence to that effect was not considered by the Court for presuming that there was no service of legal notice. The cheques were issued from the account of the accused/petitioner and the same bore his signatures. It was evident that the cheques were issued in order to discharge legal enforceable debt. No such evidence was led by the accused/petitioner to show that the cheques were issued as security. Mere assertion without leading any cogent evidence was not considered sufficient to dislodge the presumption under Section 139 of the Negotiable Instruments Act (for short 'the Act').

[4]. Having been convicted by both the Courts below, the petitioner has preferred the present petitions.

[5]. Statement of fact and findings recorded by the Courts below could not be refuted by learned counsel for the petitioner with reference to any cogent material warranting interference by this Court under Section 401 Cr.P.C.

[6]. Faced with situation, learned counsel for the

petitioner preferred to press the petitions for running of sentences concurrently in all the cases and submitted that 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 the present cases on the strength of **V.K. Bansal vs. State of Haryana and others, 2013(3) R.C.R. (Criminal) 983 (SC).**

[7]. I have heard the submissions made by learned counsel for the petitioner.

[8]. The Hon'ble Apex Court in **Nagpal Traders vs. Davinder Singh, (2017) 11 Supreme Court Cases 431** held that the 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]. 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.

[10]. 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.

[11]. 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.

[12]. 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.

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

February 14, 2018	(RAJ MOHAN SINGH)
Atik	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No