

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 187 OF 2024
ALONGWITH
INTERIM APPLICATION NO. 1613 OF 2024
IN
CRIMINAL REVISION APPLICATION NO. 187 OF 2024
ALONGWITH
CRIMINAL REVISION APPLICATION NO. 343 OF 2024

Sanjeev Sinha
Proprietor - Ganesh Steel

...Applicant

vs.

M/s. Standard Galva Steels Pvt. Ltd.

...Respondent

Mr. Neeraj D. Yadav h/f. Mr. R. Sathyanarayanan :-	Advocate for Applicant.
Mr. Sumit Kate :-	Advocate for Respondent No. 1 appointed by Legal Aid.
Mr. H. J. Dedhia :-	APP for Respondent No.2-State.

CORAM : S. M. MODAK, J.

DATE : 9th AUGUST 2024

P. C. :-

- As directed on the last date on 21st July 2024 compliance is duly made. The Learned APP is kind enough to pursue with Taloja Central

Prison. They have send a report giving the details, which are as follows :-

- (a) Date of Appellate Court judgment :- 28th March 2023
- (b) Date of entry in prison :- 29th March 2023
- (c) Duration of substantive sentence :- 6 months
- (d) In default sentence :- 3 months in default of payment of amount of compensation of Rs. 26,39,766/- (Twenty Six Lakh Thirty Nine Thousand Seven Hundred Sixty Six only) and Rs. 17,92,594/- (Seventeen Lakh Ninety Two Thousand Five Hundred Ninety Four only)
- (e) Total period of sentence undergone :- 1 Year, 4 Months, 11 Days
- (d) Probable date of release :- 28th September 2024.

2. So also learned Secretary, Maharashtra Legal Services Authority is kind enough to appoint learned Advocate Mr. Sumit Kate representing Respondent No.1- Complainant. He has accepted private notice. Affidavit of service is also filed.

3. The only point argued by Mr. Sathyanarayanan is about the nature of substantive sentence. Whether it should be consecutive or concurrent. Alternatively, he also prayed for reducing the sentence so that Applicant can come out of jail. It is admitted fact that he has not

deposited a single paisa towards compensation. He relied upon the observations in case of *B. K. Bansal State of Haryana and Ors*¹ High Court has declined the prayer to issue directions in terms of Section 427 of Criminal Procedure Code [Cr.P.C.]. The sentences are awarded under Section 138 of Negotiable Instruments Act, 1881 [N.I.Act]. The provisions of Section 427 of the Cr.P.C. was considered. If a person who is already undergoing sentence is convicted subsequently, the subsequent sentence of imprisonment will commence on the expiration of the earlier imprisonment. While considering the issue “the Rule of single transaction” was also considered. (Paragraph No. 10). In paragraph No. 15 it is observed as under :-

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 involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor.

4. In that matter, there were in all 15 complaints. On the basis of facts of those complaints in certain cases Hon’ble Supreme Court

1. AIR 2013 SC 3347.

directed sentence to run concurrent. In rest of the cases the sentence is to be run consecutively. According to learned Advocate Mr. Kate, the benefit cannot be awarded to the Applicants because the transactions are different.

5. On this background I have heard learned Advocate for Applicants. He invited my attention to the evidence recorded before the Court of Metropolitan Magistrate in C.C. No. 1617/SS/2019 and C.C. No. 1617/SS/2019. The following are the details of the transactions.

6. Basically the Complainant sold a wire rods to the accused No. 1 who is proprietary firm and accused No. 2 who is proprietor. There are two delivery orders in CC No. 1618/SS/2019. They are 248 and 249 dated 18th April. Amount of bills comes to Rs.35,62,691/- (Rupees Thirty Five Lakh Sixty Two Thousand Six Hundred Ninety One only). The Accused No. 2 issued two cheques dated 5th May 2016 and 6th May 2016 for Rs.8,95,842/- (Rupees Eight Lakh Ninety Five Thousand Eight Hundred Forty Two only) and Rs.8,96,702/- (Rupees Eight Lakh Ninety Six Thousand Seven Hundred Two only) respectively. There is common notice dated 28th May 2016. The

amount of compensation imposed is Rs.17,92,594/- (Rupees Seventy Lakh Ninety Two Thousand Five Hundred Ninety Four only) alongwith 9% interest.

7. Whereas in CC No. 1617/SS/2019 transaction was same about sale of Wire Rods. The delivery orders were four (4) dated 6th April 2013, 12th April 2013 and 15th April 2013. Four cheques were issued. Two cheques are dated 2th May 2016 and one cheque each is of 3rd May 2016 and 4th May 2016. Total amount comes to Rs.26,39,799/- (Rupees Twenty Six Lakh Thirty Nine Thousand Seven Hundred Ninety Nine only). There is common notice dated 28th May 2016. The amount of compensation imposed is Rs.26,39,799/- (Twenty Six Lakh Thirty Nine Thousand Seven Hundred Ninety Nine only) along with 9% interest.

8. It is true that he has preferred two separate Appeals bearing No. 84 of 2021 and 85 of 2021. Both Appeals were dismissed on 20th March 2023. Delay caused in filing these Revisions is already condoned.

9. Even though there are different orders and even though different cheques are there, the basic transaction is same. It is about supply of

Wire Rods. The Wire Rods were supplied as per demand and as per the convenience and different cheques are issued but basic transaction is same. Even parties are same. So certainly the benefit can be granted to the Applicant of the concurrent sentence. Another reason is on the same date i.e. on 28th May 2016 both notices were sent. I think two separate complaints were filed. Probably for the reason that only three offences of the same kind can be clubbed together. Otherwise the transaction is same. So if the substantive sentence of six months in both cases will run concurrently then in default sentence is 3 months + 3 months, because default, sentence never run concurrently. Considering the period of detention given by the Superintendent, the applicant has undergone entire sentence if calculated in above manner.

10. In that view of the matter, Applicant is entitled to be released from jail also. Hence the order :-

ORDER

- (i) Both the Revisions are partly allowed.
- (ii) Substantive sentence of six (6) months imposed by the Court of Metropolitan Magistrate, Esplanade in CC No.1617/SS/2019 and CC No.1618/SS/2019 to run concurrently.

- (iii) The accused may be released from jail immediately if not required in any other case.
- (iv) Parties to act on authenticated copy of this order.

11. Interim Application is also disposed of accordingly.

[S. M. MODAK, J.]