

249

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-44757-2023
Date of decision: 12.12.2023

Prem Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Yogesh Goyal, Advocate
for the petitioner

Mr. Vikas Bharadwaj, AAG Haryana

HARPREET SINGH BRAR, J. (ORAL)

1. The prayer in the instant petition under Section 482 read with 427 CrPC is for issuance of directions to the respondent authorities to pass an order of running the sentences concurrently qua the petitioner, who has been convicted vide three different orders dated 24.05.2019, 24.05.2019 and 18.07.2019, passed by learned Judicial Magistrate Ist Class, Gurugram in complaints under Section 138 of the Negotiable Instruments Act (hereinafter ‘NI Act’) i.e. criminal complaint no. 5 dated 06.04.2016, criminal complaint no. 6 dated 04.05.2016 and criminal complaint no. 221A dated 15.09.2016, respectively. The petitioner has been sentenced as follows:

Complaint	Sentence
Criminal Complaint no. 5 dated 06.04.2016 CIS No. 4577/2016	Rigorous imprisonment of 1 year and further to compensation to the tune of Rs. 18,00,000/- with default mechanism
Criminal Complaint no. 6 dated 04.05.2016 CIS No. 5803/2016	Rigorous imprisonment of 1 year and further to pay compensation of Rs. 1,70,000/- with default mechanism
Criminal Complaint no. 221A dated 15.09.2016 CIS No. 11174/2016	Simple imprisonment of 1 year 6 months and further to pay compensation of Rs. 15,00,000/- with default mechanism

CRM-M-44757-2023

2. The petitioner appealed against the orders of conviction, respectively, before learned Sessions Judge, Gurugram, however all three appeals were dismissed vide orders dated 10.02.2022, and 02.11.2022 respectively.

3. The petitioner has been convicted in three separate criminal complaints under Section 138 of the NI Act. Brief facts of each case are enumerated below:

- The petitioner approached complainant-Sunita for financial help to discharge his business and personal liabilities. Accordingly, the complainant gave him a friendly loan of Rs. 50,000/- on 20.04.2015 and Rs. 1,00,000/- on 04.06.2015, with the condition that the same must be returned in 6 months. On the demand of complainant, accused issued cheque no. 434614 dated 01.03.2016 for Rs. 1,50,000/-. The said cheque was dishonoured with remarks- 'funds insufficient.' In spite of issuance of legal notice, the petitioner failed to make payment leading to lodging of a criminal complaint dated 04.05.2016 in which the petitioner was convicted while his wife was dropped as an accused.
- The petitioner took a friendly loan of Rs. 16,00,000/- from complainant-Ganraj, with a promise to return the amount in 5 months. In discharge of his liability, the petitioner and his wife issued cheque no. 342738 dated 04.02.2016 for Rs. 11,00,000/- and cheque no. 342729 dated 04.02.2016 for Rs. 5,00,000/-, from their joint account. However, the cheques were dishonoured with remarks- 'funds insufficient.' The petitioner failed to make payment in spite of the legal notice that resulted in lodging of criminal complaint dated 06.04.2016 in which the petitioner was convicted.

- The petitioner received a friendly loan of R. 15,00,000/- from M/s Narayan Generator- complainant to discharge his personal liabilities. In discharge of this legally enforceable debt, the petitioner issued cheque no. 656294 dated 04.08.2016 for Rs. 15,00,000/-. On presentation for encashment, the cheque was dishonoured with remarks- 'funds insufficient.' The petitioner failed to make payment in spite of the legal notice dated 23.08.2016, which resulted in lodging of criminal complaint dated 15.09.2016 in which the petitioner was convicted.

4. Learned counsel for the petitioner contends that a prayer for making the sentences concurrent was not made before the learned lower appellate Court or the learned trial Court, which has caused a serious prejudice to the petitioner. He further submits that the petitioner is a physically disabled man with a family of six to take care of. The petitioner suffered huge losses in 2015 and kept borrowing money to recover the same. However, the situation further dilapidated and he was unable to return the borrowed money, which resulted in filing of the abovementioned criminal complaints. He further submits that all complaints are similar in nature and the petitioner has already undergone a total sentence of 18 months.

5. Per contra, the learned State counsel opposes the prayer of running the respective sentences concurrently as the petitioner is a habitual offender. Further, the learned trial Court has correctly appreciated the evidence on record while passing the respective judgments of conviction and orders of conviction and as such, does not require any interference.

6. Having heard the learned counsels for the parties and perusing the record with their able assistance, it transpires that the petitioner has been convicted and sentenced separately in three criminal compliant under Section

138 of the NI Act. The petitioner prays for the sentences to be ordered to have run concurrently so he can return to his family. The adjudication of this issue requires examination of Section 437 of the Cr.P.C, which is reproduced below:

Section 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.

7. A two Judge bench of the Hon'ble Supreme Court in **Shyam Pal and Dayawati Besoya and Another 2016(4) R.C.R(Criminal) 790** reaffirmed the ratio of law laid down in **V.K. Bansal v. State of Haryana and Another 2013(3) R.C.R(Civil) 1052** to hold that the power bestowed upon the Courts under Section 427 of the Cr.P.C is discretionary in nature and should not be exercised in a mechanical fashion. Speaking through Justice Amitava Roy, the following was observed:

"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 v. State of Kerala - 2016(4) RCR (Criminal) 602 : 2016(5) Recent Apex***

Judgments (R.A.J.) 716, 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.

16. Reverting to the facts as obtained in the present appeal, we are of the comprehension, on an appreciation thereof as well as the duration of the appellant's custody, as is evidenced by the certificate to that effect, that the appellant is entitled to the benefit of the discretion contained in Section 427 of the Code. In arriving at this conclusion we have, as required, reflected on the nature of the transactions between the parties thereto, the offences involved, the sentences awarded and the period of detention of the appellant as on date.”

8. This Court in **Dayal Chand v. Punjab State Warehousing Corporation, Punjab, Chandigarh and Others 2018 SCC Online P&H 7549, Ranjit Singh v. State of Punjab CRM-M-32996-2017** decided on 15.09.2017 and **Shashi Bhushan v. State of Haryana and others 2020 (1) R.C.R (Criminal) 208**, in view of the ratio laid down by the Hon’ble Supreme Court, ordered for sentences to be run concurrently. Therefore, considering the fact that the nature of the complaints are similar and that the petitioner has already undergone sentence of 18 months, this Court is of the view that ends of justice will be met if the substantive sentence of all three criminal complaints are run

concurrently. Needless to say that if the fine by way of compensation is not paid by the petitioner, the default mechanisms will come into play.

- 9. In view of the above discussion, this petition is allowed.
- 10. Pending miscellaneous applications, if any, also stands disposed of.

12.12 2023
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No