

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

**CRM-M-14296-2019
Date of decision-27.05.2019**

Shashi Bhushan

....Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. R.B.Gupta, Advocate for the petitioner.

Mr. Nishchal Mann, DAG, Haryana.

Mr. Gaurav Singla, Advocate for respondent Nos.2 and 3.

MANOJ BAJAJ, J.

Shashi Bhushan has filed this petition under Section 427 read with Section 482 Cr.P.C for modification of the sentence part as recorded by the trial Court and upheld by Appellate Court only to the extent that sentences awarded to the petitioner on the same date in three different complaints under Section 138 of Negotiable Instruments Act, 1881 be ordered to run concurrently.

The facts in brief leading to the present petition are that respondent/complainant filed three different complaints for dishonour of three cheque Nos. 035833 dated 23.04.2015, 035835 dated 23.10.2015 and 035834 dated 23.07.2015 amounting to Rs.1,00,000/- each allegedly issued by the petitioner in favour of respondent No.2/complainant.

It was mentioned in the complaint that a friendly loan of

Rs.3,00,000/- was advanced by the complainant in January, 2015 and to discharge the said liability, the cheques in question were issued. However, the same had dishonoured thereby compelling the complainant to institute the complaints bearing Nos.1265 dated 26.05.2015, 2332 dated 19.10.2015, 2600 dated 02.12.2015. However, there was another complaint bearing No.99 dated 13.01.2016 for a cheque of Rs.1,00,000/- wherein he was awarded sentence of six months. However, no appeal was filed against the said judgment of conviction dated 24.07.2017 and order of sentence dated 26.07.2018.

After commencement of the proceedings before the trial Court, the same ended in conviction on 10.04.2017 recorded by way of separate judgments in each complaint case. The trial Court imposed simple imprisonment for a period of six months and also directed to pay compensation of Rs.1,50,000/- to the complainant, in each case (which are subject matter of this petition).

Aggrieved against the said judgments, separate appeals were filed by the petitioner before the Appellate Court at Faridabad and during the pendency of the appeal, an attempt was made by the accused (convict) to return the amount in order to compound the offences, however, the said attempt failed and resultantly, for non-payment of the amount of the cheques, the Appellate Court proceeded to uphold the conviction of the petitioner in all the three appeals decided separately on 02.06.2018.

Learned counsel for the petitioner contends that an attempt was made to compound the offence, however, because of financial constraints

the convict could not arrange the amount and is resultantly serving the sentence pursuant to the abovementioned three convictions. According to him, the sentences would be running consecutively. Further he contends that considering the nature of the offence, it would be in the interest of justice if the concession under Section 427 Cr.P.C is extended to the convict by ordering concurrently running of sentences.

On the other hand, prayer is opposed by learned counsel appearing on behalf of respondent Nos.2 and 3 and contended that since there were three different complaints pertaining to three cheques issued on different dates, therefore, each complaint is founded on a separate cause of action. It is contended that in case the sentence is ordered to run concurrently, then it would defeat the purpose of sentencing pursuant to the conviction recorded by the Court.

At this stage, learned counsel for the petitioner has relied upon judgments passed by this Court in CRR-3685-2016, titled as “**Ravi Kant Gulati Vs. Qasimuddin**” and another judgment passed in CRR-4801-2018, titled as “**Gaurav Gupta Vs. Mrs. Damini Pahwa**” to contend that in a similar case for the different offences under Section 138 of Negotiable Instruments Act, 1881, this Court had extended the concession to the convict.

Before adjudicating the issue involved in the petition, it is necessary to read Section 427 Cr.P.C which is extracted below:-

427. Sentence on offender already sentenced for another offence.

(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence: Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

A reading of the above provision makes it clear that the discretion has been vested with the trial Court to deal with the sentencing part while recording conviction in multiple cases in respect of a common convict(s). It is apparent that in case this discretion is not exercised in favour of the convict, the sentences would run consecutively. Normally, this concession is extended in case wherein an accused is alleged to have committed various offence(s) and is being tried together at one trial for every offence. The said offences may be either under one Act or under different Acts. It is in that event when the trial Court holds the accused guilty in various offences, the sentence is normally ordered to run concurrently. However, this rule may not be strictly applicable in respect of a convict who is held guilty in respect of the different occurrences and was tried separately. The above Section 427 Cr.P.C was examined by the Hon'ble Supreme Court in "**Mohd.Akhtar Hussain @ Ahmed Bhatti Vs. Assistant**

Collector of Customs (Prevention), Ahmedabad and others”, 1988 AIR

(SC) 2143, and the relevant observations are re-produced below:-

10. The Section relates to administration of criminal justice and provides procedure for sentencing. The sentencing court is, therefore, required to consider and make an appropriate order as to how the sentence passed in the subsequent case is to run. Whether it should be concurrent or consecutive ?

11. The basic rule of thumb over the years has been the so called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.

After hearing learned counsel for the parties, this Court is of the considered opinion that as per the complainant, the loan of Rs.3,00,000/- was advanced and the same was returned by way of three different cheques. Those cheques were the subject matter of three different complaints but tried together by the trial Court, and the appellate Court also decided appeals against conviction on the same date i.e.02.06.2018. In the given facts and circumstances, when the parties are common and the dispute/complaints arises from one common transaction of advancement of loan, the same can

be construed as a one transaction only for the purposes of extending benefit under Section 427 Cr.P.C., particularly when the offences are neither heinous nor serious but summarily triable by Magistrate.

The Hon'ble Supreme Court in "*V.K.Bansal Vs. State of Haryana and others*" 2013 (3) R.C.R. (Criminal) 983, also proceeded to allow the convict to serve the sentence concurrently where the conviction was recorded for various different complaints under Section 138 of Negotiable Instruments Act, 1881.

In view of the above, this petition is allowed and it is ordered that the sentences awarded to the petitioner in all the complaint cases shall run concurrently. However, the default as well as compensation clause shall remain intact.

Petition is disposed off.

(MANOJ BAJAJ)
JUDGE

27.05.2019

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Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No