

M/L. 23.
October 9, 2023.
MNS.

WPA No. 23341 of 2023

Tapas Barui
Vs.
The State of West Bengal and others

Mr. Saumyajit Das Mahapatra,
Mr. Dhananjay Banerjee,
Ms. Oindrila Ghosh,
Ms. M. Sinha

... for the petitioner.

Mr. Suman Ghosh,
Ms. Munmun Tewari

...for the State.

1. Affidavit-of-service filed in Court today be kept on record.
2. Learned counsel for the petitioner contends that the petitioner was convicted in three separate cases under Section 138 of the Negotiable Instruments Act, 1881 (Act of 1881), in all of which similar sentences were passed. It is submitted that the petitioner has already undergone the maximum punishment in respect of one of such convictions. However, the petitioner raises a question as to whether the said three sentences in the three

cases should run concurrently or consecutively.

3. Learned counsel places reliance on the judgment of the Supreme Court in *V. K. Bansar Vs. State of Haryana and another* reported at (2013) 7 Supreme Court Cases 211 for the proposition that if the prosecution is based on a single transaction, no matter different complaints in relation thereto may have been filed, the punishment should run concurrently.
4. Learned counsel appearing for the State opposes such contentions and places reliance on Section 31 of the Code of Criminal Procedure, which provides for sentences in cases of conviction of several offences at one trial.
5. It is pointed by learned counsel for the State that as per the said provision, the court at the time of sentencing has to direct that the punishment shall run concurrently. If there is no such direction, the punishment should run consecutively and not concurrently.
6. Insofar as Section 427 of the Code of Criminal Procedure is concerned, which was relied on in the judgment cited by the petitioner, it is

argued that the said provision is not applicable to the present case.

7. A perusal of Section 427 of the Code of Criminal Procedure shows that learned counsel for the State is justified in arguing that the same is not relevant to the present case, since it pertains to cases where a person already undergoing sentence of imprisonment is sentenced on a subsequent conviction to imprisonment etc.
8. However, Section 31 of the Code of Criminal Procedure is also not applicable to the present case. The said provision contemplates a situation exactly converse to the situation in the present case.
9. Whereas in the present case the petitioner argues that for the same transaction, there have been three convictions in three separate cases, Section 31 of the Code of Criminal Procedure deals with a scenario where a person is convicted on a single trial for two or more offences.
10. In such a situation, Section 31 of the Code stipulates that the Court may, subject to the provisions of Section 71 of the Indian Penal Code, sentence the person for such offences

to the several punishments prescribed therefor which such Court is competent to inflict and while doing so, the court shall direct such punishments to run concurrently or otherwise.

11. Undoubtedly, if there are several offences, which are clubbed together in a single trial, Section 31 of the Code is applicable in its full rigour.

12. However, the present case is just the converse, where the allegations against the petitioner do not arise from “different” offences as such, but from a single transaction. For offences relating to such single transaction, three separate trials have taken place, each culminating in a similar sentence.

13. The case of the prosecution against the petitioner was that the petitioner, in order to repay his dues in respect of a single loan transaction, handed over different cheques to the complainant, five in number, which were of three different dates. Since the five cheques were all given in lieu of the dues of the petitioner with regard to a single debt, it can very well be said that although the dates of the cheques were different, the parent

transaction to which the offences relate back was single and not different.

14. Although the cheques were of three different dates, they related back to the same debt / transaction. In fact, since there were total five cheques, which were of three dates, some of which had to be clubbed together in at least one of the trials, as they were of the same date. If cheques of the same date, although individual and distinct from each other, can be clubbed together in a single case, by the same logic, it can be said that all five cheques pertained to a single transaction for the purpose of sentencing the petitioner.

15. In view of the above factual scenario, it is a single transaction on which the petitioner was convicted in three different cases, on the basis of the fact that the five cheques given to repay the same loan were of different dates.

16. Thus, by applying the ratio as laid down in *V.K. Bansal* (supra), the basic rule of thumb is that the single transaction rule has to be applied for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences.

17. In fact, the petitioner in the present case is on better footing as the enactments under which the petitioner was convicted is the same, being the 1881 Act. Even the parent transaction was the same, as the offences in the three trials arose from the same loan.

18. Hence, there is no rationale for the petitioner being incarcerated consecutively for sentences handed out in respect of offences arising out of a single transaction.

19. Thus, WPA No. 23341 of 2023 is disposed of by declaring that the sentences awarded to the petitioner under three separate convictions under the 1881 Act, are deemed to have run concurrently.

20. Since the petitioner has already undergone the maximum period of such sentence already, the petitioner shall be released immediately from incarceration by the respondent no. 4, on the basis that the petitioner has already undergone the entire period of the sentence for the three convictions concurrently.

21. There will be no order as to costs.

22. Urgent photostat certified copies of this order,
if applied for, be made available to the parties
upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)