

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

1.

CRR No.1911 of 2016 (O&M)
Date of decision : 23.07.2019

Shiv Dhiman

...Petitioner

Versus

UT of Chandigarh and another

...Respondents
2.

CRR No.1912 of 2016 (O&M)
Date of decision : 23.07.2019

Shiv Dhiman

...Petitioner

Versus

UT of Chandigarh and another

...Respondents
3.

CRR No.1913 of 2016 (O&M)
Date of decision : 23.07.2019

Shiv Dhiman

...Petitioner

Versus

UT of Chandigarh and another

...Respondents
4.

CRR No.1914 of 2016 (O&M)
Date of decision : 23.07.2019

Shiv Dhiman

...Petitioner

Versus

UT of Chandigarh and another

...Respondents

5. CRR No.1915 of 2016 (O&M)
Date of decision : 23.07.2019

Shiv Dhiman

...Petitioner

Versus

UT of Chandigarh and another

...Respondents

6. CRR No.1916 of 2016 (O&M)
Date of decision : 23.07.2019

Shiv Dhiman

...Petitioner

Versus

UT of Chandigarh and another

...Respondents

7. CRR No.2110 of 2016 (O&M)
Date of decision : 23.07.2019

Dildar Singh

...Petitioner

Versus

State of UT Chandigarh and another

...Respondents

8. CRR No.2108 of 2016 (O&M)
Date of decision : 23.07.2019

Dildar Singh

...Petitioner

Versus

State of UT Chandigarh and another

...Respondents

9.

CRR No.2111 of 2016 (O&M)
Date of decision : 23.07.2019

Dildar Singh

...Petitioner

Versus

State of UT Chandigarh and another

...Respondents

10.

CRR No.2112 of 2016 (O&M)
Date of decision : 23.07.2019

Dildar Singh

...Petitioner

Versus

State of UT Chandigarh and another

...Respondents

11.

CRR No.2113 of 2016 (O&M)
Date of decision : 23.07.2019

Dildar Singh

...Petitioner

Versus

State of UT Chandigarh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Paras Talwar, Advocate for the petitioner(s).
(In CRR Nos.1911 to 1916 of 2016)

Mr. H.S. Lalli, Advocate for the petitioner(s)
(In CRR Nos.2108, 2110 to 2113 of 2016)

Mr. Sukant Gupta, Addl. P.P. U.T. Chandigarh.

Dr. Surya Parkash, Advocate for respondent No.2.

ANIL KSHETARPAL, J.

By this order, CRR Nos.1911 to 1916, 2108, 2110 to 2113 of 2016 shall stand disposed of.

Learned counsel for the parties have addressed arguments only on the issue as to whether the sentence awarded by the Courts below is required to be ordered to run concurrently or not in all these cases. However, before deciding the aforesaid issue, it would be appropriate to note certain facts.

As per the case setup by the complainant, two companies namely M/s Tridev Infrastructure (Private) Limited (complainant) and M/s CMP Builders Private Limited (accused No.1 in 5 complaints out of total 6 complaints) were in the business of real estate development. As per the respondent-complainant, there was an agreement dated 29.11.2010 between both the aforesaid companies to the effect that accused would get purchased 100 acres of land at the rate of ₹1,05,50,000/- per acre to the complainant company. In other words, accused No.1 company was assigned the duty to make an arrangement for purchase of 100 acre land for the complainant company in one compact block within three months in the vicinity of

Chandigarh. It was agreed that in the event of failure of the accused to fulfill its promise, the accused shall be liable to pay double of the earnest money/advance amount after expiry of three months. Pursuant to the aforesaid agreement, it is alleged that ₹4,50,00,000/- was paid by the complainant company to the accused No.1-company but accused No.1-company defaulted in the performance of the agreement. Hence, accused agreed to pay double of the amount advanced i.e. ₹9,00,00,000/-. Some amount was paid but in discharge of remaining amount, 6 cheques were handed over to the complainant for a total amount of ₹8,67,00,000/-. The aforesaid cheques on presentation for encashment, were dishonoured resulting in filing of five complaints under Section 138 read with Section 142 of the Negotiable Instruments Act. It may be noted here that accused No.1-M/s CMP Builder Private Limited at that time had two Directors, Shiv Dhiman and Dildar Singh. Cheques worth ₹8.5 crores were issued by the accused No.1-company, whereas cheque for amount of ₹17,00,000/- was issued as an individual by Shiv Dhiman.

In the defence, accused had taken a plea that in fact, the entire amount stood repaid as complainant-company did not fulfill its part of promise. It was further pleaded that blank cheques given as a security have been filled in and presented in the bank and thereafter false cases have been filed.

Learned trial Court on appreciation of evidence, by separate judgments dated 02.09.2014 in all the complaints found petitioners guilty of having committed offence under Section 138 read with Section 142 of the Negotiable Instruments Act. Learned trial Court sentenced its directors for a

period of two years in each case except for a period of one year in the case arising from cheque for an amount of ₹17,00,000/-. Learned trial Court also ordered that the cheque amount in all the cases shall be the amount of compensation which shall be payable to the complainant.

11 appeals were preferred as Directors individually also filed certain appeals. All the appeals have been dismissed by the learned First Appellate Court vide separate judgments of even date i.e. 02.05.2016.

That is how these 11 revisions have come up for hearing. In some of the revision petitions, application under Section 427 Cr.P.C. for directing the sentence awarded to run concurrently has also been filed. It is further significant to note that during the pendency of the revision petitions at one stage, a compromise in writing was arrived at between the parties, pursuant where to ₹58,00,000/- was paid to the respondent-complainant company. However, further agreement with regard to transfer of certain property in State of Himachal Pradesh by the accused in favour of the complainant company in discharge of its liability did not materialize hence the settlement fell through. Although both the parties are alleging that it is due to the fault of each other, anyhow, this Court is not required to go into this issue.

As per Section 427 Cr.P.C., the Court has discretion to order the sentence awarded in different trials to run concurrently. Basically, it is the discretion of the Court which is to be exercised in accordance with well established judicial principles.

Let us examine at this stage what does precedents lay down.

First judgment of Hon'ble the Supreme Court which has been brought to the

notice of this Court is in the case of **V.K. Bansal Vs. State of Haryana and others, (2013) 3 SCC (Criminal) 282**. In the aforesaid case, order of conviction was passed in large number of cases under Section 138 of the Negotiable Instruments Act. Hon'ble the Supreme Court after examining provisions of Section 427 Cr.P.C., directed that 15 cases broadly fall in three different category relating 3 different corporate entities/different complainants and, therefore, the Court ordered that the cases falling within each of the category, the sentence would run concurrently and sentence falling in separate category of cases by different complainants would begin to run after expiration of sentence in other case has come to an end (consecutively). Subsequently, aforesaid judgment was followed by Hon'ble the Supreme Court in the case of **Shyam Pal Vs. Dayawati Besoya and another, 2016 (4) RCR (Criminal) 790**. In this judgment, Hon'ble the Supreme Court held that sentence can be ordered to run concurrently if various criminal complaints are result of a single series of transactions. At this stage, it may be noted that a larger Bench of Hon'ble the Supreme Court in the case of **O.M. Cherian @ Thankachan Vs. State of Kerala and others, (2015) 2 SCC 501** had also examined the aforesaid issue in more depth and ultimately held that it depends upon the discretion of the Court and the Court would exercise the discretion in accordance with well settled principles of law.

On the other hand, learned counsel appearing on behalf of the complainant has relied upon another judgment passed by Hon'ble the Supreme Court in the case of **Nagpal Traders Vs. Davinder Singh, 2014(4) RCR (Criminal) 96**, to contend that the Court should not show undue

leniency towards the convicts. This Court has carefully gone through the aforesaid judgment in the case of Nagpal Traders (Supra). In the aforesaid case, convict were granted opportunity by Hon'ble the Supreme Court to pay the cheque amount or at least pay some amount to the complainant but the response was not positive except saying that the convicts are not in a position to pay. The convicts even did not care to remain present in the Court. Hon'ble the Supreme Court felt unhappy with this approach of the convicts and in the aforesaid facts, the Court ordered that since the cheques in question do not relate to one single transaction, hence, the sentence shall run consecutively. In view of the aforesaid discussion, it is apparent that the judgment relied upon by the learned counsel for the respondent in the case of Nagpal Traders (Supra) is in the facts of the case and in the aforesaid judgment also, Hon'ble the Supreme Court did not hold that if all the cases are arising out of single transaction or one series of transaction, the sentence cannot be ordered to run concurrently.

Let us now recapitulate the facts of the present case. It is not in dispute that all the cheques are result of alleged agreement between the parties dated 29.11.2010. Convicts were paid ₹4.5 crores but due to default clause in the agreement, they were required to pay ₹9,00,00,000/-. It is also not in dispute that some amount was paid back. When on behalf of the complainant company its Director appeared in evidence, he admitted that certain amount has been paid and that is how total cheques worth ₹8,67,00,000/- were given by the accused. Hence, it is safe to assume that amount of ₹33,00,000/- stood already paid. Now during the pendency of the revision petitions, another amount of ₹58,00,000/- has been paid so in any

case, out of total payment of ₹4,50,00,000/-, it is safe to assume that ₹91,00,000/- stands paid. There was another transaction of ₹3,50,00,000/- which has also been repaid by the convicts/petitioners. In these circumstances, this Court is of the opinion that since the convicts have made a bona fide attempt to pay and settle the dispute, some amount has been paid and the attention of this Court has not been drawn to any reason which disentitles the petitioners to the discretion available with the Court, hence, this Court is of the opinion that ends of justice would be met if the sentence in all the cases which are 6 in number shall run concurrently provided petitioners surrender before the learned trial Court within 1 month of the date of receipt of certified copy of this judgment. Petitioners have already been convicted for a maximum period prescribed i.e. 2 years. Compensation as ordered by the Court i.e. cheque amount is maintained.

With the aforesaid modifications, all these revision petitions are disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

23.07.2019

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**