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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 17th August, 2023*

+ CRL.REV.P. 572/2023 and CRL.M.A. 13718/2023 (concurrent running of sentences)

RAJNI MOGHA & ANR. Petitioners
Through: Mr.Arjun Malik, Advocate.

versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Ms.Shubhi Gupta, APP for State.
Mr.M.D.Jangra, Mr.Varun Kumar
and Mr.Shitanshu, Advocates along
with Respondent no.2 in person.

+ CRL.REV.P. 573/2023 and CRL.M.A. 13720/2023 (concurrent running of sentence)

RAJNI MOGHA & ANR. Petitioners
Through: Mr.Arjun Malik, Advocate.

versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Ms.Shubhi Gupta, APP for State.
Mr.M.D.Jangra, Mr.Varun Kumar
and Mr.Shitanshu, Advocates along
with Respondent no.2 in person.

+ CRL.REV.P. 675/2023 and CRL.M.A. 15966/2023 (concurrent running of sentence), CRL.M.A. 15967/2023 (for exemption) and CRL.M.A. 15968/2023 (delay 15 days in filing)

PAWAN MOGHA & ANR. Petitioners
Through: Mr.Arjun Malik, Advocate.

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versus

STATE & ANR.

..... Respondents

Through: Ms.Shubhi Gupta, APP for State.
Mr.M.D.Jangra, Mr.Varun Kumar
and Mr.Shitanshu, Advocates along
with Respondent no.2 in person.

+ CRL.REV.P. 679/2023, CRL.M.A. 16076/2023 (concurrent running
of sentence), CRL.M.A. 16077/2023 (for exemption) and CRL.M.A.
16078/2023 (delay 15 days in filing)

PAWAN MOGHA & ANR.

..... Petitioners

Through: Mr.Arjun Malik, Advocate.

versus

STATE & ANR.

..... Respondents

Through: Ms.Shubhi Gupta, APP for State.
Mr.M.D.Jangra, Mr.Varun Kumar
and Mr.Shitanshu, Advocates along
with Respondent no.2 in person.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. All the aforesaid petitions raise common issues and are therefore, being taken up together.
2. CRL.REV.P. 572/2023 and CRL.REV.P. 573/2023 have been filed on behalf of the petitioner, Ms. Rajni Mogha and CRL.REV.P. 675/2023 and CRL.REV.P. 679/2023 have been filed on behalf of the petitioner Mr. Pawan Mogha. The petitioners in the aforesaid petitions are husband and

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wife. The respondent no.2 in all the four petitions is common, i.e., 'M/S Kumar And Company'.

3. Brief facts leading to the filing of the present petitions are as follows:
 - i. Both the petitioners approached the respondent no.2 for a friendly loan of Rs.5,00,000/- each, in the month of July, 2015.
 - ii. The respondent no.2 granted a loan of Rs.5,00,000/- each to both the petitioners.
 - iii. Towards discharge of their liability, each of the petitioners issued five cheques of Rs.1,00,000/- each, in favour of the respondent no. 2.
 - iv. The aforesaid cheques were dishonoured upon presentation and the respondent no.2 filed a total of four complaints, i.e., two separate complaints against each of the petitioners, invoking Section 138 of the Negotiable Instruments Act, 1881 (NI Act).
 - v. After conclusion of the trial, the Trial Court convicted the petitioners *vide* separate judgments and sentenced the petitioners to undergo 6 months simple imprisonment along with fine and further imprisonment for one month in default of payment of fine, in each of the four complaints.
 - vi. Being aggrieved by the aforesaid judgments, the petitioners preferred appeals before the Additional Sessions Judge (ASJ), South East District, Saket Court Complex, New Delhi, which were dismissed by the learned ASJ by four separate judgments, all dated 20th February, 2023.
4. The present revision petitions have been filed against the aforesaid judgments of the ASJ.
5. At the outset, the counsel for the petitioners submits that he is not

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contesting the present petitions on merits and only seeks a limited relief that the sentence awarded to the each of the petitioners in the two complaint cases, run concurrently. He places reliance on the judgment of the Supreme Court in *Shyam Pal v. Dayawati Besoya*, (2016) 10 SCC 761. He further submits that the petitioners are not in a position to pay fine and are therefore, willing to undergo one month default imprisonment in each of the cases.

6. Learned counsel appearing on behalf of the respondent no.2 submits that the aforesaid ground was never taken by the petitioners before the Trial Court or before the Sessions Court and has been taken for the first time before this Court today. He further submits that since the respondent did not recover the amounts due to them under the dishonoured cheques, the sentences should not run concurrently.

7. I have heard the counsels for the parties and perused the material on record.

8. Counsel for the respondent no.2 is correct in his submission that the aforesaid ground of the two sentences running concurrently was not taken earlier by the petitioners before the Trial Court or the Sessions Court. However, since it is a pure question of law, the petitioners are entitled to take the aforesaid ground in the present petition.

9. Under Section 427 of the Code of Criminal Procedure, 1973, the Court has the power to direct that sentences awarded to a person shall run concurrently.

10. In *Shyam Pal* (supra), which also involved complaints under Section 138 of the NI Act, the High Court had dismissed the revision petition seeking concurrent running of sentences, filed by the appellant therein. In appeal, the Supreme Court held that the sentences awarded to the appellant

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therein in the two complaint cases would run concurrently. The relevant findings of the Supreme Court are set out below:

*“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 whereunder the respondent had advanced a loan of Rs 5 lakhs 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 dishonoured. **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.***

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13. ...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.”

11. The aforesaid judgment in ***Shyam Lal*** (supra) is fully applicable in

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the facts and circumstances of the present case. In *Shyam Lal* (supra), there were two identical transactions between the same parties and two separate loans were given to the appellant therein, on two different dates. The present case is on a stronger footing as in the present case, there is only one loan transaction between each of the petitioners and the respondent. The five cheques given by each of the petitioners to the respondent were in discharge of the liability arising out of the same loan.

12. In view of the discussion above, the petitioners are entitled to the benefit of Section 427. Accordingly, it is directed that the two sentences awarded to Ms. Rajni Mogha in CRL.REV.P. 572/2023 and CRL.REV.P. 573/2023 and Mr. Pawan Mogha in CRL.REV.P. 675/2023 and CRL.REV.P. 679/2023 of six months simple imprisonment each shall run concurrently.

13. Since the petitioners submit that they are not in a position to pay the fine, each of the petitioners would have to undergo the default imprisonment of one month in each of the two cases. Therefore, each of the petitioners would serve a total sentence of 8 months.

14. The petitions along with all pending applications stand disposed of in aforesaid terms.

AMIT BANSAL, J.

AUGUST 17, 2023

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