IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. 17271 of 2020 in/and
CRR No. 2920 of 2019 (O & M)
Date of decision: 27.07.2020

M/s. Piyush Infrastructure Pvt. Ltd. and another ....Petitioner(s)

Versus

Shyam Lal ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Aditya Jain, Advocate,
for the applicant-petitioner.

Ms. Tanisha Peshawaria, DAG, Haryana.

(Proceedings are conducted through video conferencing as per instructions).

G.S.SANDHAWALIA, J.

Crl. Misc. No. 17271 of 2020

Application for pre-ponement of the main case from 22.09.2020 is allowed, in view of averments made in the application.

Hearing of the main case is preponed from 22.09.2020 to today and the same is taken up for hearing today itself.

Crl. Misc. No. 34312 of 2019

Notice in the application for condonation of delay of 40 days in filing the revision petition.

In view of averments made in the application, the application is allowed.

Delay condoned.

Main Case

The present revision petition filed under Section 401 Cr.P.C. is directed against the findings of the Courts below whereby, the petitioner has been convicted for a period of 6 months under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act'). The fine of Rs.3,75,000/-, which is 1.5 times of the cheque amount, approximately was also imposed upon him is to be recoverable under Sections 421, 431 Cr.P.C. The prayer for invoking the provisions under Section 427 Cr.P.C. for awarding the sentences to run concurrently alongwith 7 other cases was rejected by the Magistrate by holding that petitioner no. 2 Puneet Goyal is a Director of petitioner no. 1 and other cases had been filed by different complainants. The petitioner no. 2 has not paid the huge amount of compensation fine awarded to the complainants so far.

2. Resultantly, in the present revision petition, an application has also been filed under Section 427 Cr.P.C. read with Section 482 Cr.P.C. for directing the sentences awarded in this case to run concurrently with the previous sentences awarded in 25 other cases. In the revision, challenge is also raised to the judgment of the Appellate Court dated 05.04.2019 whereby, the appeal has such was rejected by holding the findings recorded by the Trial Court.

3. The gist of the case pertains to the bouncing of the cheque dated 19.11.2016 for Rs.2,50,000/- drawn on the Bank of Baroda due to insufficient funds, which was issued by the appellant-company and signed by petitioner no. 2 being the Director and being the authorized signatory. On the bouncing of the cheque on 05.12.2016, the memo was issued on 13.01.2017. Resultantly, legal notice dated 27.01.2017 (Ex.C-4) was served

upon the petitioners and, thereafter, the complaint under Section 138 of the Act was filed. No witness in defence was examined by the petitioners though the plea of defence was there that there was no agreement between the parties and, therefore, there was no legal enforceable liability qua the cheque in question arose. It was, thus, argued before the Courts below that the investment of the said amount in the petitioner no. 1-company was through an agent and no receipt or document had been placed on file to show on what basis, the amount had been advanced.

4. The Trial Court came to the conclusion that there was a presumption under the Act under Section 139 read with Section 118 of the Indian Evidence Act, 1872 which is rebuttable but the accused-petitioner no. 2 had not examined himself as a witness. Even in his statement under Section 263(g) Cr.P.C. he did not plead the actual transaction and neither the agent Jagbir had been examined. It was, thus, held that once the cheque had been signed by petitioner no. 2, it was for the petitioners to disclose as to what was the transaction which had led to the issuance of the cheque. The cheque had been issued by the authorized person and the petitioner no. 2 was the Director and even when he had received the legal notice, he had not replied to the same and, therefore, an inference as such had to be drawn against them. It was accordingly held that all the ingredients of Section 138 of the Act were fulfilled and, thus, the conviction was recorded while rejecting the prayer for running of the sentences concurrently with the 7 other cases.

5. In appeal, before the Sessions Judge, Faridabad, an additional point as such was raised that the company has not been impleaded as an accused. The same was rejected on the ground that legal notice was sent to

both the company and the Director. The Trial Court had summoned both and the sentencing was also for both the accused including the company to pay compensation. It was noticed that the appeal was also filed together and, therefore, it could not be held that the company has not been impleaded. It was also noticed that the cheque (Ex.C-1) had been filled up in a typed form and was not hand written and it had been put to the petitioner no. 2 that whether he had issued the cheque. The same had been replied that the actual transaction had not been mentioned by the complainant and there was no agreement between the parties and, therefore, no enforceable debt existed against the company. It was held that the case of the complainant was that he had put in the money for being invested in the project with the hope of getting good profit. Thus, it was for the accused to explain how the cheque bearing signatures of petitioner no. 2 had reached the complainant if there was no transaction. The legal notice had been sent on 27.01.2017 under registered post as per the receipts (Exs. C-5 to C-8) and the petitioner no. 2 had not denied that he had not received a legal notice or that the address mentioned in the notice was not correct. The response as such to the same had not been given and, thus, it was held that it was necessary for the accused to respond to the legal notice by explaining the actual transaction. Resultantly, the sentence of 6 months and the compensation was upheld. However, it is apparent that the issue of concurrent running of sentences as such was not addressed by the Appellate Court though challenge was raised in the grounds of appeal that the application under Section 427 Cr.P.C. had been dismissed.

6. A perusal of the judgments of the Courts below would go on to show that there is no perversity or illegality as such in the conviction which

has been recorded as admittedly, on account of bouncing of the cheque on account of insufficient funds led to the same. The legal notice had been duly served upon both the petitioners. As noticed, there was no reply as to what was the defence of the petitioners and why the amount was not payable and whether there existed any pre-existing liability or not. It was the bounden duty as such of the petitioners to put forth their defence at the initial stage before the complaint had been filed and then substantiate it by way of evidence, if any. The defence raised was that the money had been invested through an agent namely Jagbir and the cheque in question had also been given to Jagbir but the said agent was never examined by the complainant also. Once the cheque had been issued and bounced on account of insufficient funds, presumption arose under Section 139 that the same was on account of a pre-existing liability for which the cheque had been issued for a legally enforceable debt. The cheque having been signed by the petitioner no. 2, thus, made him liable for conduct of the business of the company and was attributable to the neglect on part of petitioner No.2 under Section 141 and, therefore, it cannot be held that there is any impropriety in the judgments to that extent. Therefore, there is no scope for interference in the revisional jurisdiction and the present revision petition is accordingly dismissed qua the merits of the case.

7. Counsel for the petitioner has, however, vehemently submitted that there are as many as 25 cases in which conviction has been recorded and, therefore, the benefit under Section 427 Cr.P.C., should be granted. The details of the cases which have been mentioned in the application bearing Crl. Misc. No. 34313 of 2019 are as under:-

S.No.	Case No.	Title	Court
1.	NACT/2389/2016	Lokesh Arora versus M/s Piyush Colonisers Ltd.	Sh. Jitender Kumar, JMIC, Faridabad.
2.	NACT/2913/2016	Ajay Khutala versus M/s Piyush Infrastructure	Sh. Pardeep Kumar, JMIC, Faridabad.
3.	NACT/2914/2016	Mahipal versus M/s Piyush Infrastructure	Sh. Jitender Kumar, JMIC, Faridabad.
4.	NACT/3918/2016	Rekha Singh versus Piyush Infrastructure	Sh. Rakesh Kumar, JMIC, Faridabad.
5.	NACT/3919/2016	Rekha versus Punee Goel	Sh. Rakesh Kumar, JMIC, Faridabad.
6.	NACT/2929/2016	Amrit Lal versus Piyush Infrastructure	Sh. Rakesh Kumar, JMIC, Faridabad.
7.	NACT/5138/2016	Sujata Goneka versus Piyush Infrastructure	Sh. Amit Sihag, JMIC, Faridabad.
8.	NACT/587/2017	Sujata Goneka versus Piyush Infrastructure	Sh. Amit Sihag, JMIC, Faridabad.
9.	NACT/4457/2016	Gajender Sharma versus Piyush Infrastructure	Sh. Amit Sihag, JMIC, Faridabad.
10.	NACT/3576/2016	Bhagwan Dass versus Piyush Colonisers	Sh. Jitender Kumar, JMIC, Faridabad.
11.	NACT/3146/2016	Bhagwan Dass versus Piyush Colonisers	Sh. Jitender Kumar, JMIC, Faridabad.
12.	NACT/1488/2017	Naresh Kumar versus Piyush Coloniser Ltd.	Sh. Pardip Kumar, JMIC, Faridabad.
13.	NACT/4397/2016	Hemlata Kukreja versus Piyush Shelters	Sh. Amit Sihag, JMIC, Faridabad.
14.	NACT/5359/2017	Kamani versus Piyush Infrastructure	Sh. Jitender Kumar, JMIC, Faridabad.
15.	NACT/3229/2017	Sonu versus Piyush Infrastructure	Sh. Jitender Kumar, JMIC, Faridabad.
16.	NACT/17/2018	Dharambir versus Piyush Infrastructure	Sh. Jitender Kumar, JMIC, Faridabad.
17.	NACT/3930/2016	Balwan Singh versus Piyush Colonisers Ltd.	Sh. Rakesh Kumar, JMIC, Faridabad.
18.	NACT/113/2017	Deepa Gupta versus Piyush Colonisers Ltd.	Sh. Jitender Kumar, JMIC, Faridabad.
19.	NACT/310/2017	Raj Bala versus Piyush Colonisers Ltd.	Sh. Jitender Kumar, JMIC, Faridabad.
20.	NACT/4386/2016	Virender versus Puneet Goel	Sh. Pardeep Kumar, JMIC, Faridabad.
21.	NACT/3/2017	Ajay Khutela versus Piyush Infrastructure	Sh. Pardeep Kumar, JMIC, Faridabad.

22.	NACT/4692/2017	Rajpal versus Piyush Infrastructure	Sh. Pardeep Kumar, JMIC, Faridabad.
23.	NACT/5061/2017	Dharambir versus Piyush Shelters	Sh. Pardeep Kumar, JMIC, Faridabad.
24.	NACT/3711/2017	S.D. Build versus Piyush Infrastructure	Sh. Pardeep Kumar, JMIC, Faridabad.
25.	NACT/3110/2017	Bhupender versus Piyush Smart Traders	Sh. Pardeep Kumar, JMIC, Faridabad.

8. However, the moot and interesting question which arises as such is as to whether the benefit of concurrent running of sentences should be given to the petitioner in view of the fact that he has been sentenced in 25 other cases, the chart of which has been reproduced above.

9. Section 427 Cr.P.C. provides for such benefit which gives discretion upon the Court whether the sentence is to run concurrently with such previous sentence or that it is to commence at the expiration of the imprisonment to which he has been previously sentenced. The provisions of Section 427 Cr.P.C. read thus:-

> *"427. **Sentence on offender already sentenced for another offence**- (1) When an person already undergoing 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.*
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> *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."*

10. The Apex Court in ***Mohd. Akhtar Hussain vs. Assistant Collector of Customs, 1988 (4) SCC 183*** held that the concurrent running of sentences is recognized if the conviction arises out of a single transaction. It was further observed that the said benefit would have no application if the transaction relating to offences is not the same or the facts constituting the two offences are different. The relevant portion of the judgment reads thus:-

> *"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."*

11. In the case of ***State of Maharashtra and another Vs. Najakat Ali Mubarak Ali, AIR 2001 SC 2255***, the Apex Court considered the provisions of Section 427 Cr.P.C, and came to the conclusion that the provisions were intended to provide amelioration to the prisoners.

12. The said aspect was also noticed by the Full Bench of this Court in the case of ***Jang Singh Vs. State of Punjab, 2008 (1) RCR (Criminal) 323***, wherein it has been noticed that habitual offenders should not be given same treatment as given to normal offenders. Each case was to

be decided depending upon the facts, nature and gravity and, therefore, principle of segregation was accepted between habitual offenders and first time offenders. It was held that it is permissible to make an application under Section 427 Cr.P.C.

13. In the present case, it is to be seen that the present conviction is a stand alone conviction qua the complainant Shyam Lal. Nothing from the table above would go on to show that the said complainant had also preferred any other complaint whereby he had been successful against the petitioners. Therefore, the sentences pertaining to the same complainant could not run concurrently and, therefore, the benefit is not liable to be granted to the petitioner as it is not a case of a single transaction.

14. In the case of ***State of Punjab Vs. Madan Lal, 2009 (5) SCC 238,*** the benefit was granted by this Court in similar circumstances whereby conviction was recorded under Section 138 of the Act and was challenged by the State. It was noticed that the transactions related to the family of the accused respondent and different cheques had been issued to the complainant party and separate complaints had been filed, which had resulted in convictions by different Courts. The said view was not interfered by and the said appeal of the State was, accordingly, dismissed, keeping in mind the judgment of the Apex Court in **Najakat Ali's case (supra)**

15. A similar issue came up before the Apex Court in ***V.K. Bansal vs. State of Haryana and others, 2013 (7) SCR 617.*** In the said case, this Court had declined the prayer made by the appellant therein for directions to award the sentence and for the same to run concurrently under Section 138 of the Act also. It was noticed by the Apex Court that the appellant in the

said case was a Director in a group of companies who had approached the Haryana Financial Corporation for financial assistance and facilities. The cheques issued by the Corporation had bounced leading to various complaints filed by the Corporation which led in sentencing of the appellant in different complaints varying from 6 months to one year alongwith different amounts of fine and default sentences in the event of non-payment of amounts. In some of the cases, the sentence had been reduced to 9 months by the Appellate Court. Eventually, this Court had dismissed 15 out of the 17 revision petitions and declined the concurrent running of the sentences on the ground that once a huge amount was payable, the sentence could not be said to be excessive.

16. Resultantly, the Apex Court noticed that it was a discretionary power to be exercised alongwith judicial lines and not in a mechanical, wooden or pedantic manner and there was no cut or dried formula. It would depend upon the facts of the given case and the nature of the offence committed and it was for the benefit of the prisoner in the case where prosecution is based on single transaction in different complaints. Resultantly, it was held that the cheques which had been dishonored by the borrowing company should be arising out of the single loan transaction to justify directions for concurrent running of the sentences. However, distinction was made where the sentence had also been imposed qua the cheques which had bounced issued in favour of State Bank of Patiala, which was a transaction independent of any loan or financial assistance between the State Financial Corporation and the borrowing companies.

17. Thus, the appeals were allowed partly by holding that the sentences awarded pertaining to the complaints of the Haryana Financial

Corporation and the loan relating to Aravali Tubes and Aravali Alloys were to run concurrently. However, the sentences awarded whereby conviction had been recorded in the complaint filed by State Bank of Patiala towards the cheques offered by Sabhyata Plastics and M/s Rahul Plastics were to run consecutively in terms of Section 427 Cr.P.C. The relevant portion reads thus:-

> *"15. In conclusion, we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor.*
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> *16. Applying the above test to the 15 cases at hand we find that the cases against the appellant fall in three distinct categories. The transactions forming the basis of the prosecution relate to three different corporate entities who had either entered into loan transactions with the State Financial Corporation or taken some other financial benefit like purchase of a cheque from the appellant that was on presentation dishonoured. The 15 cases that have culminated in the conviction of the appellant and the award of sentences of imprisonment and fine imposed upon him may be categorised as under:*
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> *1) Cases in which complainant-Haryana State Financial Corporation advanced a loan/banking facility to M/s Arawali Tubes Ltd. acting through the appellant as its Director viz. No.269-II/97; No.549-II/97; No.393-II/97; No.371-II/97; No.372-II/97; No.373-II/97; No.877-II/96; No.880-II/96; No.878-II/96; No.876-II/96; No.879-II/96; No.485-II/96*

2) Cases in which complainant-Haryana State Financial Corporation advanced a loan/banking facility to the appellant to M/s Arawali Alloys Ltd. acting through the appellant as its Director viz. No.156-II/1997 and No.396-II/1998

3) Criminal complaint No. 331-II/97 in which complainant- State Bank of Patiala purchased/discounted the cheque offered by Sabhyata Plastics acting through the appellant as its Director.

17. Applying the principle of single transaction referred to above to the above fact situations we are of the view that each one of the loan transactions/financial arrangements was a separate and distinct transaction between the complainant on the one hand and the borrowing company/appellant on the other. If different cheques which are subsequently dishonoured on presentation, are issued by the borrowing company acting through the appellant, the same could be said to be arising out of a single loan transaction so as to justify a direction for concurrent running of the sentences awarded in relation to dishonour of cheques relevant to each such transaction. That being so, the substantive sentence awarded to the appellant in each case relevant to the transactions with each company referred to above ought to run concurrently. We, however, see no reason to extend that concession to transactions in which the borrowing company is different no matter the appellant before us is the promoter/Director of the said other companies also. Similarly we see no reason to direct running of the sentence concurrently in the case filed by the State Bank of Patiala against M/s Sabhyata Plastics and M/s Rahul Plastics which transaction is also independent of any loan or financial assistance between the State Financial Corporation and the borrowing *companies. We make it clear that the direction regarding concurrent running of sentence shall be limited to the substantive sentence only. The sentence which the appellant has been directed to undergo in default of payment of fine/compensation shall not be affected by this direction. We do so because the provisions of Section 427 of the Cr.P.C. do not, in our opinion, permit a direction for the concurrent running of the substantive sentences with sentences awarded in default of payment of fine/compensation.*

18. In the result, these appeals succeed but only in part and to the following extent:

1) Substantive sentences awarded to the appellant by the Courts of Judicial Magistrate, First Class, Hissar and Additional Chief Judicial Magistrate, Hissar, in Criminal complaint cases No.269-II/97; No.549-II/97; No.393- II/97; No.371-II/97; No.372-II/97; No.373-II/97; No.877-II/96; No.880- II/96; No.878-II/96; No.876-II/96; No.879-II/96; No.485-II/96 relevant to the loan transaction between Haryana Financial Corporation and Arawali Tubes shall run concurrently.

2) Substantive sentences awarded to the appellant by the Court of Judicial Magistrate, First Class, Hissar in Criminal complaint cases No.156- II/1997 and No.396-II/1998 between Haryana Financial Corporation and Arawali Alloys relevant to the transactions shall also run concurrently;

3) Substantive sentences inter se by the Court of Judicial Magistrate, First Class, Hissar in the above two categories and that awarded in complaint case No.331-II/97 shall run consecutively in terms of Section 427 of the Code of Criminal Procedure.

4) No costs.

18. The present case, thus, squarely falls within the ambit of the

above said observations. The transaction entered into with the respondent-complainant is a different transaction whereas the other convictions recorded against the petitioners were preferred by different complainants and, therefore, the petitioner cannot as such seek benefit in the present revision petition as there is no other conviction recorded at the behest of the present respondent-complainant in similar circumstances. As per the custody certificates, counsel for the appellant has submitted that he has been in custody since 05.04.2019 in the present case. The said fact is, however, incorrect as per the custody certificate furnished by the State which would go on to show that the sentence which has been upheld by the order of the Sessions Judge, Faridabad on 05.04.2019 is yet to be undergone as per the custody certificate dated 25.07.2020. The petitioner, as per the said certificate, has undergone the sentence in complaint no. 2354 dated 23.12.2016, which was passed by the Court of Sh. Pardeep Kumar, Judicial Magistrate, Ist Class, Faridabad on 25.07.2018 and the sentence expired on 24.07.2020. He is, thus, undergoing the sentence in criminal complaint no. NACT 3930/2016, which is mentioned at Sr. No. 17 of the above table whereby, he has been convicted for three months on 29.01.2019 and which was upheld on 05.10.2019. In such circumstances, the sentence in the present case is yet to start.

19. Resultantly, keeping in view the above discussion, the prayer for running of the sentences concurrently with the above mentioned 25 cases is declined while dismissing the revision petition.

27.07.2020 **(G.S. SANDHAWALIA)**
shivani **JUDGE**

Whether reasoned/speaking Yes/No
Whether reportable Yes/No