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

% Judgment delivered on: 29.04.2019

\+ CRL.REV.P. 629/2016 and CRL.M.A. 6370/2018 and CRL. M.A. 7711/2018

SMT RESHAM DEVI SURANA ..... Petitioner

versus

STATE (GNCT DELHI)& ANR ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Rohan Sharma and Mr. Ravinder Jain, Advs.

For the Respondent : Mr. Hiren Sharma, APP for the State
Mr. Karan Jain, Advocate for Respondent No.2 with AR Mr. Raj Kumar Kashyap

CORAM:
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns judgement dated 04.07.2016, whereby three appeals of the petitioner impugning three separate orders of conviction in Complaint Case No. 289/1/2002, 290/1/2002 and 291/1/2002 were dismissed.

2. Petitioner was convicted of the offence Under Section 138 of Negotiable Instruments Act, 1881 and sentence to undergo simple imprisonment of one year each in the three cases and to pay

compensation of Rs. 8,00,000/-, Rs. 30,00,000/- and Rs. 1,50,00,000/- respectively in the three cases and in default to undergo three months imprisonment in each of the cases.

3. Parties have settled their disputes. Learned counsel for the respondents – complainant submits that petitioner has suffered substantial setback in her life. Her husband is suffering from Cancer and is not able to work and she herself is ailing and their financial condition is very poor.

4. Learned counsel submits that keeping in view of the condition of the petitioner and her family, the respondent – complaint has agreed to waive off the entire claim against the petitioner and has settled the disputes without accepting any amount.

5. Learned counsel for the petitioner submits that petitioner has already completed the substantive sentence in Complaint Case No. 289/1/2012 on 18.05.2017 and as on 28.08.2018 had undergone 10 months and 24 days of incarceration in Complaint Case No. 290/1/2012. The sentence of the petitioner was suspended by order dated 26.04.2018 with the result that petitioner suffered further two months of incarceration.

6. Learned counsel for the petitioner submits that the three cases emanate out of one single transaction as the three cheques were for return of one loan amount of Rs. 1 crore. It is submitted that three

cheques were for refund of principal as well as interest accrued on the loan amount and in terms of Section 427 (1), the substantive sentences of the three cases should have been directed to run concurrently.

7. Learned counsel submits that since judgments were passed by the Trial Court on different dates, the court did not direct the sentences to run concurrently, however, appellate court has erred in the impugned judgment by not modifying the sentences to run concurrently.

8. Learned counsel the respondent fairly concedes that the transaction in respect to which the three cheques were issued was one single transaction.

9. Since admittedly the three cases emanate out of one single transaction, applying the ratio of the judgement of the Supreme Court in *V.K. Bansal Vs. State of Haryana & Ors.* (2013) 7 SCC 211, the Appellate Court should have modified the sentences so that the substantive sentences would have run concurrently.

10. In case, substantive sentences of the petitioner were to run concurrently and the in-default sentences were to run successively, petitioner would have had to undergo one year and 9 months of incarceration. As noticed from the nominal roll, petitioner has undergone nearly two years of incarceration cumulatively in all the three cases.

11. Petitioner has also filed an application seeking compounding of the subject offence and waiver of the cost liable to be imposed in terms of judgment of the Supreme Court in *Damodar S. Prabhu Vs. Sayed Babalal H.* 2010(5) SCC 663.

12. Though, in the said application it is contended that the petitioner does not have the wherewithal to pay the costs, however, no documents showing her financial conditions has been annexed.

13. Be that as it may, since the petitioner has already undergone over two years of incarceration, I am of the view that interest of justice would be served if the impugned order dated 04.07.2016 is modified to the limited extent, to direct that the substantive sentences in all three cases shall run concurrently and the in-default sentences would run successively.

14. In view of the above, it is directed that the substantive sentences in all three cases shall run concurrently and the in-default sentences would run successively.

15. The sequitur of the above is that petitioner having undergone two years of incarceration, is declared to have undergone the substantive and in-default sentences in all the three cases. Accordingly, petitioner is directed to be released in the above three cases. The Bail bonds are discharged.

16. Petition along with all the pending applications are disposed of

in the above terms.

17. Copy of the judgment be forwarded to the concerned Trial Court and Superintendent Jail for compliance.

18. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

APRIL 29, 2019
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HIGH COURT OF DELHI
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