

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

1. CRR No.3677 of 2018 (O&M)
Date of decision : 17.07.2019

Prince Garg and another

...Petitioners

Versus

State of Haryana and another

...Respondents

2. CRR No.3262 of 2018 (O&M)
Date of decision : 17.07.2019

Prince Garg and another

...Petitioners

Versus

State of Haryana and another

...Respondents

3. CRR No.2001 of 2018 (O&M)
Date of decision : 17.07.2019

Om Parkash Katyal

...Petitioner

Versus

Prince Garg and others

...Respondents

4. CRR No.2358 of 2018 (O&M)
Date of decision : 17.07.2019

Om Parkash Katyal

...Petitioner

Versus

Prince Garg and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. S.S. Rana, Advocate for the petitioners.
(In CRR Nos.3677 and 3262 of 2018)
for respondent Nos.1 and 2
(In CRR Nos.2001 and 2358 of 2018)

Ms. Harpreet Kaur, AAG, Haryana.

Mr. Devender Arya, Advocate for the petitioners
(In CRR Nos.2001 and 2358 of 2018)
for respondent No.2
(In CRR Nos.3677 and 3262 of 2018)

ANIL KSHETARPAL, J.

CRM No.39102 of 2018 in CRR No.3677 of 2018

For the reasons stated in the application, which is duly supported by an affidavit, delay of 114 days in filing the present revision petition is condoned.

Application is allowed.

CRM No.34504 of 2018 in CRR No.3262 of 2018

For the reasons stated in the application, which is duly supported by an affidavit, delay of 121 days in filing the present revision petition is condoned.

Application is allowed.

MAIN CASES

By this order, CRR Nos.3677, 3262, 2001 and 2358 of 2018
(four revisions petitions) shall stand disposed of. All these revision petitions

have been filed against judgment of conviction under Section 138 of the Negotiable Instruments Act, 1881 and order of sentence passed by the Court of Judicial Magistrate Ist Class, Panchkula sentencing petitioners to rigorous imprisonment for a period of one year in two separate complaints with respect to separate cheques between the same parties bearing different dates. Sentence awarded to run consecutively. Two appeals were preferred by the convicts-petitioners whereas two appeals were preferred by the complainant-victim for enhancement of the sentence awarded. Learned Additional Sessions Judge, Panchkula has dismissed all the four appeals.

Two revisions have been preferred by the complainant-victim seeking enhancement of the sentence whereas remaining two revisions have been filed by the convicts. Counsel for the complainant on 15.03.2019 confined his prayer to the sentence be ordered to run concurrently.

Learned counsel for the parties have drawn attention of the Court to Sections 31 and 427 of Cr.P.C. and Section 72 of the Indian Penal Code. It is apparent that Section 31 of Cr.P.C. is applicable only in a situation when different offences subject matter of one trial (case) are found to have been committed by the accused. In the present case, two different cheques were subject matter of two different complaints filed separately. Thus, Section 31 of Cr.P.C. has no applicability.

On reading of Section 427 of Cr.P.C., it is apparent that the Court is vested with a discretionary power to direct that the subsequent sentence shall run concurrently with such previous sentence. However, the Courts below have refused to exercise such power.

This Court has also examined the judgment relied upon by the

learned counsel for the convicts in the case of **V.K. Bansal Vs. State of Haryana and others, (2013) 3 SCC (Criminal) 282**, as also judgment in the case of **State of Punjab Vs. Madan Lal, 2009(2) RCR (Criminal) 602**. In the case of V.K. Bansal (Supra), it was found that appellant before Hon'ble the Supreme Court was convicted in 15 different cases. While exercising discretion, the Court categorized those 15 cases in 3 different sets and thus, in each set, the sentence was ordered to run concurrently. In the case of State of Punjab (Supra), Hon'ble the Supreme Court upheld the discretion exercised by the High Court in three complaints under the Negotiable Instruments Act, 1881.

It may be noted here that the aforesaid question was referred to 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** and Larger Bench held that the Court has a discretion to order sentence to be run concurrently although normally the sentences in each case would run consecutively. The larger Bench has discussed in detail the provisions of the Code of Criminal Procedure and the Indian Penal Code.

Thus, it is obvious that the power of the Court is discretionary.

Now on the touchstone of the aforesaid guidelines laid down, let us examine the present case. It has come in evidence that convict-petitioner Prince Garg had agreed to sell a residential flat in building Royal Empire (Royal Minar) at Zirakpur to the complainant-victim for a sum of ₹24,00,000/- in the year 2011 and received a sum of ₹18,20,000/-. Later on, it came to the notice of the victim that neither any land has been allotted to the convict nor convict or his firm is owner of the land on which flats are to

be constructed, agreed to be sold to the complainant-victim. Thus, refund of the amount was claimed and convict agreed to pay the amount. For that purpose, three cheques were issued-first cheque dated 15.05.2012 for a sum of ₹6,00,000/-, second cheque dated 15.07.2012 for a sum of ₹6,00,000/- and third cheque dated 15.09.2012 for a sum of ₹6,20,000/-. Subject matter of the present cases are two cheques, one dated 15.07.2012 and another dated 15.09.2012. Both the cheques on presentation before the bank were dishonoured with the remark that “account has been blocked”.

This Court had directed the parties to inform this Court as to how many cases are pending against the convicts-petitioners. This Court has been informed that more than 10 cases are pending in the Courts below at various stages. Thus, it is apparent that the petitioners have similarly allegedly cheated various gullible persons who were looking for a roof on their head. In these circumstances, the Court does not find that discretion deserves to be exercised in favour of the convicts-petitioners.

Still further, both the Courts have considered this aspect and exercised discretion in a particular manner i.e. the sentences would run consecutively and not concurrently. This Court does not find any reason to interfere with the same as the discretion exercised is not shown to be perverse.

Petitioners even during the pendency of the present petitions had on 14.11.2018 got issued notice by contending that the convicts are ready to settle with the complainant. Thereafter, on 18.01.2019, once again the case was adjourned to explore the possibility of compromise. In view of the aforesaid, it is apparent that the intention of the convict is not honest and

the convict was only buying time.

Further, the payment made in the year 2011 has not been returned, although more than 8 years have elapsed. Not a penny has been paid.

In view thereof, CRR Nos.3262 and 3677 of 2018 are dismissed.

Let us now consider the revisions which have been filed by the complainant-victim. Learned Courts have awarded sentence in each of the complaint for a period of one year and the sentence in each of the case is to run consecutively. The maximum sentence permissible in such case is for a period of two years. Hence, there is no scope for further enhancement.

Accordingly, all the revision petitions are dismissed.

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

17.07.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No