

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

Judgment reserved on : 20.05.2022
Judgment pronounced on : 01.06.2022

CRR No. 3415 OF 2019 (O&M)

YOGESH KUMARPetitioner

Versus

STATE OF PUNJAB AND ANOTHER ...Respondents

2. **CRR No. 3411 OF 2019 (O&M)**

YOGESH KUMARPetitioner

Versus

STATE OF PUNJAB AND ANOTHER ...Respondents

3. **CRR No. 3406 OF 2019 (O&M)**

YOGESH KUMARPetitioner

Versus

STATE OF PUNJAB AND ANOTHER ...Respondents

4. **CRR No. 3403 OF 2019 (O&M)**

YOGESH KUMARPetitioner

Versus

STATE OF PUNJAB AND ANOTHER ...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by: Mr. Raj Kumar Gupta, Advocate and
Mr. Rajiv Rathor, Advocate for the petitioner (s)
in all the petitions.

Ms.Amarjit Kaur Khurana, DAG, Punjab.

Mr. Chanakya Batta, Advocate and
Mr. Parshotam Lal Singla, Advocate
for respondent No.2.

VINOD S. BHARDWAJ. J.

1. The point for consideration in the instant petition is as to whether the sentences should be ordered to be run concurrently under Section 427 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Cr.P.C.”) where the petitioner-accused is being prosecuted for having issued four different cheques in discharge of his liability and four independent complaints have been filed relating to dishonour of each cheque.

2. Before proceeding further into the matter, a brief reference to the facts arising in each revision petition is being referred to as under:

CRR No.	Complaint No./Title/Offence/Cheque No. and date/Amount	Judgment of Trial Court and Sentence	Judgment of Appellate Court and sentence	Actual Sentence undergone
CRR-3403-2019 (O&M)	COMA 18/2 dated 10.03.2014 Parveen Kumar versus Yogesh Kumar Section 138 of Negotiable Instruments Act Cheque No.000310 dated 01.02.2014 for amount of Rs.9,00,000/-	Date of decision: 12.06.2017 Rigorous imprisonment for 01 (one) year.	Criminal Appeal No.47, date of decision dated 01.11.2019 in CRR No.673 of 2017 Compensation to the tune of Rs.9,00,000/- to the complainant. Rigorous imprisonment for 01 (one) year.	01 year and 08 months
CRR-3406-2019 (O&M)	COMA 15 dated 01.03.2014 Parveen Kumar versus Yogesh Kumar Under Section 138 of Negotiable Instruments	Date of decision 12.06.2017 Rigorous imprisonment for 01 (one) year.	Criminal Appeal No.45, date of decision dated 01.11.2019 in CRR No.676 of 2017	-----

	Act Cheque No.000308 dated 18.01.2014 for amount of Rs.7,00,000/-		Compensation to the tune of Rs.7,00,000/- to the complainant. Rigorous imprisonment for 01 (one) year.	
CRR-3411-2019 (O&M)	COMA 19/2 dated 10.03.2014 Parveen Kumar versus Yogesh Kumar Under Section 138 of Negotiable Instruments Act Cheque No.000312 dated 11.02.2014 for amount of Rs.9,00,000/-	Date of decision 12.06.2017 Rigorous imprisonment for 01 (one) year.	Criminal Appeal No.46, date of decision dated 01.11.2019 in CRR No.675 of 2017 Compensation to the tune of Rs.9,00,000/- to the complainant. Rigorous imprisonment for 01 (one) year.	-----
CRR-3415-2019 (O&M)	COMA 223/2014 Parveen Kumar versus Yogesh Kumar Section 138 of Negotiable Instruments Act Cheque No.000314 dated 26.02.2014 for amount of Rs.9,00,000/-	Date of decision 12.06.2017 Rigorous imprisonment for 01 (one) year.	Criminal Appeal No.48, date of decision dated 01.11.2019 in CRR No.672 of 2017 Compensation to the tune of Rs.9,00,000/- to the complainant. Rigorous imprisonment	01 year and 07 months

			for 01 (one) year.	
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FACTS OF THE CASES

CRR-3403-2019 (O&M)

3. The case of the respondent-complainant is to the effect that the petitioner-accused being proprietor of M/s Sukhdev Money Changer, Anarkali Bazar, Ishar Chowk, Near Gurudwara Atma Singh, Jagraon, Tehsil Jagraon, District Ludhiana had borrowed a sum of Rs. 9,00,000/- in cash and that towards discharge of his liability/debt, the cheque No. 000310 dated 01.02.2014 drawn on HDFC Bank, Jagraon had been issued which was presented and dishonoured vide memo dated 03.02.2014 with the remarks “Stop Payment”. The petitioner-accused was convicted by the Judicial Magistrate First Class, Jagraon vide judgment dated 12.06.2017. The appeal preferred by the petitioner before the Court of Additional Sessions Judge, Ludhiana was dismissed vide judgment dated 01.11.2019.

CRR-3406-2019 (O&M)

4. The case of the respondent-complainant is to the effect that the petitioner-accused being proprietor of M/s Sukhdev Money Changer, Anarkali Bazar, Ishar Chowk, Near Gurudwara Atma Singh, Jagraon, Tehsil Jagraon, District Ludhiana had borrowed a sum of Rs. 7,00,000/- in cash and that towards discharge of his liability/debt, the cheque No. 000308 dated 18.01.2014 drawn on HDFC Bank, Jagraon had been issued. Upon presentation of the said cheque on 20.01.2014, the same was dishonoured with the remarks “Stop Payment”. Upon consideration of the respective evidence led by the parties, the petitioner was convicted by the Judicial

Magistrate First Class, Jagraon vide judgment dated 12.06.2017. Aggrieved thereof, an appeal was preferred by the petitioner-accused before the Court of Additional Sessions Judge, Ludhiana, however, the said appeal was also dismissed vide judgment dated 01.11.2019.

CRR-3411-2019 (O&M)

5. The case of the respondent-complainant in the present complaint was to the effect that the petitioner-accused had borrowed a sum of Rs, 9,00,000/- in cash and that towards discharge of his liability/debt, the cheque No. 000312 dated 11.02.2014 drawn on HDFC Bank, Jagraon had been issued. However, the same was dishonoured with the remarks "Stop Payment". It is contended that the petitioner-accused was the proprietor of M/s Sukhdev Money Changer, Anarkali Bazar, Ishar Chowk, Near Gurudwara Atma Singh, Jagraon, Tehsil Jagraon, District Ludhiana. The petitioner-accused was convicted vide judgment dated 12.06.2017 passed by the Judicial Magistrate First Class, Jagraon and appeal preferred by the petitioner was dismissed by Additional Sessions Judge, Ludhiana vide judgment dated 01.11.2019.

CRR-3415-2019 (O&M)

6. The case of the respondent-complainant in the present complaint is to the effect that the petitioner-accused being the proprietor of M/s Sukhdev Money Changer Anarkali Bazar, Ishar Chowk, Near Gurudwara Atma Singh, Jagraon, Tehsil Jagraon, District Ludhiana had borrowed a sum of Rs, 9,00,000/- in cash and that towards discharge of his liability/debt, the cheque No. 000314 dated 26.02.2014 drawn on HDFC

Bank, Jagraon had been issued. The said cheque was dishonoured on its presentation on 27.02.2014 with the remarks "Stop Payment". The petitioner-accused was convicted vide judgment dated 12.06.2017 passed by Judicial Magistrate First Class, Jagraon and the appeal preferred by the petitioner before the Court of Additional Sessions Judge, Ludhaia was dismissed vide judgment dated 01.11.2019.

7. Along with respective revision petitions, an application along with Section 427 read with Section 482 Cr.P.C. was also filed with a prayer that the sentence awarded in each case should be ordered to run concurrently.

8. Learned counsel for the petitioner made a statement at the bar that he does not wish to contest the judgments and gives up his challenge to the judgments on merits of the case and that instead the Court considers the issue regarding the concurrent running of the sentences in all the cases. Reference is also made to the custody certificate to argue that the petitioner has already undergone his entire sentence in one of the case i.e. Criminal Appeal No. 47 dated 12.07.2017 and is concurrently undergoing sentence in Criminal Appeal No.48 dated 12.07.2017. He has undergone an actual sentence of 01 month and 07 days as on 23.02.2022.

9. In view thereof, the case was heard only with respect to the sentence and the entitlement of the petitioner to pray for concurrent running of the same. Learned counsel appearing on behalf of the petitioner has submitted that all the 04 cheques of a total amount of Rs.34 lakhs had been issued in discharge of a single consolidated liability and as such, irrespective of the different dates mentioned in the cheque, they must be read as a part of

one single transaction. He further shows his argument by inheritance to the immediate proximity of the cheque numbers and the dates on which the said cheques had been issued to contend that it is not the case set up by the respondent-complainant that the cheques in question had been issued in discharge of distinct and separate liabilities that accrued at different point of time. Rather, the consolidated amount of Rs. 34 lakhs found to be due against the petitioner was discharged by means of issuance of 04 different cheques of separate denominations. 03 cheques were issued for a sum of Rs. 9,00,000/- each while one cheque was issued for a sum of Rs. 7,00,000/-. He thus contends that the liability having been crystallized, the issuance of the cheques would invariably form a part of the same or single comprehensive transaction and should not be regarded as commission of separate and distinct offences. Resultantly, the sentence ought to be ordered to run concurrently. He had placed reliance on the judgment of Hon'ble Supreme Court of India in the matter of *"V.K. Bansal versus State of Haryana and another"* reported as (2013) 7 Supreme Court Cases 211.

10. To the contrary, counsel for respondent has opposed the prayer made on behalf of the petitioner and has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *"Nagpal Traders versus Davinder Singh"* reported as 2014 (4) R.C.R (Criminal) 96 to contend that no undue leniency should be shown to any accused in awarding the sentence. It was pointed out that in the said case, the High Court had directed the sentences to run concurrently and that the said judgment was set aside by the Hon'ble Supreme Court and the sentence imposed by the Trial Court was restored. Furthermore, reliance was placed on the judgment of Rajasthan High Court in the matter of *"Bhanu Prakash versus State & Others"* in

S.B. Criminal Misc. (Pet.) No. 1345/2016 decided on 18.07.2017. A further reliance was also placed on the judgment of “M.R. Kudva versus State of Andhra Pradesh” reported as 2007 (1) RCR (Criminal) 868. However, upon being confronted that the said judgment has been passed in a context where a separate petition under Section 427 Cr.P.C. read with Section 482 Cr.P.C. has been filed and the Court was not seized of the matter in exercise of its appellate or revisional jurisdiction, learned counsel appearing on behalf of the respondent fairly conceded that ratio of the above judgment would not be applicable to the facts of the instant case.

11. I have considered the rival submissions advanced on behalf of the respective parties and have gone through the case law cited by them.

12. In order to appreciate the submissions made by the respective counsels, it is essential to make a reference to Section 427 Cr.P.C. which is reproduced as under:

“427. Sentence on offender already sentenced for another offence.

(1). When a person already undergoing a 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: 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.

13. A perusal of the same shows that when a person who is already undergoing a sentence and is liable to undergo a subsequent imprisonment on conviction, the Court may direct the sentence to run concurrently with such previous sentence, or the sentence shall start after expiration of the first sentence.

The question which thus arises for consideration is as to under what justifying circumstances should the Court issue a direction for the sentences to run concurrently.

PRECEDENT JUDGMENTS ON CONCURRENT RUNNING OF SENTENCES

14. In this regard, it would be essential to advert to precedents on the subject. The said aspect was examined by the Hon'ble Supreme Court of India in the matter of **"Mohd. Akhtar Hussain versus Asstt. Collector, Customs (Prevention), Ahmedabad in Criminal Appeal No. 467 of 1988 "**

The Hon'ble Supreme Court, while dealing with the Section 427 held as under:

"10. The Section relates to administration of criminal justice and provides procedure for sentencing. The sentencing court is, therefore, required to consider and make an appropriate order as to how the sentence passed in the subsequent case is to run. Whether it should be concurrent or consecutive ?

11. *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.*

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18. *It is no doubt that the enormity of the crime committed by the accused is relevant for measuring the sentence. But the maximum sentence awarded in one case against the same accused is not irrelevant for consideration while giving the consecutive sentence in the second case although it is grave. The Court has to consider the totality of the sentences which the accused has to undergo if the sentences are to be consecutive. The totality principle has been accepted as correct principle for guidance. In R. v. Edward Charles French, [1982] Cr. App. R. (S) p. 1 (at 6), Lord Lane, C.J., observed :*

"We would emphasize that in the end, whether the sentences are made consecutive or concurrent the sentencing judge should try to ensure that the totality of the sentences is correct in the light of all the circumstances of the case."

15. Furthermore, in the matter of **“V.K. Bansal versus State of Haryana and another”** reported as **(2013) 7 Supreme Court Cases 211** held as under:

“13. There are also cases where the High Courts have depending upon whether facts forming the basis of prosecution arise out of a single transaction or transactions that are akin to each other directed that the sentences awarded should run

concurrently. As for instance the High Court of Allahabad has in Mulaim Singh v. State directed the sentence to run concurrently since the nature of the offence and the transactions thereto were akin to each other. Suffice it to say that the discretion vested in the Court for a direction in terms of Section 427 can and ought to be exercised having regard to the nature of the offence committed and the facts situation, in which the question arises.

15. In. Madan Lal's case this Court relied upon the decision in Akhtar Hussain's case and affirmed the direction of the High Court for the sentences to run concurrently. That too was a case under Section 138 of the Negotiable Instruments Act. The State was aggrieved of the direction that the sentences shall run concurrently and had appealed to this Court against the same. This Court, however, declined interference with the order passed by the High Court and upheld the direction issued by the High Court.

16. 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.

16. Similarly, in the matter of **"Sunil Kumar @ Sudhir Kumar and another versus the State of Uttar Pradesh"** bearing **Criminal Appeal No. 526 of 2021** dated 25.05.2021, the Hon'ble Supreme Court held as under:

*"7.1. The learned counsel has contended, while relying on the decisions in **Nagaraja Rao v. Central Bureau of Investigation: (2015) 4 SCC 302** and **Gagan Kumar v. State of Punjab: (2019) 5 SCC 154**, that it is obligatory for the Court awarding punishments to specify whether they shall be running*

*concurrently or consecutively; and the omission on the part of the Trial Court and the High Court, to state the requisite specifications, cannot be allowed to operate detrimental to the interests of the accused-appellants. The learned counsel has contended that though as per the mandate of Section 31 CrPC, unless specified to run concurrently, the sentences do run consecutively but, for that purpose, the Court is required to direct the order in which they would run; and no such direction having been given by the Trial Court or by the High Court, it cannot be said that the Courts were consciously providing for consecutive running of sentences. Further, with reference to the decision in **O.M. Cherian alias Thankachan v. State of Kerala & Ors.: (2015) 2 SCC 501**, the learned counsel would urge that it is not the normal rule that multiple sentences are to run consecutively.*

*7.2. The learned counsel Mr. Pai has also attempted to adopt another line of argument that concurrent or consecutive running of sentences is also to be governed by 'single transaction' principle, as discernible from a combined reading of Sections 31(1) and 220(1) CrPC. In this regard, apart from the aforesaid decisions in **Nagaraja Rao** and **Gagan Kumar**, the learned counsel has also relied upon the decisions in **Mohan Baitha & Ors. v. State of Bihar & Anr.: (2001) 4 SCC 350**; **Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti v. Assistant Collector of Customs (Prevention), Ahmedabad & Anr.: (1988) 4 SCC 183**; and **Manoj alias Panju v. State of Haryana: (2014) 2 SCC 153** and has submitted that looking to the nature of accusation, there was no reason for the Courts to direct consecutive running of sentences in the present case.*

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8.2. The learned AAG has also submitted that the principles related with commission of offences in a single transaction do

*not lead to the proposition that different sentences in relation to multiple offences shall invariably be running concurrently; and has referred to the enunciations in **O.M. Cherian** (supra). The learned AAG has further referred to the Constitution Bench decision in the case of **Muthuramalingam** (supra) to submit that except life imprisonments, the other term sentences awarded by the Court for several offences do run consecutively, unless directed otherwise.*

8.3. The learned AAG for the State would submit that concurrent running of sentences, as provided in any particular case, relates to the facts and circumstances pertaining to that case and the appellants cannot claim any parity for concurrent running of sentences with reference to any other decided case, even if relating to the offences of similar nature. The learned AAG would argue that in the present case, looking to the nature and gravity of offences, the Trial Court has exercised its discretion in not directing concurrent running of sentences, which only means that the sentences are to run consecutively; and that an omission on the part of the Trial Court in not specifying the order of running cannot mean that the sentences are to run concurrently

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*10. The contentions urged in this matter essentially revolve around the provisions contained in Section 31(1) CrPC. The contours of these provisions have been succinctly delineated and explained by this Court in the case of **O.M. Cherian** (supra) in the following terms: -*

“20. Under Section 31 CrPC it is left to the full discretion of the court to order the sentences to run concurrently in case of conviction for two or more offences. It is difficult to lay down any straitjacket

approach in the matter of exercise of such discretion by the courts. By and large, trial courts and appellate courts have invoked and exercised their discretion to issue directions for concurrent running of sentences, favouring the benefit to be given to the accused. Whether a direction for concurrent running of sentences ought to be issued in a given case would depend upon the nature of the offence or offences committed and the facts and circumstances of the case. The discretion has to be exercised along the judicial lines and not mechanically.

21. Accordingly, we answer the reference by holding that Section 31 CrPC leaves full discretion with the court to order sentences for two or more offences at one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances. We do not find any reason to hold that normal rule is to order the sentence to be consecutive and exception is to make the sentences concurrent. Of course, if the court does not order the sentence to be concurrent, one sentence may run after the other, in such order as the court may direct. We also do not find any conflict in the earlier judgment in Mohd. Akhtar Hussain and Section 31 CrPC.”

*10.1. In **Muthuramalingam** (supra), the basic question before the Constitution Bench was as to whether consecutive life sentences could be awarded to a convict on being found guilty of a series of murders, for which, he had been tried in a single trial. In the course of determination of this question, the Constitution Bench dealt with several dimensions of sentencing, particularly those relating to multiple sentences and observed, inter alia, that,-*

“23.....So interpreted Section 31(1) CrPC must mean that sentences awarded by the court for several

offences committed by the prisoner shall run consecutively (unless the court directs otherwise) except where such sentences include imprisonment for life which can and must run concurrently....”

10.2. Thus, it is beyond a shadow of doubt that Section 31(1) CrPC vests complete discretion with the Court to order the sentences for two or more offences at one trial to run concurrently having regard to the nature of offences and the surrounding factors. Even though it cannot be said that consecutive running is the normal rule but, it is also not laid down that multiple sentences must run concurrently. There cannot be any straitjacket approach in the matter of exercise of such discretion by the Court; but this discretion has to be judiciously exercised with reference to the nature of the offence/s committed and the facts and circumstances of the case. However, if the sentences (other than life imprisonment) are not provided to run concurrently, one would run after the other, in such order as the Court may direct.

*11. For what has been provided in Section 31(1) CrPC read with the expositions of this Court, it follows that the Court of first instance is under legal obligation while awarding multiple sentences to specify in clear terms as to whether they would run concurrently or consecutively. In the case of **Nagaraja Rao** (supra), this Court expounded on this legal obligation upon the Court of first instance in the following terms:-*

11. The expressions “concurrently” and “consecutively” mentioned in the Code are of immense significance while awarding punishment to the accused once he is found guilty of any offence punishable under IPC or/and of an offence punishable under any other Special Act arising out of one trial or more. It is for the reason that award of former enure to the benefit of the accused whereas award of latter is detrimental to the

accused's interest. It is therefore, legally obligatory upon the court of first instance while awarding sentence to specify in clear terms in the order of conviction as to whether sentences awarded to the accused would run "concurrently" or they would run "consecutively."

12. *As noticed, if the Court of first instance does not specify the concurrent running of sentences, the inference, primarily, is that the Court intended such sentences to run consecutively, though, as aforesaid, the Court of first instance ought not to leave this matter for deduction at the later stage. Moreover, if the Court of first instance is intending consecutive running of sentences, there is yet another obligation on it to state the order (i.e., the sequence) in which they are to be executed. The disturbing part of the matter herein is that not only the Trial Court omitted to state the requisite specifications, even the High Court missed out such flaws in the order of the Trial Court.*

13. *Even when we find the aforementioned shortcomings in the orders passed by the Trial Court as also by the High Court, the question is as to whether the sentences awarded to the appellants could be considered as running concurrently? As noticed, the omission to state whether the sentences awarded to the accused would run concurrently or would run consecutively essentially operates against the accused because, unless stated so by the Court, multiple sentences run consecutively, as per the plain language of Section 31(1) CrPC read with the expositions in **Muthuramalingam and O.M. Cherian** (supra). The other omission to state the order of consecutive running cannot ipso facto lead to concurrent running of sentences.*

14. *Faced with the position that the stated omissions will not, by themselves, provide a room for concurrent running of sentences, learned counsel for the appellants has endeavoured to invoke the 'single transaction' principle. In our view, the*

said principle is essentially referable to Section 220 CrPC, which provides that if more offences than one are committed in one series of acts so connected together as to form the same transaction, then the accused may be charged with and tried at one trial for every such offence. In a given case, after such trial for multiple offences, if the accused is convicted and awarded different punishments, concurrent running thereof may be provided depending on the facts and the relevant surrounding factors. We are afraid, the principle related with 'single transaction' cannot be imported for dealing with the question at hand.

*14.1. In the case of **Mohan Baitha** (supra), this Court observed that the expression 'same transaction', from its very nature, is incapable of an exact definition and it is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. The question involved in that case did not relate to sentence but to the inquiry and trial of different offences pertaining to Sections 304-B, 498-A, 120-B and 406 IPC and territorial jurisdiction of the Magistrate in Bihar when the alleged incident constituting one of the offences, i.e., under Section 304-B IPC, had taken place in the State of Uttar Pradesh. Of course, in the case of **Mohd. Akhtar Hussain** (supra), this Court indicated that if a transaction constitutes two offences under two enactments, generally it is wrong to have consecutive sentences but this Court hastened to observe that such a rule shall have no application if the transaction relating to the offences is not the same or the facts concerning the two offences are quite different. Significantly, in that case, consecutive running of sentences awarded to accused-appellant, in two different cases pertaining to the Gold (Control) Act, 1968 and the Customs Act, 1962, was upheld by this Court with the finding that the two offences for which the appellant was prosecuted were 'quite distinct and different'.*

The only modification ordered by this Court was concerning the term of imprisonment for the latter conviction while disapproving its enhancement from 4 years to 7 years by the High Court after noticing that he was already sentenced to imprisonment for a term of 7 years in the first offence. The trial and conviction in the case of Manoj alias Panju (supra) had been for offence under Section 307 IPC as also under Sections 25 and 27 of the Arms Act. In the case of Nagaraja Rao (supra), the trial and conviction had been of offences under Section 381 IPC and Section 52 of the Post Office Act, 1898. In the case of Gagan Kumar (supra), offences were under Sections 279 and 304-A IPC. These decisions, essentially proceeding on their own facts, do not make out a case for interference in favour of the appellants.

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*21. While closing on the matter, we deem it appropriate to reiterate what was expounded in the case of **Nagaraja Rao (supra)**, that it is legally obligatory upon the Court of first instance, while awarding multiple punishments of imprisonment, to specify in clear terms as to whether the sentences would run concurrently or consecutively. It needs hardly an emphasis that any omission to carry out this obligation by the Court of first instance causes unnecessary and avoidable prejudice to the parties, be it the accused or be it the prosecution.”*

17. While reiterating the principles expounded in the case of **“Nagaraja Rao versus CBI” reported as (2015) 4 SCC 302**, the Hon’ble Supreme Court stated that it is legally obligatory upon the Court of first instance while awarding multiple punishments to specify as to whether the sentences are to run concurrently or consecutively.

18. In the matter of **“State of Punjab versus Madan Lal”** bearing **Criminal Appeal No. 529 of 2004** decided on 05.03.2009, the accused was convicted in 03 complaints filed under Section 138 of Negotiable Instruments Act, 1881. The High Court ordered the sentence to run concurrently in all the 03 cases. The said order of the High Court was upheld by the 3-Judge Bench of the Supreme Court.

19. At the same time, it would be appropriate to make a reference to the judgment cited by the respondent titled as **“Nagpal Traders versus Davinder Singh”** reported as **2014 (4) R.C.R. (Criminal) 96**. The same reads as follows :-

“9. We must first refer to the conduct of the Respondent. During the course of hearing of these appeals, we gave opportunity to the Respondent to pay the cheque amounts or at least to pay some amount to the complainant-firm because before the High Court the Respondent did not challenge his conviction. He only prayed for concurrency. Thus, he admitted his liability. We requested the Respondents counsel to contact the Respondent and communicate his response to us. The appeals were adjourned for that purpose. Today counsel for the Respondent made a statement that the Respondent is not in a position to pay any amount. The Respondent has not even cared to remain present in the court. We are unhappy with this approach of the Respondent. It is obvious that since the Respondent has undergone one years sentence, he is not willing to pay any amount to the complainant-firm. We shall, therefore, deal with the rival submissions. We find substance in the submission of learned Counsel that the High Court has shown undue leniency to the Respondent. No reasons have been assigned by the High Court for this approach. This Court has on several occasions cautioned the courts that undue leniency

should not be shown to the accused facing charges under Section 138 of the NI Act. We may usefully refer to the observations of this Court in Suganthi Suresh Kumar where this Court has expressed displeasure about courts imposing a flea-bite sentence on the accused in cases under Section 138 of the NI Act. Following paragraph could be usefully quoted:

"12. The total amount covered by the cheques involved in the present two cases was Rs. 4,50,000. There is no case for the Respondent that the said amount had been paid either during the pendency of the cases before the trial court or revision before the High Court or this Court. If the amounts had been paid to the complainant there perhaps would have been justification for imposing a flea-bite sentence as had been chosen by the trial court. But in a case where the amount covered by the cheque remained unpaid it should be the lookout of the trial Magistrates that the sentence for the offence under Section 138 should be of such a nature as to give proper effect to the object of the legislation. No drawer of the cheque can be allowed to take dishonour of the cheque issued by him light-heartedly. The very object of enactment of provisions like Section 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter if the accused paid the amount at least during the pendency of the case."

The above observations are clearly attracted to this Case. It is not the case of the Respondent that he has paid any amount to the complainant-firm during the pendency of these cases. He has shown scant regard to this Courts wishes. The amount involved is about Rs.14,74,753/-. The Respondent should not have been, therefore, given a flea-bite sentence.

10. We may also refer to the judgment of this Court in the case of Jeetu @ Jitendra where this Court has while considering as to how the appeal should be disposed of by the appellate court when there is no challenge to conviction observed that it is the obligation of the Court to decide the appeal on merits and not accept the concession and proceed to deal with the sentence, for the said mode and method defeats the fundamental purpose of the justice delivery system. This Court further noted that there are many cases where the High Courts after recording the non-challenge to the conviction, have proceeded to dwell upon the proportionality of the quantum of sentence. It was observed that such a course is impermissible in law and should not be resorted to. We respectfully agree with this view of this Court. We are dealing with one of such cases. In our opinion, the High Court should not have shown leniency to the Respondent. We will have to therefore rectify the error committed by the High Court.

20. However, a full Bench of this Court in the matter of titled as ***“Jang Singh versus State of Punjab”*** reported as ***2008 (1) R.C.R. (Criminal) 323*** had held that if an accused is a habitual offender and is found guilty on various counts and is suspected that he would be a menace to society if let loose, then the consecutive sentence should be awarded. An habitual offender should not be given the same treatment which may be extended to an offender who is not habitual. The relevant part of the said judgment is being extracted as under:-

“12. This case basically related to the interpretation of sub-section (2) of Section 427 Criminal Procedure Code and it was held, as noticed above, that imprisonment for a term or an imprisonment for a life can only be superimposed to the earlier life sentence and certainly not added to it, since extending the

life span of the offender or for that matter anyone is beyond human might. Referring about sub-section (1) of the Section, it is stated that the same deals with an offender, who while undergoing sentence for a fixed term is subsequently convicted to an imprisonment for a fixed term or for a life. It is further held that in such a situation, the first sentence, being for a fixed term, expires on a definite date which is known when the subsequent conviction is made. In this background, it is further observed that ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the court directs the subsequent sentence to run concurrently with the previous sentence. Here again the Supreme Court would not provide any guidelines or directions governing the mode, method or principle where direction for consecutive or concurrent execution of sentences are to be made. In fact, in K. Prabhakaran v. P. Jayarajan, 2005(1) RCR (Civil) 667 : (2005)1 SCC 754, the Hon'ble Supreme Court has clearly observed that there are no guidelines or specific provision to suggest under what circumstances various sentences of imprisonment shall be directed to run concurrently or consecutively the Code of Criminal Procedure and further that there are no judicial decisions laying down guidelines as to what should be the criteria in this regard. These observations, however, were made in a slightly different context as the Hon'ble Supreme Court in this case was mainly concerned to see the aspect of dis-qualification of a person in terms of Section 8(3) of the Representation of People Act upon his conviction for an offence and the sentence so awarded.

18. The consensus of the judicial opinion, as may emerge from different judgments passed by various High Courts and the Hon'ble Supreme Court, seems to be that normal rule, as per Section 427 Criminal Procedure Code, is that, a person who is undergoing a sentence of imprisonment and is sentenced on a subsequent conviction to an imprisonment or an imprisonment for life, then such imprisonment or imprisonment of life shall

commence after the expiration of the imprisonment, to which he has been previously sentenced. This, however, would not be so if the Court directs that the subsequent sentence shall run concurrently with the previous sentence. Such direction to make the sentences to run concurrently, as per various decisions noted above, can be exercised by the trial Court or by the appellate Court or a revisional Court at the time of exercising appellate or revisional jurisdiction as well. However, if the trial Court does not pass any such direction for making the sentences to run concurrently and appeal or revision against said decision is also decided, then it may not be open for a person to seek such direction for making the sentences to run concurrently by moving an application under Sections 482/427 Criminal Procedure Code. The view taken by one set of the High Courts that such an application can be entertained while exercising inherent powers under Section 482 Criminal Procedure Code would no more appear to be a good law in view of the decision of the Hon'ble Supreme Court in M.R. Kudva case (supra). We are, thus, bound to take this view that this discretion though available with the trial Court, appellate Court or the revisional Court while holding trial or entertaining appeal or revision but would not be so available to be exercised in isolation when application in this regard is moved either under sections 482 or 427 Criminal Procedure Code. What principle and consideration will govern the exercise of this discretion, as already noted above can not be exhaustively enumerated. Certain relevant factors, as can be culled out from different judgments referred to above, may give an indication where such discretion may be exercised. These factors generally would be the nature or character of the offences committed, the prior criminal record of the offender, character his age and sex etc. ghastly nature of the crime. The offender being habitual would also be the factor, which can be relevantly taken into consideration. It may be stated at the cost of repetition that these are not the only reasons for which the

Court can exercise this discretion. Discretion always is open to be exercised by any Court dependent upon the facts and circumstances of each case on any relevant or valid consideration as may be considered so by the Court while holding the trial or deciding the case at the stage of appeal or revision. It may require a notice that Section 427 Criminal Procedure Code as observed by Hon'ble Supreme Court is aimed at amelioration and this aspect may also require to be kept in view while exercising the discretion.”

21. A perusal of the same shows that the sentencing Court had a discretion to direct concurrence. The investiture of such discretion, presupposes that it should be exercised on sound principles and not on impulses, whims or fancies. Unprincipled exercise for unregulated benevolence ill behaves judicial functions. A casual direction made regarding concurrent running of sentences is likely to travel against the intent, object or the express provisions of the statute. The question which would thus arise for consideration is as to what is the judicial parameter for directing the sentences to run concurrently and thereafter, to ascertain whether the said parameters are satisfied in the facts of the instant case.

22. The same would require the Court to examine various other provisions enshrined in the Code of Criminal Procedure. It would thus also be essential to refer to Section 31, Section 219, Section 220 and Section 223 of the Code of Criminal Procedure, 1973. The same are extracted herein below:

Section 31 in The Code Of Criminal Procedure, 1973

“31. Sentences in cases of conviction of several offences at one trial.

(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71

of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court: Provided that-

(a) in no case shall such person be sentenced to imprisonment for longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

Section 219 in The Code Of Criminal Procedure, 1973

219. Three offences of same kind within year may be charged together.

(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local law: Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

Section 220. Trial for more than one offence.

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub- section (2) of section 212 or in sub- section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.”

Section 223 in The Code Of Criminal Procedure, 1973

223. What persons may be charged jointly. The following persons may be charged and tried together, namely:-

(a) persons accused of the same offence committed in the course same transaction;

(b) person accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) person accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or

concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last- named offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860). or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges: Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

23. A perusal of the aforesaid provisions read with Section 427 Cr.P.C. shows that the use of phrase “Offence forming a single transaction” has been incorporated in Section 220 Cr.P.C. Section 31 of the Cr.P.C. contemplates a situation where sentences are being imposed on account of conviction under several offences at one single trial and that such sentences can be directed by the Court to run concurrently. Section 219 of the Cr.P.C. whereafter incorporates a situation that where a person is being tried of 03 offences of the same kind within one year, the said cases may be charged together and the person may be tried at one trial for any number of cases not exceeding 03 cases. Section 220 of the Cr.P.C is attracted in a situation wherein one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for every such offence. Section

223 of the Cr.P.C. stipulates various persons who can be charged and tried together. Section 427 of the Cr.P.C. thereafter contemplates a situation where the accused is convicted and sentenced for offences under separate trials and that subsequent sentences can be ordered to run concurrently with the previous sentence. The aforesaid scheme shows that the underlying legislative intent was to extend some benefit to an accused who is being tried for the commission of offence. While Section 31 Cr.P.C. dealt with initial stage where a person has committed several offences at one trial, Section 219 Cr.P.C. sought to extend the benefit by trying different offences for which a person has been tried separately, but if the same are alleged to have taken place within a period of one year, the accused may be charged and tried together at one trial; Section 220 Cr.P.C. talks of a situation where a person commits multiple offences in one series of acts that are connected together to form part of the same transaction to be charged and tried at one trial for every such offence and Section 223 of the Cr.P.C. contemplates various persons who were accused of committing offences to be charged and tried together while Section 427 Cr.P.C. springs into action after different trials have already come to an end and separate sentences are being imposed. All the aforesaid provisions tend to accord a benefit of extending an indulgence to an accused for the sentences to run concurrently and that an accused ought not to be subjected to multiple trials, multiple convictions or multiple sentences. The aforesaid intent being reflected through more than one statutory provision under the procedural scheme, the legislative intent is reiterated and sought to be emphasized. The Object of incorporation of such provisions was to extend the benefit of concurrent running of the sentences wherever and whenever such a benefit becomes admissible to an accused,

upon exercise of judicial discretion based on sound principles and not just on impulse, whims or fancies. The mandate of Section 427 of the Cr.P.C. thus ought to be examined in light of the scheme sought to be proposed in the of the Code of Criminal Procedure, 1973 which aims to empower the Court to extend such benefit at different stages, different trials as well as after different convictions.

24. A reference to the aforesaid judgments shows that the principle of single transaction has been extended and brought into action by the Hon'ble Supreme Court while considering the application moved under Section 427 Cr.P.C. While dealing with the issue of single transaction and as to what would constitute formation of single transaction, the said fact discussed in the judgment of "*Kamal Kant Ray Chaudhary versus Emperor*" reported as 1937 ILR 98.

25. While dealing with the scope of Sections 233, 234, 235, 236 and 239 of the Code of Criminal Procedure then wherein such provisions are akin to Sections 218 to 233 of the Code of Criminal Procedure, 1973, it was observed by the Division Bench of the Calcutta High Court in the matter of "*Kamala Kanta Ray Chaudhuri Vs. Emperor*" reported as ILR (1938) 1 Cal 98 as under :

Section 235(1) requires that in order that several offences may be joined in one indictment, the offences must be committed by the same person in one series of acts, and that such acts must be not merely connected together, but so connected together as to form the same transaction. The first element to establish, therefore, is a "series of acts", which would necessarily imply the acts being "connected together", but this will not be enough; it will have to be shown further that

the acts “from the same transaction”. Mere sequence in time may establish the first element, but no necessarily the other. The expression “so “connected together as to form the same transaction” has purposely, and, I may add, wisely, been left undefined, but the words must be given a reasonable and rational meaning, and cannot be stretched to include a series of acts which have no relation to each other as cause and effect or as principal and subsidiary, or which are not shown to follow, the one from the other, as a necessary or natural sequel or concomitant.

As I read s. 235(1), there must be one continuous thread of a common purpose running through the acts to support a joinder of charges in respect thereof. Mere difference in time or place between the commission of one offence and of another will not necessarily import want of such continuity: they may yet be linked together by a community or continuity of purpose, and thus form the same transaction.

26. The said test of single transaction was further examined in the judgment of **“State of Andhra Pradesh versus Chimalapati Ganesh Rao and another”** passed in **Criminal Appeal No. 39 of 1961** decided on 23.04.1963. The relevant part reads thus as under:-

“Xxx xxx xx xx xx xx xx xx

What is meant by "same transaction" is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any Court which has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity

of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction. The connection between a series of acts seems to us to be an essential ingredient for those acts to constitute the same transaction and, therefore, the mere absence of the words "so connected together as to form" in Clause (a), (c) (sic) and (d) of Section 239 would make little difference. Now, a transaction may consist of an isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently they would not form part of the same transaction but would constitute a different transaction or transactions.

Xx xx xx xx xx xx”

27. Furthermore, the said principles of single transaction has been relied upon in the judgment of *Mohd. Akhtar Hussani (Supra)*; *V.K. Bansal (Supra)* and as reasoned in the judgment of *Sunil Kumar @ Sudhir Kumar*. Hence, even though only Section 220 of the Cr.P.C. contemplates the offences found to be part of the same transaction, yet, the said principle has been attracted by judicial interpretation to be imbibed in Section 31 as well as Section 427 of the Cr.P.C.

28. Therefore, even though single transaction has not been defined anywhere in the code, however, it can safely be concluded that in order to ascertain whether a transaction can be regarded as same/single transaction, it would be essential for a Court to examine the following aspects :

- i) The proximity of time and place; or
- ii) Unity of purpose and design; or
- iii) Continuity of action in respect of series of acts; or
- iv) Acts /series of acts are connected together to form same transaction; or
- v) Where the parties are same and the case is tried together by singularity/commonness of the evidence; or
- vi) Where the separate proceedings initiate out of one consolidated Act reflecting intent of the parties to fulfill the said purpose/object by means of separate transactions; or
- vii) Where the nature of the offence and the transactions thereto are akin to each other;
- viii) Where the offences are intertwined as to form part of the same transaction.

The aforesaid circumstances are singularly as well as cumulatively reflective of what may constitute a part of single or same transaction.

29. A perusal of the custody certificate shows that the petitioner has already undergone his complete sentence in the revision petition arising out of Appeal No. 47 dated 12.07.2017. Since concurrent running of sentences would only be considered when a person is undergoing actual imprisonment and keeping in view the fact that the petitioner has undergone his complete sentence in the Criminal Revision bearing No. 3403-2019 arising out of Criminal Appeal No. 47 dated 12.07.2017, the revision petition has been

rendered infructuous as the petitioner is not undergoing any sentence in the said conviction. Therefore, no relief can be granted in the same.

30. The question which thus remains to be decided in the present batch of petitions is in relation to the remaining 03 petitions arising out of 3 different complaints that were all filed within a period of less than 10 days from one another and could loosely attract the applicability of Section 219 Cr.P.C. as well, if such aspect was duly agitated and pressed before the trial Court.

31. The question which thus arises for further consideration is as to whether sufficient grounds exist for exercising the discretion in the case in hand and as to whether the cases of the petitioner can be categorized as falling within single/same transaction:-

- i) That for ascertaining the said aspect, it is essential to advert to the pleading of the respondent-complainant in the present cases. A perusal of the submissions made and evidence led in all cases shows that the offence is stated to have been committed in a similar manner and at the same time. It is not the pleaded case or the case supported by any evidence that the transactions for which the complaints in question were instituted were separate, distinct and independent transactions. As a matter of fact, the complaints as well as evidence led by the respondent-complainant is silent on the said aspect. It cannot thus be assumed that separate cheques in question were issued in discharge of separate liability arising on account of distinct, independent transactions that were not inter-linked.

ii) It would also be essential to refer to the evidence as noticed by the trial Court in each of the cases which shows that the reliance for proving a legally enforceable debt and pre-existing liability is sought to be discharged by making a reference to the ledger and cash books for the same year. The relevant extract of the judgment of the trial Court dealing with the said evidence in each of the cases is tabulated as under:-

CRR-3403-2019	To discharge onus, complainant Parveen Kumar himself stepped into the witness box as CW1 and in his examination in chief by way of affidavit Ex.CA, has deposed on the lines of version of the complaint and further he proved on record various documents i.e. Original cheque bearing No. 000310 Ex.C1, bank memo as Ex.C2 , notice in envelope received back Ex.C3, copy of legal notice as Ex.C4, postal receipt as Ex.C5, certified copy of day book for the year 2013-14 Ex.C6, copy of cash book for the year 2013-14 Ex.C7, copy of ledger for the year 2013-14 Ex.C8, duly certified copy of the return for the assessment year 2014-15 Ex.C9 and thereafter he closed the after notice evidence.
CRR-3406-2019	To discharge onus, complainant Parveen Kumar himself stepped into the witness box as CW1 and in his examination in chief by way of affidavit Ex.CA, has deposed on the lines of version of the complaint and further he proved on record various documents i.e. Original cheque bearing No. 000308 Ex.C1, bank memo as Ex.C2, copy of legal notice as Ex.C3, postal receipt as Ex.C4, reply Ex.C5, certified copy of day book for the year 2013-14 Ex.C6 to Ex.C8, duly certified copy of the return for the assessment year 2014-15 Ex.C9 and

	thereafter he closed the after notice evidence.
CRR-3411-2019	To discharge onus, complainant Parveen Kumar himself stepped into the witness box as CW1 and in his examination in chief by way of affidavit Ex.CA, has deposed on the lines of version of the complaint and further he proved on record various documents i.e. Original cheque Ex.C1, bank memo as Ex.C2, notice in envelope received back Ex.C3, copy of legal notice as Ex.C4, postal receipt as Ex.C5, certified copy of day book for the year 2013-14 Ex.C6, copies of cash book for the year 2013-14 Ex.C6 to Ex.C8, duly certified copy of the return for the assessment year 2014-15 Ex.C9 and thereafter he closed the after notice evidence.
CRR-3415-2019	To discharge onus, complainant Parveen Kumar himself stepped into the witness box as CW1 and in his examination in chief by way of affidavit Ex.CA, has deposed on the lines of version of the complaint and further he proved on record various documents i.e. Original cheque bearing No. 000314 Ex.C1, bank memo as Ex.C2, original envelope Ex.P3, copy of legal notice as Ex.C4, postal receipt as Ex.C5, certified copy of the day book for the year 2013-14 Ex.C6 Ex.C9, and copy of appeal Ex.C10. Thereafter the complainant closed the after notice evidence.

iii) It is thus evident that even though the evidence may have been separately submitted in the form of a separate affidavit in each complaint, however, it is in substance the same evidence that is being relied upon by the respondent-complainant for establishing a pre-existing liability and legally enforceable debt.

Furthermore, the cheques in question have been issued in a close proximity to each other. It is evident that the first cheque was issued on 18.01.2014 followed by the second cheque on 01.02.2014, the third cheque on 11.02.2014 and the last cheque on 26.02.2014. There is nothing on record to suggest as to whether the liability with respect to the each of the cheques accrued after the issuance of the respective cheques and had no link to an earlier liability. The circumstances rather lend credence to the submission made by the counsel for the petitioner that upon the settlement of the accounts amongst the parties, a total liability of Rs.34,00,000/- was determined and that cheques in question had been against discharge of a compounded crystallized liability, to be discharged by separate cheques spread over a period of time instead of issuing a single cheque towards discharge of the total liability.

- iv) All the complaints have been decided by the same Illaqa Magistrate by the judgment of one single date. It thus establishes that all the cases were also being tried together even though separate complaints may have been filed.
- v). That all the appeals were also dismissed by Additional Sessions Judge, Ludhiana on the same date. Hence, apart from assigning separate complaint or appeal number, there is no segregation of the cases and they have for all purposes been tried together.
- vi). That there is a close proximity with respect to the purpose for issuance of the cheque, the time span within which the cheques

have been issued and submitted for presentation and the period of institution of the complaints as well.

- vii) The purpose and object of the multiple cheques in such quick succession is apparently towards satisfying a consolidated liability determined amongst the parties and for issuance of cheques which have been seemingly issued on the same date as they are cheques in a series after leaving one cheque foil in between. The pattern would not support the probability as if the cheques in question would have been issued independently for separate and distinct transactions.

32. Now adverting to the judgment referred relied upon by the learned counsel for the respondent in the matter of Nagpal Traders (supra), it is submitted that the said judgment is not applicable in the facts of instant case in as much as the same was passed after noticing the conduct of the accused and that despite making an offer to make the payment and an assurance having been made to the Hon'ble Supreme Court, the accused retracted from the same. In so far as the Full Bench of this Court in the matter of Jang Singh (Supra) is concerned, the same is also not attracted to the facts of the instant case in as much as the said judgment restricts the benefit against habitual offenders who are involved in successive criminal acts. The present case would not apparently label the petitioner as a habitual offender. In a matter of dishonor of cheque, such a presumption may be drawn where an accused has defaulted in repayment of various persons in a similar manner over a period of time in distinct, independent and unrelated events. But in a case of mere institution of separate complaints upon dishonour of multiple cheques issued in discharge of one single liability, the accused

should not be categorized as a habitual offender. Hence, taking into consideration the nature of transaction and the precedent judgments as well as the statutory principles laid down by the Hon'ble Supreme Court, and the statutory objective, I am of the opinion that the complaints in question can be safely construed as a part of one single transaction.

33. Having held so, the issue which thus arises next relates to the sentencing of the petitioner.

34. The Hon'ble Supreme Court has held in the matter of **"State of Punjab versus Madan Lal" (supra)** that the benefit of concurrent running of the sentence should be extended to the petitioner. It is, however, held by the Hon'ble Supreme Court that the single transaction has to be carefully construed. The Hon'ble Supreme Court has also held in the matter of **"Shyam Pal versus Dayawati Besoya and another reported as (2016) 10 SCC 761"**, while dealing with the scope of Section 427 Cr.P.C., in a matter relating to proceedings under Section 138 of the Negotiable Instruments Act, 1881 that the power to direct concurrent running of sentence is discretionary. The accused in the said case was convicted in respect of two cases arising out of successive transactions in a series between the same parties and tried together. The relevant paragraphs are extracted as under:-

"13. Though this provision has fallen for scrutiny of this Court umpteen times, we can profitably refer to one of the recent pronouncements in V.K. Bansal vs. State of Haryana and Another (2013) 7 SCC 211 where it was held that though it is manifest from Section 427(1), that the Court has the power and discretion to issue a direction that a subsequent sentence shall run concurrently with the previous sentences, the very nature of the power so conferred, predicates that the discretion, would have to be exercised along judicial lines or not in a mechanical

or pedantic manner. It was underlined that there is no cut and dried formula for the Court to follow, in the exercise of such power and that the justifiability or otherwise of the same, would depend on the nature of the offence or offences committed and the attendant facts and circumstances. It was however postulated, that the legal position favours the exercise of the discretion to the benefit of the prisoners in cases where the prosecution is based on a single transaction, no matter even if different complaints in relation thereto might have been filed. The caveat as well was that such a concession cannot be extended to transactions which are distinctly different, separate and independent of each other and amongst others where the parties are not the same.

14. *The imperative essentiality of a single transaction as the decisive factor to enable the Court to direct the subsequent sentence to run concurrently with the previous one was thus underscored. It was expounded as well that the direction for concurrent running of sentence would be limited to the substantive sentence alone.*

15. *In a more recent decision of this Court in Benson vs. State of Kerala – Criminal Appeal No.958 of 2016 (since disposed of on 03.10.2016) and the accompanying appeals, arising from the conviction of the appellant from his prosecution on the offences proved, this Court in the singular facts as involved and having regard to the duration of his incarceration and the remission earned by him, extended the benefit of such discretion and directed that the sentences awarded to him in those cases would run concurrently. It was noticeably recorded that the offences in the cases under scrutiny had been committed on the same day. The benefit of the discretion was accorded to the appellant therein referring as well to the observation in V.K. Bansal (supra) that it is difficult to lay down any straight jacket approach in the matter and that a direction that the subsequent sentence would run concurrently or not, would essentially depend on the nature of*

the offence or offences and the overall fact situation. Understandably, the appellant was required to serve the default sentence as awarded with the direction that if the fine imposed had not been deposited, the default sentence or sentences would run consecutively.

Xx xx xx xx xx xx xx
Xx xx xx xx xx xx xx

17. *It is thus ordered that the substantive sentences of 10 months simple imprisonment awarded to the appellant in the two complaint cases referred to hereinabove would run concurrently. Needless to say, the appellant would have to serve the default sentences, if the fine by way of compensation, as imposed, has not been paid by him. The appeals are thus allowed to this extent. The appellant would be entitled to all consequential reliefs with regard to his release from custody as available in law based on this determination.*

35. Thus, while applying the aforesaid principles of law, it would also be essential to balance the principle of sentencing in a manner that would restore faith of people in the system of administration of criminal justice and that the judicial process is not seen siding with an accused. The sentence imposed must not seem to be a flea-bite sentence, a phrase aptly used by the Hon'ble Supreme Court in the matter of **“Suganthi Suresh Kumar versus Jagdeeshan”** reported as **(2002) 2 Supreme Court Cases 420**. The sentencing must not only show reformatory and reprimanding aspect, but must also take the retributive aspect into consideration. Where the violator of law has displayed lack of bona fide and his culpability stands duly established, the Court has to keep in mind that the sentence so imposed should not appeared to be lenient or fail to display any deterrent effect. It cannot be the object of law or the philosophy behind imposing of sentence that the same promotes violation or makes a violator-convict believe that he

may commit multiple offences and thereafter seek concurrent running of the sentences. A transaction in the nature of issuance of multiple cheques towards discharge of one single liability has a potential of great misuse on either sides and just as it may incite an accused to swell his liability and to not pay the same despite issuance of multiple cheques, at the same time, there is immense possibility that the creditor secures multiple cheques for each installment and lodges different complaints against default of each cheque and claim consecutive running of sentences in each of the said cases to seek confinement of a defaulter in custody for an indefinite period. The crucial test thus is the similarity of the transaction and not the quantum of the money involved. A Court is thus required to maintain a fine balance by imposing a sentence so that the reformatory, retributive and deterrent effects are balanced well.

36. Having held so, it is noticed that while sentencing the petitioner-accused, the Court below has although imposed a sentence of one year, however, no sentence of fine has been imposed. The said sentence imposed by the trial Court was modified by the lower Appellate Court while dealing with the revision petition filed by the respondent-complainant. A compensation in terms of Section 357(3) of the Cr.P.C., to pay the amount of cheque was imposed and the said compensation was awarded to the respondent-complainant. The trial Court has not imposed any sentence of fine or default sentence on account of failure of the accused to deposit the same.

37. As the question of sentence has been kept open by the petitioner and the High Court is seized of the said matter regarding sentence in exercise of the powers under Section 401 Cr.P.C., it is thus necessary to

examine the issue of sufficiency of the punishment so imposed and as to whether, the High Court can, in exercise of the power conferred under Section 401 (2) Cr.P.C. read with Section 482 Cr.P.C. alter or modify the sentence so imposed by the Courts below to the prejudice of an accused.

38. The counsel appearing on behalf of the respective parties were specifically confronted with the said aspect and were called upon to respond to the same. A perusal of Section 401(2) Cr.P.C. empowers the High Court to pass an order to the prejudice of an accused after he has been granted opportunity of being heard either personally or through pleader in his defence. The prohibition imposed in exercise of the revision powers is only under Section 401 (3) Cr.P.C., that a finding of acquittal cannot be converted into one of conviction.

39. Learned counsel appearing on behalf of the parties have not disputed that such a power is vested in the High Court to modify or alter a judgment when the High Court is seized of its revisional jurisdiction provided an opportunity of hearing is granted to the party to whose prejudice an order is to be passed. Such opportunity was duly extended to the counsel for the parties.

40. Having held that the benefit under Section 427 of the Cr.P.C. is available in favour of the petitioner-accused as the transactions in question appear to be part of a single transaction and other factors noticed in the preceding paragraph and also the principles culled out for determining of which aspects are to be considered to form a part of single transaction, the petitioner would be entitled to claim benefit under Section 427 Cr.P.C. for the remaining 03 criminal revision petitions and the sentences so imposed in

the said cases can be ordered to run concurrently. It has also become essential to examine as to whether the sentence so imposed appears to be a flea-bite sentence and does not give semblance of extension of undue concession under law in favour of a person who is a violator of law. It has been noticed that even though the petitioner was convicted for commission of the offence and sentenced to undergo simple imprisonment for a period of 01 year, however, neither any sentence of fine or default punishment was imposed, nor any compensation awarded. Consequently, a revision petition had been preferred by the respondent-complainant before the Court of Sessions seeking enhancement of sentence, however, the Additional Sessions Judge, while adjudicating on the said revision petition directed compensation for the value of the cheque to be paid to the respondent-complainant. There was no sentence imposed in the event of default on the part of the petitioner-accused for non-payment of compensation as directed to be paid under Section 357 Cr.P.C. The Hon'ble Supreme Court has held in the matter of "*R.Mohan versus A.K. Vijay Kumar*" passed in *Criminal Appeal No. 883 of 2012* decided on 03.07.2012 that the idea behind directing the accused to pay compensation to the complainant is to grant immediate relief to the complainant who is a victim and is aimed to alleviate his grievance. It is held that as per the provisions of Section 357 (3) Cr.P.C., if a convict does not pay the compensation so awarded, the Court may impose a default punishment and sentence and that imposition of such a default sentence would not be illegal. In this regard, it is also necessary to make a reference that Section 357 (4) Cr.P.C. specifically empowers a High Court to pass appropriate orders while exercising the power of revision. The relevant extract of the said judgment is reproduced herein below:

“10. That takes us to the legal question whether the court can award a sentence in default of payment of compensation. Under Section 357 of the Code the Court can pass order to pay compensation. Sub-Section (1) of Section 357 of the Code empowers the court to award compensation to the victim of offence out of the sentence of fine imposed on the accused. Section 357(3) is relevant. It reads thus :

"357. Order to pay compensation. –

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced."

Thus, if a fine is not a part of the order of sentence, the court may order the accused to pay compensation to the person who has suffered any loss or injury because of the act of the accused for which he is sentenced.

*11. In **Hari Singh v. Sukhbir Singh & Ors., 1988(2) RCR (Criminal) 394 : (1988)4 SCC 551**, the accused were convicted and sentenced under Section 325 read with Section 149, Section 323 read with Section 149 and Section 148 of the Indian Penal Code. They were released on probation of good conduct. Each of them was ordered to pay compensation of Rs. 2,500/- to the injured. In default of payment of compensation, they were directed to serve their sentence. This court inter alia considered whether the compensation awarded to the injured could be legally sustained. This court observed that the power of the court under Section 357(3) to award compensation is not ancillary to other sentences, but it is in addition thereto and is intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. This court further observed that it is a measure of responding appropriately to crime as well as of reconciling the victim with the offender. Describing it as a constructive approach to crime, this court recommended to all courts to exercise this power liberally so as to meet the ends of justice in a better way. It was clarified that*

the order to pay compensation may be enforced by awarding sentence in default. The relevant observations of this court may be advantageously quoted.

"11. The payment by way of compensation must, however, be reasonable. What is reasonable may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by instalments, may also be given. The court may enforce the order by imposing sentence in default."

12. While dealing with a case under Section 138 of the said Act in Suganthi Suresh Kumar , relying on Hari Singh , this court reiterated the same view and held that the court can impose a sentence of imprisonment on the accused in default of payment of compensation ordered under Section 357(3) of the Code.

13. Undoubtedly, there is no specific provision in the Code which enables the court to sentence a person who commits breach of the order of payment of compensation. Section 421 of the Code provides for the action which the court can take for the recovery of the fine where the accused has been sentenced to pay a fine. Proviso thereto states how to deal with a situation where default sentence is prescribed. Section 421 reads thus :

*"421. **Warrant for levy of fine.** (1) When an offender has been sentenced to pay a fine, the court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may*

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter :

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under Section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law :

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender."

14. Section 431 of the Code provides for recovery of any money (other than a fine) payable by virtue of any order made under the Code and the recovery of which is not otherwise expressly provided for. Compensation awarded by a court can fall in this category. Section 431 says that such money shall be recoverable as if it were a fine. Section 431 of the Code reads thus :

*"431. **Money ordered to be paid recoverable as fine.** Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine :*

Provided that Section 421 shall, in its application to an order under Section 359, by virtue of this section, be construed as if in the proviso to sub-section (1) of Section 421, after the words and figures 'under Section 357', the words and figures 'or an order for payment of costs under Section 359' had been inserted."

*Thus, one has to again fall back on section 421 of the Code for recovery of compensation directed to be paid by the court. For the purpose of mode of recovery, compensation is put on par with fine
(See K.A. Abbas HSA.)*

15. Section 64 of the Indian Penal Code also needs to be quoted because it provides for sentence of imprisonment for non-payment of fine. It reads thus :

*" 64. **Sentence of imprisonment for non-payment of fine.** In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the*

offender is sentenced to a fine, it shall be competent to the court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence."

16. *The above provisions were examined by this Court in **Vijayan v. Sadanandan K. & Anr., 2009(2) RCR (Criminal) 969 : 2009(3) R.A.J. 525 : (2009)6 SCC 652** After quoting them, this Court rejected the submission that where there is default in payment of compensation ordered by the court, recourse can only be had to Section 421 of the Code because there is no provision enabling the court to award a default sentence. This Court observed that if such a view is taken, the very object of sub-section (3) of Section 357 would be frustrated and the relief contemplated therein would be rendered somewhat illusory.*

17. *We respectfully concur with this view. In **K. Bhaskaran v. Sankaran Vaidhyan Balan (1999)7 SCC 510** while considering Section 357(3) of the Code this Court expressed that if the Judicial Magistrate of the First Class were to order compensation to be paid to the complainant from out of the fine realised the complainant will be the loser when the cheque amount exceeded the said limit. In such a case a complainant would get only the maximum amount of rupees five thousand because Judicial Magistrate First Class can as per Section 29 (2) of the Code pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding Rs. 5,000/-, or of both (the said amount is now increased to Rs. 10,000/-). This Court clarified that in such cases the Magistrate can alleviate the grievance of the complainant by taking resort to Section 357(3) of the Code.*

18. *The idea behind directing the accused to pay compensation to the complainant is to give him immediate relief so as to alleviate his grievance. In terms of Section 357(3) compensation is awarded for the loss or injury suffered by the person due to the act of the accused for which he is sentenced. If merely an order, directing compensation, is passed, it would be totally ineffective. It could be an order without any deterrence or apprehension of immediate adverse consequences in case of its non-observance. The whole purpose of giving relief to the complainant under Section 357(3) of the Code would be frustrated if he is driven to take recourse to Section 421 of the Code. Order under Section 357(3) must have potentiality to secure its observance. Deterrence can only be infused into the order by providing for a default sentence. If Section 421 of the Code puts compensation ordered to be paid*

by the court on par with fine so far as mode of recovery is concerned, then there is no reason why the court cannot impose a sentence in default of payment of compensation as it can be done in case of default in payment of fine under Section 64 of the Indian Penal Code. It is obvious that in view of this, in Vijayan, this court stated that the above mentioned provisions enabled the court to impose a sentence in default of payment of compensation and rejected the submission that the recourse can only be had to Section 421 of the Code for enforcing the order of compensation. Pertinently, it was made clear that observations made by this Court in Hari Singh are as important today as they were when they were made. The conclusion, therefore, is that the order to pay compensation may be enforced by awarding sentence in default.”

41. Furthermore, in the matter of **“Kumaran versus State of Kerala and another”** passed in **Criminal Appeal No. 896-897 of 2017** decided on 05.05.2017, the Hon’ble Supreme Court held that when an accused has undergone a jail sentence in default of non-payment of compensation, the compensation would still be recoverable under Section 421 Cr.P.C. The relevant extract of the said judgment is reproduced hereinafter below:

“2. The present appeals raise an interesting question as to whether when compensation is ordered as payable for an offence committed under Section 138 of the Negotiable Instruments Act, and in default thereof, a jail sentence is prescribed and undergone, is compensation still recoverable.

*25. At this juncture, it is important to note that in **Vijayan v. Sadanandan K., 2009(2) RCR (Criminal) 969 : (2009) 6 SCC 652**, this Court held :*

"29. To appreciate the said legal position, the provisions of Section 431 are set out hereinbelow:

"431. Money ordered to be paid recoverable as fine. Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine:

Provided that Section 421 shall, in its application to an order under Section 359, by virtue of this section, be construed as if in the proviso to sub-section (1) of Section 421, after the words and figures 'under Section 357', the words and figures 'or an order for payment of costs under Section 359' had been inserted."

Section 431 makes it clear that any money other than a fine payable on account of an order passed under the Code shall be recoverable as if it were a fine which takes us to Section 64 I.P.C.

30. Section 64 I.P.C. makes it clear that while imposing a sentence of fine, the court would be competent to include a default sentence to ensure payment of the same. For the sake of reference, Section 64 I.P.C. is set out hereinbelow:

"64. Sentence of imprisonment for non-payment of fine. In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine, it shall be competent to the court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence."

31. The provisions of Sections 357(3) and 431 Cr.P.C., when read with Section 64 I.P.C., empower the court, while making an order for payment of compensation, to also include a default sentence in case of non-payment of the same."

26. This statement of the law was reiterated in **R. Mohan v. A.K. Vijaya Kumar, 2012(3) RCR (Civil) 744 : 2012(3) RCR (Criminal) 648 : 2012(4) Recent Apex Judgments (R.A.J.) 437 : (2012) 8 SCC 721** (see paras 26 to 29).

27. These two judgments make it clear that the deeming fiction of Section 431 Cr.P.C. extends not only to Section 421, but also to Section 64 of the Indian Penal Code. This being the case, Section 70 I.P.C., which is the last in the group of Sections dealing with sentence of imprisonment for nonpayment of fine must also be included as applying directly to compensation under Section 357(3) as well. The position in law now becomes clear. The deeming provision in Section 431 will apply to Section 421(1) as well, despite the fact that the last part of the proviso to Section 421(1) makes a reference only to an order for payment of expenses or compensation out of a fine, which would necessarily refer only to Section 357(1) and not 357(3). Despite this being so, so long as compensation has been directed to be paid, albeit under Section 357(3), Section 431, Section 70 I.P.C. and Section 421(1) proviso would make it clear that by a legal fiction, even though a default sentence has been suffered, yet, compensation would be recoverable in the manner provided under Section 421(1). This would, however, be without the necessity for recording any special reasons. This is because Section 421(1) proviso contains the disjunctive "or" following the recommendation of the Law Commission, that the proviso to old Section 386(1) should not be a bar to the issue of a warrant for levy of fine, even when a sentence of imprisonment for default has been fully undergone. The last part inserted into the proviso to Section 421(1) as a result of this recommendation of the Law Commission is a category by itself which applies to compensation payable out of a fine under Section 357(1) and, by applying the fiction contained in Section 431, to compensation payable under Section 357(3).

28. As is well known, a legal fiction is not to be extended beyond the purpose for which it is created or beyond the language of the section by which it is created. For example, see ***Prakash H. Jain v. Marie Fernandes, 2003(2) RCR (Rent) 559 : (2003) 8 SCC 431 at 438***. However, once the purpose of the legal fiction is ascertained, full effect must be given, and it should be carried to its logical conclusion. This is clear from the celebrated passage in ***East End Dwelling Co. Ltd. v. Finsbury Borough Council, 1951 (2) All ER 587 at 589***:

"if you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of those in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs".

29. The legal fiction enacted under Section 431 is not limited to "the purpose of this Act" unlike Section 6A of the Central Sales Tax Act, as was the case in *Ash ok Leyla nd Limited v. Sta te of Ta mil Na du , (2004) 3 SCC 1 at pa ra 32,76* . Thus it is clear that the object of the legal fiction created by Section 431 is to extend for the purpose of recovery of compensation until such recovery is completed and this would necessarily take us not only to Section 421 of the Cr.P.C. but also to Section 70 of the Penal Code, a companion criminal statute, as has been held above."

42. The lower Appellate Court having directed compensation to be paid to the respondent-complainant, a default punishment can be so imposed

by the High Court in exercise of the powers vested in it under Section 357 (4) read with Section 401(2) Cr.P.C. and the order awarding sentence can be suitably modified. It is accordingly ordered as under :-

- i) That the Criminal Revision bearing No. 3403-2019 arising out of Criminal Appeal No. 47 dated 12.07.2017 in case titled **“Yogesh Kumar versus Parveen Kumar”** under Section 138 of the Negotiable Instruments Act, 1881 decided vide judgment dated 01.11.2018 passed by the Additional Sessions Judge, Ludhiana is dismissed as having been rendered infructuous since the entire sentence in the said case has already been undergone by the petitioner.
- ii) The sentence imposed in CRR No. 3406-2019 arising out of Criminal Appeal No.45, CRR No. 3411-2019 arising out of Criminal Appeal No.46 and CRR No. 3415-2019 arising out of Criminal Appeal No.48 in case titled **“Yogesh Kumar versus Parveen Kumar”** are directed to run concurrently.
- iii) That even though compensation under Section 357 Cr.P.C. has been awarded by the lower Appellate Court in exercise of the powers under Section 357 (3) Cr.P.C., however, no default sentence has been imposed. Hence, while exercising powers under Section 357(4) read with Section 401 (2) Cr.P.C., the High Court seized of the matter in exercise of its revisional jurisdiction, the order awarding compensation is partly modified and it is directed that in the event of the petitioner-accused committing default in payment of compensation as directed by the Lower Appellate Court, he shall undergo a sentence of 06 months of simple

imprisonment, as a maximum punishment prescribed for the offence under Section 138 of the Negotiable Instruments Act, 1881 is 02 years and by virtue of Section 65 of the Indian Penal Code, 1860 the default sentence ought not to exceed 1/4th of the maximum sentence so prescribed for the substantive offence.

- iv) That the default sentence imposed against non-payment of the compensation shall run consecutively and is not to run concurrently with the substantive sentence already ordered to run concurrently.
- v) That the respondent-complainant shall be entitled to seek recovery of the compensation awarded against the petitioner-accused despite them having undergone a default sentence for non-payment of compensation in terms of law laid down by the Hon'ble Supreme Court in the matter of "*Kumaran versus State of Kerala and another*" passed in *Criminal Appeal Nos. 896-897* decided on 05.05.2017.

The present petitions are accordingly partly allowed in terms as referred to above.

(VINOD S. BHARDWAJ)
JUDGE

JUNE 01, 2022
Vishal sharma

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