

CRR-2097-2022 (O & M)

::1::

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2097-2022 (O & M)
Date of decision: 22.12.2023

Pawan Kumar

..... Petitioners

V/s

G.J.V., Enterprises and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sant Pal Singh Sidhu, Advocate,
for the petitioners.

Mr. Deepak Vashishth, Advocate,
for respondent No.1.

Mr. Rajiv Goel, DAG, Haryana,
for respondent No.2.

JASJIT SINGH BEDI, J. (Oral)

The present revision petition has been preferred against the impugned judgment dated 27.07.2022 passed by the Additional Sessions Judge, Hisar vide which the judgment of conviction and order of sentence dated 22/24.08.2017 passed by the Judicial Magistrate Ist Class, Hisar, has been upheld.

2. The brief facts of the case as emanating from the pleadings are that the complainant-G.J.V. Enterprises through its partner Gourav Tanwar filed a complaint bearing Criminal Complaint No.441-II with the allegations that Sai Gold India Enterprises Private Limited was a firm being run by the petitioner and his co-accused Krishan Kumar Soni. In order to give a

CRR-2097-2022 (O & M)

::2::

Rs.97,50,000/- on various dates between 02.08.2012 to 04.05.2013. However, the deal could not materialize and Pawan Kumar (petitioner) and Krishan Kumar Soni agreed to return the amount of security deposited by the complainant for the Franchise. For discharging their liability, the accused issued four different cheques. The details of which are as under:-

Sr. No.	Cheque No.	Dated	For a sum of (Rs.)	Drawn on
1.	570575	30.11.2013	10,00,000/-	Andhra Bank, Hisar Branch, District Hisar against account No.16671100001185
2.	570576	31.12.2013	50,00,000/-	Andhra Bank, Hisar Branch, District Hisar against account No.16671100001185
3.	570577	31.01.2014	25,00,000/-	Andhra Bank, Hisar Branch, District Hisar against account No.16671100001185
4.	570578	28.02.2014	25,00,000/-	Andhra Bank, Hisar Branch, District Hisar against account No.16671100001185

3. All the cheques were dishonoured. Therefore, two complaints were filed bearing Criminal Complaint No.441-II instituted on 05.03.2014 qua cheque No.570575 dated 30.11.2013 for a sum of Rs.10,00,000/- drawn on Andhra Bank, Hisar Branch, District Hisar against account No.16671100001185 and cheque No.570576 dated 31.12.2013 for a sum of Rs.50,00,000/- drawn on Andhra Bank, Hisar Branch, District Hisar against account No.16671100001185.

4. The second complaint bearing Criminal Complaint No.658-II was instituted on 20.05.2014 qua cheque No.570577 dated 31.01.2014 for a sum of Rs.25,00,000/- drawn on Andhra Bank, Hisar Branch, District Hisar against account No.16671100001185 and cheque No.570578 dated

CRR-2097-2022 (O & M)

::3::

28.02.2014 for a sum of Rs.25,00,000/- drawn on Andhra Bank, Hisar Branch, District Hisar against account No.16671100001185.

5. The Court of the Judicial Magistrate Ist Class, Hisar (Trial Court) vide its judgment of conviction 22.08.2017 and order of sentence dated 24.08.2017 convicted the petitioner and his co-accused in criminal complaint No.441-II and sentenced them to undergo imprisonment for the period of 02 years and to pay a compensation of Rs.1,20,00,000/-.

6. On the same days i.e. on 22.08.2017 and 24.08.2017, the Trial Court vide its judgment of conviction and order of sentence, convicted the petitioner and his co-accused in Criminal Complaint No.658-II dated 20.05.2014 and they were sentenced to undergo imprisonment for the period of 02 years and to pay a compensation of Rs.1 Crore to the complainant.

7. Aggrieved by the aforementioned judgments of conviction of the Trial Court, the petitioner filed Criminal Appeal No. 458 of 2017 in Criminal Complaint No.441-II before the Additional Sessions Judge, Hisar. The said Court vide its judgment dated 28.07.2022 dismissed the appeal filed by the petitioner thereby affirming the judgment of conviction and order of sentence passed by the Judicial Magistrate Ist Class, Hisar. Aggrieved by the said order, the petitioner filed the connected petition bearing Criminal Revision No. 2099-2022 before this Court.

8. Meanwhile, aggrieved by the order of the Trial Court in Criminal Complaint No. 658-II dated 20.05.2014, the petitioner filed Criminal Appeal No.457 of 2017 before the Additional Sessions Judge, Hisar. The said Court vide its judgment dated 27.07.2022 dismissed the

CRR-2097-2022 (O & M)

::4::

appeal filed by the petitioner thereby affirming the judgment of conviction and order of sentence passed by the Judicial Magistrate Ist Class, Hisar.

9. Aggrieved by the said order, the petitioner filed the present petition bearing Criminal Revision No. 2097 of 2022.

10. The co-accused of the petitioner, namely, Krishan Kumar Soni also challenged his conviction vide two different appeals i.e. Criminal Appeal No.455 of 2017 and Criminal Appeal No.459 of 2017. During the pendency of the appeal, Krishan Kumar Soni settled the matter with the complainant and admitted his liability to pay 50% of the total cheque amount and thus, his appeals were accepted by the Additional Sessions Judge vide judgment dated 11.07.2022 and he was acquitted.

11. The learned counsel for the petitioner contends that it was the admitted case of the complainant that an amount of Rs.97,50,000/- had been given as a security. It was improbable that the accused would give cheques for an amount totalling Rs.1,10,00,000/- to the respondent No.1-complainant for discharging the liability of Rs.97,50,000/-. From the evidence, it was clearly established that the petitioner had resigned from the company on 28.02.2014 and the cheque in dispute had been handed over to the respondent No.1/complainant after his resignation. Therefore, no liability could be imposed upon the petitioner. Admittedly, the Franchise agreement was not executed by the petitioner and he was not the Managing Director of the company so the liability of the petitioner was not made out. In fact, as the cheques were given as a refund of the security amount, they could not be said to be legally enforceable debt. He, therefore, contends that the

CRR-2097-2022 (O & M)

::5::

judgments of conviction were liable to be set aside and the petitioner/accused ought to be acquitted.

12. The learned counsel for the respondent No.1, on the other hand, contends that the offence stands established beyond any reasonable doubt. The signatures on the cheques stood admitted. Therefore, the complainant had discharged the statutory presumption under the Act. In fact, there was no evidence that the blank security cheques had been misused. The co-convict of the petitioner, namely, Krishan Kumar Soni had accepted his guilt and on payment of 50% of the cheque amount he had been acquitted. Therefore, the petitioner could not be absolved of the findings arrived at against him.

13. I have heard the learned counsel for the parties.

14. A perusal of the record would reveal that the signatures on the cheques in question stand admitted. The statutory presumption under the Act has been discharged by the complainant. There is no evidence that the blank signed security cheques had been misused. The issuance of the cheques and their subsequent dishonour stand admitted beyond any reasonable doubt. Therefore, the offence stands established beyond any reasonable doubt.

15. In view of the aforementioned discussion, I find no merit in the present petition and the same stands dismissed.

16. As regards the imposition of sentence, the learned counsel for the petitioner-accused contends that as four different cheques had been issued with regard to the same transaction i.e. the refund of an amount of Rs.97,50,000/-, the sentence imposed in the instant case be ordered to run

CRR-2097-2022 (O & M)

::6::

concurrently with the sentence imposed in the first case i.e. Criminal Complaint No.441-II. Reliance is placed on the judgments in '***Shyam Pal versus Dayawati Besoya and anr. (Criminal Appeal Nos.988-989 of 2016 (arising out of SLP (Crl.) Nos.6226-27 of 2016) decided on 28.10.2016) and Dalip Kumar versus Sachin Singal (bearing CRM-M-35360-2022 decided on 17.08.2023)***'.

17. The learned counsel for the complainant-respondent No.1, on the other hand, contends that as two separate complaints had been filed regarding the dishonour of four cheques, there was no justifiable reason to order the sentences to run concurrently.

18. I have heard the learned counsels for the parties separately on this issue as well.

19. In '***Shyam Pal versus Dayawati Besoya and anr. (Criminal Appeal Nos.988-989 of 2016 (arising out of SLP (Crl.) Nos.6226-27 of 2016) decided on 28.10.2016)***', the Hon'ble Supreme Court has held as under:-

"9. The learned counsel for the appellant has urged that as both the complaints filed by the respondents have arisen out of successive transactions in a series between the same parties and had been tried together on the basis of same set of evidence, the sentences awarded ought to run concurrently, the High Court had failed to appreciate the same. It has been submitted that the appellant is in custody since 25.02.2015 and if the two substantive sentences are construed to run concurrently, he has served not only the substantive sentences but also the sentence in default of fine as on date. That the appellant comes from a poor financial background, as well as is the sole bread earner of the family and that if the two

sentences are to run consecutively, he would suffer grave injustice, has been emphasized. No argument, noticeably has been advanced, as abandoned before the High Court as well, impeaching the conviction.

10. We have extended our required consideration to few facts and the submissions made.

The materials on record leave no manner of doubt that the complaints filed by the respondents stem from two identical transactions between the same parties where under the respondent had advanced loan of L 5 lacs each to the appellant on two different dates against which the latter had issued cheques to discharge his debt and that the cheques had been dishonored. The facts pleaded and proved do unassailably demonstrate that the loans advanced had been in the course of a series of transactions between the same parties on same terms and conditions. Significantly in both the cases, following the conviction of the appellant under Section 138 of the Act, the same sentences as well have been awarded. There is thus an overwhelming identicalness in the features of both the cases permitting, the two transactions, though undertaken at different points of time, to be deemed as a singular transaction or two segments of one transaction. This deduction understandably is in the singular facts of the case.

11. The Custody Certificate dated 06.05.2016 issued by the Deputy Superintendent of Prison, Central Jail No.5, Tihar, New Delhi appended to the appeal petition mentions that the appellant on being convicted in the complaint cases referred to herein above under Section 138 of the Act is serving out the sentences awarded and that the period of his custody is as hereunder:

(1) 25.02.2015 to 13.12.2015 (As convict in CC No. 430/11)

(2) 14.12.2015 till date i.e. 06.05.2016 (As convict in CC No. 407/11)

That meanwhile the appellant had been on interim bail for 10 days from 05.10.2015 to 14.10.2015 as granted by the High Court has also been stated.

12. The law on the orientation of two sentences awarded to an offender following his conviction successively, to define the cumulative duration thereof is envisaged in section 427 of the Code of Criminal Procedure, 1973 (for short "Code") in following terms:

"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. *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 v. State of Haryana and Another 2013(3) RCR (Civil) 1052 : 2013(3) RCR (Criminal) 983 : 2013(4) Recent Apex Judgments (R.A.J.) 680 : (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 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.

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 herein above 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”.

20. In ‘***Dalip Kumar versus Sachin Singal (bearing CRM-M-35360-2022 decided on on 17.08.2023)***’, it was held as under:-

“13. Admittedly, the transaction in each of the complaints is between the same parties and regarding the same ledger/account. The three cheques leading to the filing of two complaints were issued within a span of a few days and the complaints themselves had also been filed within a gap of a couple of months. In fact, as per the orders dated 10.10.2019 (Annexure P-7 and P-8) and the statement of the complainant of the even date (Annexure P-9), the Court has held and the complainant has agreed that the complaint was between the same parties and the allegations were also similar. The complainant did not have any objection if the cross-examination conducted in one complaint was read in the other complaint as well. Therefore, the Court had held that the evidence recorded till date in one complaint was to be read in both the complaints verbatim.

Further, even if the proceedings in both the complaints were to go on separately and two judgments of conviction were recorded, in view of the judgments In Re: (supra), Shyam Pal (supra), Benson (supra) V.K. Bansal (supra) and Ravinder Singh (supra) the sentences would in all probability, be ordered to run concurrently the transactions being the same.

14. On the other hand, the facts in the judgment in K. Padamaja Rani (supra) are different. Firstly that was a case pertaining to four cases. These were several transactions over a period of time for supply of raw material for which the petitioner had tendered cheques towards payments. In the

instant case, there were three cheques issued within a span of a few days which culminated in two complaints filed within a span of a couple of months. Similarly, the judgment in Vishwanath Jha (supra) will not come to the aid of the respondent. Firstly, V.K. Bansal (supra) has not been considered. Secondly, the Court has not considered the anomalous situation that would arise where instead of multiple cheques being issued for the Rs.12,42,289/- debt a single cheque had been issued. If a single cheque had been issued for the entire debt, then there would have been a single trial and the imposition of a single sentence which would not have exceeded two years.

Even otherwise, if the substantive sentence is ordered to run concurrently nothing prohibits the Court from imposing a sentence of fine to be paid as compensation upto twice of the cheque amount for all the cheques comprising different complaints as is evident from a plain reading of Section 138 of the Negotiable Instruments Act along with a judgment in Gaurav Khullar Versus Eleven V Industries & others, decided on 28.02.2023, CRR-1631-2016.

15. In view of the above discussion, no useful purpose would be served by permitting the continuance of two separate trials and therefore, it would be just and expedient if the trial emanating out of complaint No.COMP/9225/2018 dated 05.07.2018 and the summoning order dated 06.07.2018 be clubbed with the trial emanating out of complaint No.COMP/6718/2018 dated 15.05.2018 and summoning order dated 17.05.2018. The Trial Court would then proceed to hear the arguments in each case and pass one judgment”.

21. In view of the aforementioned discussion, the substantive sentence imposed by the Trial Court vide judgment of conviction and order

CRR-2097-2022 (O & M)

::13::

vide judgment dated 27.07.2022 arising out of Criminal Complaint No. 658-II dated 20.05.2014 is ordered to run concurrently with the sentence imposed by the Trial Court vide judgment of conviction and order of sentence dated dated 22/24.08.2017 and upheld by the Lower Appellate Court vide judgment dated 28.07.2022 arising out of Criminal Complaint No.441-II dated 05.03.2014. However, the sentence of payment of compensation shall remain intact in each case.

(JASJIT SINGH BEDI)
JUDGE

December 22, 2023
sukhpreet

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