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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CRL.REV.P. 772/2016 & CRL.M(BAIL) NO. 2109/2016, 1173/2017, CRL.M.A.15987/2017**

Order reserved on: 30th November,2017
Order pronounced on: 4th January,2018

RANJEETA MEHRA ...Petitioner
Through: Ms. Sunita Arora and Mr. Lucky Tiwari, Advocates.

versus

STATE (NCT OF DELHI) & ANR …Respondents
Through: Mr. Mukesh Kumar, APP for the State/ respondent no. 1 with Mr. Manish Lamba, Advocate for respondent no.2.

\+ **CRL.REV.P. 774/2016 & CRL.M(BAIL) NO. 2110/2016, 1172/2017**

RANJEETA MEHRA ...Petitioner
Through: Ms. Sunita Arora and Mr. Lucky Tiwari, Advocates.

versus

STATE (NCT OF DELHI) & ANR …Respondents
Through: Mr. Mukesh Kumar, APP for the State/ respondent no. 1 with Mr. Manish Lamba, Advocate for respondent no.2.

CORAM:

% **HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

1. The present Revision petition is filed by the petitioner under Section 397 and 401 read with Section 482 of The Code of

Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') ***for setting aside the impugned judgment dated 17.10.2016 passed by District & Session Judge (West), Delhi in Criminal Appeal No. 54451/2016 & 54450/2016 and impugned judgments dated 06.05.2016 and order on sentence dated 20.05.2016 passed by Metropolitan Magistrate*** in Criminal Complaint No. 3951/1/11 & 3952/1/11 registered under Section 138 of the Negotiable Instruments Act,1881(hereinafter referred as 'NI' Act).

2. The brief facts of the present case are that the complaint was lodged by Respondent No. 2 who alleged that a friendly loan amounting to Rs.7,00,000/- was advanced to the petitioner in two installments in the month of May and August 2009 and in return the petitioner issued six post dated cheques, out of which four cheques were dishonoured when presented in the concerned bank for encashment. The complainant filed two separate complaints under Section 138 NI Act and sent a legal notice dated 21.09.2011 for repayment of the loan amount to the petitioner. On the said complaint, the order dated 06.05.2016 was passed by the learned MM, whereby held her guilty for the offence under Section 138 NI Act for both the complaints and sentenced her to undergo :

> *"simple imprisonment of three months and is ordered to pay the compensation of Rs.3,00,000/- to the complainant and in case of failure to pay the amount, the accused shall undergo further simple imprisonment of two months."*

The said order was challenged before the District and Session Judge, and the same was dismissed vide order dated 17.10.2016. Hence, the present petition.

3. The learned counsel for the petitioner contends and limits her arguments on the quantum of sentence, as accorded by the Trial Court. She submits that since the transaction was between the same parties, though there were two loan agreements, the sentences should have been directed to run concurrently. It was suggested by the counsel for the petitioner that the legal position favours the exercise of discretion for the benefit of an accused in cases where prosecution is based on a single transaction even if different complaints thereof may have been filed for dishonour of different cheques. The transactions forming the basis of prosecution relate to the same parties i.e the petitioner and the respondent and therefore the sentences ought to have been ordered to run concurrently.

4. Per contra, Mr. Mukesh Kumar, learned APP for the State opposed the bail application and submitted that the transactions in the present case were not parallel to each other and even the terms and conditions of the transactions were different. Hence, the sentence awarded should not run concurrently.

5. The submissions made by the both the parties have been considered and records perused.

6. After perusal of the facts and circumstances of the case, ***the main issue which require adjudication in the present case is whether the sentence awarded by the Trial Court should concurrently or***

consecutively. In ***V.K.Bansal vs State Of Haryana & Ors.*** reported in **(2013) 7 SCC 211,** it was observed by the Apex Court that:

> *"7. 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."*

In ***Shyam Pal v. Dayawati Besoya*** reported in ***(2016) 10 SCC 761,*** it was held 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 offence or offences committed and the attendant facts and circumstances."*

7. Keeping in mind the above settled proposition of law, it is seen in the present case that it is undisputed that two loan agreements were entered into by the parties and cheques were issued under the signature of the petitioner to the respondent no.2, in respect to the

loan amount. The two separate loan agreements indicated the amount of Rs.3,00,000 and Rs.4,00,000/- respectively, and both bearing the signatures of the petitioner. Four post dated cheques bearing different numbers, for different amounts and containing different dates for presentation to the banks, were issued by the petitioner to the respondent no.2. The said cheques were dishonoured when presented to the respective banks for encashment. It is perused that each of the loan agreement was a separate, distinct transaction between the petitioner and the respondent no.2 and different cheques were dishonoured on different dates when the same was presented in the respective banks for encashment. If different cheques issued by the petitioner to the respondent no.2, which were subsequently dishonoured on presentation, arose out of a single loan transaction, then it could have been justified to direct for concurrent running of the sentences in relation to dishonour of cheques relevant to each such transactions.

8. As per the settled legal law in this regard that a direction that the subsequent sentence would run concurrently or not, would essentially depend on the nature of the offence or offences and the overall factual situation and that such a concession cannot be extended to transactions which are distinctly different, separate and independent of each other. Considering the facts and circumstances of the present case, it is clear that both the loan agreements executed between the parties are not arising out of the single transaction. Hence, this court is of the view that the sentence

awarded by the Trial Court in the present case is not to run concurrently but consecutively.

9. The present petition stands disposed of.

SANGITA DHINGRA SEHGAL, J

JANUARY 04, 2018

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