

216 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17906-2020
Date of decision-31.07.2020

Mangal Vs. ...Petitioner

Kailash Chander and another ...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Jasdev Singh Thind, Advocate for the petitioner.

Mr. Sanchit Punia, Advocate for respondent No.1.

Mr. Sukhdeep Parmar, DAG, Haryana.

MANOJ BAJAJ, J.

Petitioner-Mangal has filed this petition under Section 482 read with Section 427 Code of Criminal Procedure for modification of the sentence awarded by trial Court in two different complaint cases under Section 138 Negotiable Instruments Act, 1881, bearing Nos.2025-II-2017 and 2026-II-2017, both titled as “*Kailash Chander Vs. Mangal*” and decided by way of separate judgment(s) of conviction and order(s) of sentence dated 09.10.2018. While holding the accused guilty, the trial Court awarded him sentence of six months simple imprisonment in each case and also directed the convict to pay the compensation equivalent to the cheque amount.

The facts in brief leading to the present petition are that complainant (respondent) had filed two different complaints for dishonour of two cheques bearing Nos.709448 and 709449 for a sum of Rs.1,00,000/- and 1,20,000/-, respectively, which were issued by petitioner towards discharge of the liability of Rs.2,20,000/-. According to the complainant, a car bearing No.HR 26-AL-2789 owned by him was offered for sale and brother of accused, namely, Padam Kumar agreed to purchase the said vehicle for total sale consideration of Rs.2,40,000/-. A sum of Rs.20,000/- was paid to the

complainant in the presence of witness-Balwan Singh r/o V.P.O Neoli Kalan and the petitioner being guarantor issued the above mentioned cheques in favour of the complainant as a security against remaining sale consideration which was to be paid by purchaser in a specified time. At the time of the said deal, the possession of the vehicle was handed over to the purchaser, however, after passing of the considerable time, when complainant demanded the remaining sale consideration of Rs.2,20,000/-, the accused asked him to present both the cheques for encashment. Upon presentation, the cheques were dishonoured on account of insufficient funds and the bank sent the intimation to the complainant through its memo dated 05.08.2017. A legal noticed dated 14.08.2017 was served upon the accused by the complainant, however, the demand made by him was not met with, as no amount was paid by the accused. On this cause of action, the complainant filed two separate complaints under Section 138 Negotiable Instruments Act, 1881.

After conclusion of the trial, learned Judicial Magistrate First Class, Hisar vide its separate judgments dated 09.10.2018 held the accused guilty in both the cases and awarded him sentence of six months simple imprisonment in each case and further directed the convict to pay compensation of Rs.1,00,000/- in complaint No.2025-II-2017 and Rs.1,20,0000/- in the other connected complaint.

Aggrieved against the judgments of conviction and orders of sentence dated 09.10.2018 (Annexure P-1), the convict preferred two separate appeals and the same were also decided vide separate judgments dated 20.11.2019 (Annexure P-4), whereby appeals were dismissed and the order of sentence awarded by trial Court was also maintained.

According to the learned counsel for the petitioner, as the

revision bearing No.945-2020 arising out of the criminal complaint No.2025-II-2017 was filed before this Court with a prayer to order the sentence to run concurrently, as the sentence awarded in other complaint stood served. The said petition was disposed off vide order dated 15.06.2020 (Annexure P-5), with the observation that the convict may file a separate petition for the said relief. Hence the present petition.

This Court had issued the notice of motion on 06.07.2020 and the respondent appeared through his counsel, Mr. Sanchit Punia, Advocate and filed his reply.

Learned counsel for the petitioner contends that considering the nature of offence and the fact that the trial in both the complaints were conducted simultaneously, therefore, trial Court ought to have ordered concurrent running of sentences in both the cases, particularly when the dispute was between the same parties. It is pointed out that both the appeals were also decided on the same date whereby the conviction and sentence imposed by the trial Court was upheld. He submits that no prejudice would be caused to the other side in case the concession under Section 427 Cr.P.C is extended to the petitioner by ordering that the sentences shall run concurrently instead of consecutively. In support of his prayer, learned counsel has placed reliance upon the judgment passed by the Hon'ble Supreme Court in Criminal Appeal No.529-2004, titled as "**State of Punjab Vs. Madan Lal**" and another judgment passed in Criminal Appeal Nos.1102-1104-2017, titled as "**P.N.Mohanan Nair Vs. State of Kerala**".

Learned counsel for the respondent through his reply has raised objection that petition is not maintainable. It has further been mentioned that since 20 % amount as directed by the trial Court was not deposited by the convict, therefore, considering the conduct of the petitioner, no interference

is called for by this Court under Section 482 Cr.P.C. According to the

complainant, the provisions of Section 427 Cr.P.C would not be attracted as there is no subsequent sentence imposed by the Court after the conviction of the petitioner on 09.10.2018, whereby he was held guilty in both the complaints. He further contends that as the cheques in question were different and the two complaints were filed on different cause of actions, therefore, the petitioner is not entitled to the concession of concurrent running of sentences in these two convictions. According to him, the Court has already shown leniency to the petitioner by imposing the sentence on lesser side i.e. six months simple imprisonment in each complaint.

Learned counsel for the respondent has also placed reliance upon the judgment passed by the Hon'ble Supreme Court in "**M.R.Kudva Vs. State of Andhra Pradesh**", 2007 (AIR) SCW 130 and the two judgments passed by this Court in CRM-M-45527-2016, titled as "**Chhote Lal Vs. State of Punjab**" and CRM-M-30986-2013, titled as "**Mahender Vs. State of Haryana**" to contend that since the judgment passed by the Appellate Court was not challenged, therefore, the separate petition under Section 427 Cr.P.C alone for alteration of the sentence is not maintainable. He has prayed that the petition deserves to be dismissed.

After hearing learned counsel for the parties and considering the above background of the case, this Court finds that the two cheques issued in favour of the complainant, were of course subject matter of two separate complaints mentioned above, but the said cheques were issued towards discharge of legally enforceable debt of one transaction i.e. sale of vehicle by complainant in favour of brother of the petitioner. Admittedly, the vehicle was sold for a sum of Rs.2,40,000/- and Rs.20,000/- was paid at the time of the deal and the remaining amount was to be paid later on, and towards the said liability the cheques were issued by the accused. In the given facts and

one common dispute, therefore, it can be construed as a one transaction only for the purposes of extending the benefit under Section 427 Cr.P.C, keeping in view the nature of offence which is neither heinous nor serious.

The judgments relied upon by the complainant may not be applicable in the present case as previously the petitioner had approached this Court through CRR-945-2020, however, when this Court suggested the petitioner to bring the separate petition to seek the relief of concurrent running of sentences in two convictions, the learned counsel for the petitioner withdrew the petition with liberty to file an appropriate petition for concurrent running of sentences. This Court had accepted the said prayer and gave him the liberty for filing the fresh petition. Therefore, in these circumstances, the ratio laid down in the judgment cited by learned counsel for the respondent may not be applicable and further reliance can be placed upon “State of Punjab Vs. Madan Lal (Supra)” and judgment dated 27.05.2019, passed in CRM-M-14296-2019, titled as “Shashi Bhushan Vs. State of Haryana and others”, wherein this Court has extended the similar benefit to the convict who was convicted in three different complaints under Section 138 Negotiable Instruments Act, 1881.

In view of the above, this petition is allowed and it is ordered that the sentence of imprisonment awarded on 9.10.2018 to the petitioner pursuant to the conviction recorded in complaint case No.2025-11-2017 shall run concurrently. However, the default as well as compensation clause shall remain intact.

Petition is disposed off.

(MANOJ BAJAJ)
JUDGE

31.07.2020

vanita

Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No