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

Date of decision: 16.01.2023

\+ CRL.M.C. 4690/2022

AMIT SHARMA ..... Petitioner

Through: Mr Siddharth Yadav, Adv.

versus

RAMA GOYAL ..... Respondent

Through: Mr Attin Shankar Rastogi, Mr Rajesh Ranjan and Mr Shivkant Arora, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (*ORAL*)**

1. This is a petition filed under Section 482 Cr.P.C seeking a direction for concurrent running of sentences awarded to the petitioner by learned MM-01, South, NI Act, Saket Courts, Delhi vide order dated 17.02.2020 in cases bearing CC Nos. 12459/2018, 12465/2018, 12475/2018 and 13036/2018 all titled as '*Rama Goyal vs. Amit Sharma*' under Section 138 of the Negotiable Instruments Act.

2. The brief facts are that the petitioner owed Rs. 28 lakhs to the parents of the respondent which was duly accepted by the petitioner and also acknowledged in writing. Subsequently, a settlement was arrived at between the petitioner and respondent wherein the petitioner agreed to pay a sum of Rs. 12 lakhs to respondent vide his handwritten undertaking dated 10.04.2018 and issued 4 cheques of Rs 3 lakhs each. All the cheques on

presentation were dishonoured and the respondent filed four complaints under Section 138 of the Negotiable Instruments Act bearing CC Nos. 12459/2018, 12465/2018, 12475/2018 and 13036/2018.

3. Vide 4 separate orders the petitioner was held guilty for violation of Section 138 of the Negotiable Instruments Act. Vide judgment dated 28.01.2020 and vide order on sentence dated 17.02.2020, the petitioner was awarded sentence of 8 months with a fine of Rs. 4,50,000/- and in the event of failure to pay the fine, further imprisonment of three months.

4. The petitioner filed an appeal against the said judgments and orders on sentence under Section 374 Cr.P.C. The learned Sessions Court directed the petitioner to deposit 20% of the fine in all four cases. The petitioner was unable to deposit the fine in any of the cases

5. In this view of the matter, the present petition has been filed seeking an order directing concurrent running of sentence awarded to the petitioner in the four complaint cases.

6. Mr Yadav, learned counsel for the petitioner has relied upon the judgment passed by Hon'ble Supreme Court in ***V.K. Bansal v. State of Haryana & Anr.*** (2013) 7 SCC 211 and more particularly para Nos. 2 and 16.

> *"**2.** The material facts are not in dispute. The appellant is a Director in a group of companies including Arawali Tubes Ltd., Arawali Alloys Ltd., Arawali Pipes Ltd. and Sabhyata Plastics (P) Ltd. The appellant's case before us is that in connection with his business conducted in the name of the above companies, he had approached the respondent Haryana Financial Corporation for financial assistance and facilities. The Corporation had*

accepted the requests made by the companies and granted financial assistance to the first three of the four companies mentioned above. Several cheques towards repayment of the amount borrowed by the appellant in the name of the above companies were issued in favour of Haryana Financial Corporation which on presentation were dishonoured by the banks concerned for insufficiency of funds. Consequently, the Corporation instituted complaints under Section 138 of the Negotiable Instruments Act against the appellant in his capacity as the Director of the borrowing companies. These complaints were tried by the Judicial Magistrates at Hissar culminating in the conviction of the appellant and sentence of imprisonment which ranged between 6 months in some cases to one year in some others besides imposition of different amounts of fine levied in each complaint case and a default sentence in the event of non-payment of amount awarded in each one of those cases.

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."*

7. Mr Rastogi, learned counsel has also relied upon judgment passed by Hon'ble Supreme Court in ***M.R. Kudva v. State of A.P.*** (2007) 2 SCC 772 and more particularly. Para 12 which reads as under:

> ***"12.** However, in this case the provision of Section 427 of the Code was not invoked in the original cases or in the appeals. A separate application was filed before the High Court after the special leave petitions were dismissed. Such an application, in our opinion, was not maintainable. The High Court could not have exercised its inherent jurisdiction in a case of this nature as it had not exercised such jurisdiction while passing the judgments in appeal. Section 482 of the Code was, therefore, not an appropriate remedy having regard to the fact that neither the trial Judge, nor the High Court while passing the judgments of conviction and sentence indicated that the sentences passed against the appellant in both the cases shall run concurrently or Section 427 would be attracted. The said provision, therefore, could not be applied in a separate and independent proceeding by the High Court. The appeal being devoid of any merit is dismissed."*

8. I have heard learned counsel for the parties.

9. In the present case different complaints were filed, and different orders of sentence were passed. Having said that, I am of the view that all the complaints arise from a single transaction. This is clearly evident as the petitioner had admitted the loan in his own handwriting and further that he owes Rs. 12 lakhs to the respondents. The loan transaction was one, the admitted debt was one of Rs. 12 lakhs for which four cheques were issued. Issuance of four different cheques do not make it four different transactions. The reliance of Mr Yadav is well founded on the judgment of ***V.K. Bansal*** **(supra)**.

10. As regards as the judgment of ***M.R. Kudva*** **(supra)** is concerned, the factual matrix in that case suggests that the matter had gone up to the Supreme Court and Special Leave Petitions were dismissed and the High Court had not indicated that sentences passed against the appellant in both cases were to run concurrently. In the present case, since the cheques in question were issued based upon a single transaction, I am of the view that the sentence should be running concurrently in all four complaint cases.

11. For the aforesaid reasons, the petition is allowed and it is directed that the sentences awarded by the learned MM-01, South, NI Act, Saket Courts, Delhi vide order dated 17.02.2020 in cases bearing CC Nos. 12459/2018, 12465/2018, 12475/2018 and 13036/2018 all titled as '*Rama Goyal vs. Amit Sharma*' under Section 138 of the Negotiable Instruments Act, shall run concurrently. With regard to non payment of the fine, the default sentence shall run separately.

12. With these directions, the petition is allowed and disposed of.

13. Copy of this order be sent to concerned Jail Superintendent.

JASMEET SINGH, J

JANUARY 16, 2023/sr

Click here to check corrigendum, if any