

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:22.01.2024

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.R.C.(MD).Nos.664 to 669 of 2023

and

CrI.M.P.(MD).Nos.6318, 9324, 9326, 9328, 9329 & 9332 of 2023

CrI.R.C.(MD).No.664 of 2023:

M.Siddiq @ Abu Bakkar

... Petitioner

Vs.

Nizamuddin @ Mohammed Marzook

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the judgment passed by the learned Additional District and Sessions Judge, (FTC), Kumbakonam dated 20.04.2023, in C.A.No.100 of 2021 confirming the judgment of conviction and sentence passed by the learned Judicial Magistrate No-I, Kumbakonam, in S.T.C.No.1850 of 2019 dated 30.09.2021 and to set aside the same.

For Petitioner : Mr.N.Dilipkumar (in all cases)

For respondent : Mr.T.Balakumaran (in all cases)

COMMON ORDER

The petitioner filed these Criminal Revision Cases challenging the conviction and sentence passed in S.T.C.Nos.1850 to 1852, 1866, 1870 and 1904 of 2019 dated 30.09.2021, by the learned Judicial Magistrate No-I, Kumbakonam, confirmed by the learned Additional District and Sessions Judge, (FTC), Kumbakonam, in C.A.Nos.100, 101, 102, 103, 104 and 105 of 2021, dated 18.04.2023 and 20.04.2023 respectively. The petitioner issued 18 cheques to discharge his total liability of Rs.1,80,00,000/- and the same was dishonoured. Therefore, 6 private complaints were filed under Section 138 r/w 142 of the Negotiable Instruments Act and separate conviction and sentence were imposed by the trial Court. The same was confirmed by the first appellate Court. Challenging the same, the present revision cases were filed and hence, this Court has taken up all these cases for hearing together and disposed of by way of this common order.

2. The respondent herein initiated the proceedings under Section 138 of the Negotiable Instruments Act against the revision petitioner and

his wife, with the allegation that they have entered into a sale agreement with the respondent on 22.11.2013, for the sale consideration of Rs.2,05,10,840/-and he made payment of entire above said amount. Due to the pendency of several litigation over the property, the accused namely, the petitioner and his wife were not able to execute and register the sale deed. Hence, the complainant/respondent demanded the refund of amount. But, they refused to pay the same. Hence, the respondent made a complaint before the Central Crime Branch, Chennai.

3. The petitioner and his wife have filed a Anticipatory Bail petition before this Court in Crl.O.P.No.16057 of 2014, where an interim Anticipatory Bail was granted with a condition to make the payment of Amount. Therefore, the petitioner is said to have paid a sum of Rs. 25,00,000/- and also to file an undertaking affidavit to make repayment in ten installments for a sum of Rs.1,80,00,000/- by issuing 18 cheques each for Rs.10,00,000/- and cheques were issued. The said the cheques were presented with the respondent's bank and the same were returned with an endorsement of insufficient fund, which clearly shows that the petitioner and his wife did not adhere to the terms of undertaking.

Therefore, the respondent issued a statutory notice under Section 138 of the Negotiable Instruments Act, and the same was received by the petitioner. Thereafter, there was no reply from him. Hence, 6 private complaints were filed in S.T.C.Nos.435 to 440 of 2016, before the learned Judicial Magistrate, Kumbakonam, for the dishonour of 18 cheques bearing Nos.519705 to 519722 for Rs.10,00,000/- each in favour of the respondent for the repayment. Thereafter, all the cases were transferred to Judicial Magistrate Court No.I, Kumbakonam and renumbered as S.T.C.Nos.1850, 1851,1852,1866,1870 & 1904 of 2019.

4. During the trial, P.W.1 was examined. Even though he was a NRI, he dutifully appeared before the trial Court and submitted himself for cross examination. When the cross examination was in part, the petitioner/accused failed to continue the cross examination, after the respondent left India. The petitioner filed a petition under Section 311 of Cr.P.C., and the same was dismissed. Aggrieved over the same, the petitioner filed a petition in Crl.O.P.(MD).No.16057 of 2014, before this Court and the same was also dismissed, on factual grounds.

5. The learned trial Judge after considering the evidence adduced on the side of P.W.1 and the evidence adduced on the side of the respondent/complainant, acquitted his wife, on the ground that she was neither a signatory to the cheque nor joint account holder and convicted the petitioner alone which is as follows:

<i>S.No.</i>	<i>Accused</i>	<i>Conviction under Section</i>	<i>Case Nos.</i>	<i>Sentence of Imprisonment/ fine imposed</i>
1.	M.Siddiq @Abu Bakkar	Section 138 of NI Act	S.T.C.No. 1850 of 2019	Simple Imprisonment of one year and to pay a cheque amount of Rs.22,67,000/- as compensation, in default to undergo Simple Imprisonment for three months.
2.	M.Siddiq @Abu Bakkar	Section 138 of NI Act	S.T.C.No. 1866 of 2019	Simple Imprisonment of one year and to pay a cheque amount of Rs.22,67,000/- as compensation, in default to undergo Simple Imprisonment for three months.
3.	M.Siddiq @Abu Bakkar	Section 138 of NI Act	S.T.C.No. 1851 of 2019	Simple Imprisonment of one year and to pay a cheque amount of Rs.22,67,000/- as compensation, in default to undergo Simple Imprisonment for three months.
4.	M.Siddiq @Abu Bakkar	Section 138 of NI Act	S.T.C.No. 1852 of 2019	Simple Imprisonment of one year and to pay a cheque amount of Rs.22,67,000/- as compensation, in default to undergo Simple Imprisonment for three months.
5.	M.Siddiq @Abu Bakkar	Section 138 of NI Act	S.T.C.No. 1870 of 2019	Simple Imprisonment of one year and to pay a cheque amount of Rs.22,67,000/- as compensation, in default to undergo Simple Imprisonment for three months.

6.	M.Siddiq @Abu Bakkar	Section 138 of NI Act	S.T.C.No. 1904 of 2019	Simple Imprisonment of one year and to pay a cheque amount of Rs.22,67,000/- as compensation, in default to undergo Simple Imprisonment for three months.
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Aggrieved over the same, the petitioner filed the appeal in C.A.Nos.100, 101, 102, 103, 104 and 105 of 2021, before the learned Additional District and Sessions Judge, (F.T.C.), Kumbakonam, and the same was dismissed on 18.04.2023 and 20.04.2023 respectively. Challenging the concurrent finding of the Courts below, the petitioner filed these revision cases before this Court.

6. The learned counsel for the petitioner submitted that even though the petitioner gave an undertaking before this Court, at the time of granting bail, the same is not a binding before this Court to decide the issue of legally enforceable debt and the same was not proved before this Court. He would further submit that the undertaking given before the bail Court is not binding before this Court. The undertaking affidavit filed before the bail Court was not filed before this Court. Hence, there is no privity of contract and relationship between the petitioner and the

respondent and also had filed summary suit before the Court below. In spite of the persistent prayer made by the petitioner, there was no opportunity given to the petitioner to conduct fair trial by cross examining P.W.1/defacto complainant. The cheques were fabricated in six cases and the six cases were filed. The deposition was not recorded in six cases. Separate legal notice was not issued. The award of compensation was different from the cheque amount. Since the number of suits were pending, the proceedings under Section 138 of the Negotiable Instruments Act can not be entertained.

7. The learned counsel for the respondent refuted the contention and submitted that adequate opportunity was given and the amount is an advance amount. Hence, there is a legally enforceable debt. The undertaking affidavit being not filed is not a matter to disbelieve the version and the order of this Court has clearly indicated the undertaking given by the petitioner. The petitioner has entered into the contract between the respondent and hence, the allegation that there is no contractual relationship, is not correct. The allegation of sufficient opportunity was not given, is not correct, when his plea was dismissed by

this Court and the petitioner challenged the dismissal of recall petition. The petitioner filed six cases for his 18 cheques as per law. Therefore, there is no merit in the contention of the petitioner. Both the Courts below considered all the aspects and appreciated the evidence and facts and recorded a finding that the petitioner committed the offence under Section 138 of the Negotiable Instruments Act.

8. This Court considered the rival submissions made on either side and perused the materials available on record.

9. The petitioner and his wife had entered into a sale agreement with the respondent on 22.11.2013. The respondent agreed to purchase the property for the sale consideration of Rs.2,05,10,840/- and the respondent paid advance of Rs.1,80,00,000/- Thereafter, due to some dispute regarding the property, the said agreement was unable to be executed. Therefore, the respondent asked to refund the amount, but the same was not done. Hence, six complaints were preferred before the Central Crime Branch, Chennai. At that time, the petitioner and his wife filed the Anticipatory Bail before this Court in Crl.O.P.(MD)No.16057 of

2014 and agreed to make the payment by filing the undertaking affidavit and handed over the 18 cheques. On the basis of the undertaking affidavit, this Court passed the following order in the above said Criminal Original Petition:

“3. I submit that as per the order of this Hon'ble Court we made fair endeavor to hand over Demand Draft to the tune of Rs.10,00,000/- dated 29.11.2014 and 04.12.2014 (Five lakhs each) and Rs.15,00,000/- as cheque dated 16.01.2015, in cheque Nos.519703 and 519704 but he could not be contact and moreover he is always accompanying with an accused namely, Selvam alias Daniel who is main kartha for the entire issue, therefore I am placing the said Demand Draft and cheque before this Hon'ble Court to show our bonafide.

7. I Submit that now I am negotiating with prospectus buyer to sell my properties therefore through this affidavit I undertake to settle the entire amount due to the defacto complainant i.e., Rs. 1,80,00,000/- (One Crores and Eighty Lakhs)

“On 05.06.2015 cheque to the sum or Rs. 90,00,000/- (Ninety lakhs) bearing cheque Nos.519705 to 519713, nine cheques of Rs.10,00,000/- (ten lakhs)

bearing cheque Nos.519714 to 519722, nine cheques of Rs.10,00,000/- (Ten Lakhs) each”.

10. In the said proceedings, on behalf of his wife, the petitioner has given the undertaking to repay the amount and he gave 18 cheques bearing Number 519705 to 519722 for Rs.10,00,000/- each in favour of the respondent for the repayment. He also admitted the filing of the undertaking affidavit before the Court. In the said circumstances, this Court finds that this amount is legally enforceable debt. The petitioner herein has undertaken to pay the amount of debt incurred by his wife. The said undertaking is valid in law. When the petitioner and his wife are living under the same roof, the learned trial Judge granted sufficient opportunities to defend the cases. In order to prolong and protract the issue, the petitioner did not cross examine the respondent, when the respondent was available in India. Thereafter, he filed a recall petition under Section 311 of Cr.P.C., and the same was dismissed by this Court. Hence, this Court can not accept the plea of the petitioner that no sufficient opportunity was given to him.

11. According to the learned counsel for the petitioner, the undertaking affidavit was not produced and hence, both the Courts below failed to take adverse inference against the respondent and failed to hold that the respondent has not proved the debt. This Court is not inclined to accept the argument on the ground that the material terms of the undertaking affidavit has been incorporated in the Anticipatory Bail order copy in CrI.O.P.No.16057 of 2014, which has been marked as Ex.P1. Further, he admitted the said fact and he also has not denied the same in the explanation during the course of the under Section 313 of Cr.P.C., proceedings.

12. The learned counsel for the petitioner submitted that the anticipatory bail was cancelled subsequently on the ground that the petitioner has not acted as per the undertaking affidavit and hence, the validity of the issuance of cheque becomes “zero”. The said argument has no legs to stand for the reason that the petitioner admitted the liability and also the receipt of an advance amount and issuance of the cheque to repay the said advance amount. When he filed the undertaking affidavit and also paid part amount during the course of the anticipatory

bail, the petitioner has no *locus* to escape from the above undertaking. Hence, the finding of both the Courts below that the petitioner committed the offence under Section 138 of the Negotiable Instrument Act is correct.

13. The learned counsel for the petitioner submitted that filing of the 6 cases for 18 cheques is not legally correct and hence, the initiation of the proceedings itself is illegal and consequently, the conviction and sentence of imprisonment passed by both the Courts below is liable to be set aside. As per Section 219 of Cr.P.C., the respondent has filed 6 cases for his 18 cheques. There is no bar to file even single complaint for all the 18 cheques as held by the Hon'ble Division Bench of this Court in the case of Manjula Vs. Colgate Palmolive (India) Limited, reported in 2006 (5) CTC 303. Hence, this Court does not find any merits in the submission of the learned counsel for the petitioner in filing six cases for each 3 cheques to the value of Rs.30,00,000/-.

14. In all aspects, both the Courts below have considered the evidence of P.W.1 and Ex.P1 and categorically held that the petitioner

issued the cheques to discharge the amount mentioned in the cheque for refund of the advance amount received by the petitioner as per the sale agreement. Therefore, the presumption under Section 139 of NI Act, would arise.

15. It is settled principle that mere denial of issuance of cheque to discharge the liability is not sufficient to rebut the presumption under Section 139 of NI Act. He either should produce evidence or bring on record such facts and such circumstances which may lead the Court to conclude either that the consideration did not exist or that its non-existence was so probable that a prudent man would do under the circumstances of the case. In this aspect it is relevant to note the judgment of the Hon'ble Supreme Court in the case of ***Rohitbhai Jivanlal Patel v. State of Gujarat, (2019) 18 SCC 106 at page 118***

15. So far the question of existence of basic ingredients for drawing of presumption under Sections 118 and 139 of the NI Act is concerned, apparent it is that the appellant-accused could not deny his signatures on the cheques in question that had been drawn in favour of the complainant on a

bank account maintained by the accused for a sum of Rs 3 lakhs each. The said cheques were presented to the bank concerned within the period of their validity and were returned unpaid for the reason of either the balance being insufficient or the account being closed. All the basic ingredients of Section 138 as also of Sections 118 and 139 are apparent on the face of the record. The trial court had also consciously taken note of these facts and had drawn the requisite presumption. Therefore, it is required to be presumed that the cheques in question were drawn for consideration and the holder of the cheques i.e. the complainant received the same in discharge of an existing debt. The onus, therefore, shifts on the appellant-accused to establish a probable defence so as to rebut such a presumption.

17. On the aspects relating to preponderance of probabilities, the accused has to bring on record such facts and such circumstances which may lead the Court to conclude either that the consideration did not exist or that its non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that the consideration did not exist.

This Court has, time and again, emphasised that though there may not be sufficient negative evidence which could be brought on record by the accused to discharge his burden, yet mere denial would not fulfil the requirements of rebuttal as envisaged under Sections 118 and 139 of the NI Act.

ii) *In Kumar Exports [Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513 (SCC pp. 520-21, paras 20-21)*

“20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the

court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact,

for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act.

21. The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, therefore, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue.”

16.It is settled principle that unless there is a perversity in the finding of the courts below, this Court has no jurisdiction to interfere with the finding of the Courts below and the same is fortified by the following decisions of the Hon'ble Supreme Court:

In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri***,
reported in **1999 SCC (Cri) 275 at page 454**

5. Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to

the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter, the impugned judgment of the High Court is wholly unsustainable in law and we, accordingly, set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence.

(ii) In *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197 at page 205

16. It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

When the respondent clearly proved his case of legally enforceable debt, presumption under Section 139 of the Act arises and the same was not rebutted as per the requirement of law and this Court finds no reason to interfere with the concurrent finding of the Courts below that the cheques were issued to discharge the legally enforceable debt.

17.Question of sentence:

To consider the petitioner's plea of concurrent sentence in S.T.C.Nos.1850, 1851, 1852, 1866, 1870 and 1904 of 2019, it is relevant to extract the law laid down by the Honourable supreme Court in the following cases;

17.1.In the case of *V.K.Bansal Vs. State of Haryana and another* reported in **(2013) 7 SCC 211**, the relevant portion is extracted

hereunder:

We make it clear that the direction regarding concurrent running of sentence shall be limited to the substantive sentence only. The sentence which the appellant has been directed to undergo in default of payment of fine/compensation shall not be affected by this direction. We do so because the provisions of Section 427 CrPC do not, in our opinion, permit a direction for the concurrent running of the substantive sentences with sentences awarded in default of payment of fine/compensation.

19.In the result, these appeals succeed but only in part and to the following extent:

19.1.Substantive sentences awarded to the appellant by the Courts of the Judicial Magistrate, First Class, Hissar and Additional Chief Judicial Magistrate, Hissar, in Criminal Complaint Cases No. 269-II/1997; No. 549-II/1997; No. 393-II/1997; No. 371-II/1997; No. 372-II/1997; No. 373-II/1997; No. 877-II/1996; No. 880-II/1996; No. 878-II/1996; No. 876-II/1996; No. 879-II/1996 and No. 485-II/1996 relevant to the loan transaction between Haryana Financial Corporation and Arawali

Tubes shall run concurrently.

17.2. In the case of ***Shyam Pal v. Dayawati Besoya***, reported in (2016) 10 SCC 761, the relevant portion is extracted hereunder;

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 [V.K. Bansal v. State of Haryana, (2013) 7 SCC 211 : (2013) 3 SCC (Civ) 498 : (2013) 3 SCC (Cri) 282] 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 [Benson v. State of Kerala, (2016) 10 SCC 307] 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 [V.K. Bansal v.State of Haryana, (2013) 7 SCC 211 : (2013) 3 SCC (Civ) 498 : (2013) 3 SCC (Cri) 282] that it is difficult to lay down any straitjacket 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.

18.The above judgment was also considered by the Honourable **MR.JUSTICE N.ANAND VENKATESH**, in ***Crl.O.P.Nos.16606 and 16609 of 2023***. The relevant portion is extracted hereunder:

8.It is clear from the above judgments that I the accused person is found guilty in more than one case and he is sentenced and the order of the Court is silent with respect to the period from which the subsequent sentence will take effect, the sentences will start running from the date when they were given effect to. In other words, it will run concurrently.

9.In the instant case, the petitioner has been convicted and sentenced for the offence

under Section 138 of Negotiable Instrument Act, 1881, and all the three sentences were confirmed by this Court in the Criminal Revision Petitions on 12.05.2023. This Court did not specifically state that the sentences in each case will run consecutively. In view of the same, the effect of Section 427(1) of Cr.P.C., will apply and when the petitioner is undergoing the sentence in S.T.C.No.217 of 2012, the sentences in the other two cases in S.T.C.No.305 of 2012 and S.T.C.No. 329 of 2012 will also merge with the period of sentence of one year Rigorous Imprisonment that is suffered in S.T.C.No.217 of 2012. This is the view of the discretion that is vested in the Court under Section 427 of Cr.P.C.

10.In the light of the above discussion, the sentences imposed in S.T.C.No.305 of 2012 and S.T.C.No.329 of 2012 shall run concurrently with the sentence imposed in S.T.C.No.217 of 2012. These Criminal Original Petitions are disposed of accordingly.

19. The petitioner gave undertaking before this Court at the time of granting anticipatory bail to settle the due amount of Rs.1,80,00,000/- and issued 18 cheques of Rs.10,00,000/- each. As per undertaking, he

was unable to make the payment. The cheques issued by him were returned for the reason “funds insufficient”. Hence, two legal notices were issued by the complainant. Thereafter, there was neither repayment nor reply from him. Hence, six separate private complaints were filed and the same were taken on file in S.T.C.Nos.435, 436, 437, 438, 439 and 440 of 2016, by the learned Judicial Magistrate, Kumbakonam and subsequently, they were transferred to Judicial Magistrate Court No.I, Kumbakonam and numbered as S.T.C.Nos.1870, 1866, 1850, 1851, 1852 and 1904 of 2019, wherein, the petitioner was convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881 and was sentenced and the particulars of the same is tabulated hereunder:

<i>S.No.</i>	<i>Accused</i>	<i>Conviction under Section</i>	<i>Case Nos.</i>	<i>Sentence of Imprisonment/ fine imposed</i>
1.	M.Siddiq @Abu Bakkar	Section 138 of NI Act	S.T.C.No. 1850 of 2019	Simple Imprisonment of one year and to pay a cheque amount of Rs.22,67,000/- as compensation, in default to undergo Simple Imprisonment for three months.
2.	M.Siddiq @Abu Bakkar	Section 138 of NI Act	S.T.C.No. 1866 of 2019	Simple Imprisonment of one year and to pay a cheque amount of Rs.22,67,000/- as compensation, in default to undergo Simple Imprisonment for three months.

3.	M.Siddiq @Abu Bakkar	Section 138 of NI Act	S.T.C.No. 1851 of 2019	Simple Imprisonment of one year and to pay a cheque amount of Rs.22,67,000/- as compensation, in default to undergo Simple Imprisonment for three months.
4.	M.Siddiq @Abu Bakkar	Section 138 of NI Act	S.T.C.No. 1852 of 2019	Simple Imprisonment of one year and to pay a cheque amount of Rs.22,67,000/- as compensation, in default to undergo Simple Imprisonment for three months.
5.	M.Siddiq @Abu Bakkar	Section 138 of NI Act	S.T.C.No. 1870 of 2019	Simple Imprisonment of one year and to pay a cheque amount of Rs.22,67,000/- as compensation, in default to undergo Simple Imprisonment for three months.
6.	M.Siddiq @Abu Bakkar	Section 138 of NI Act	S.T.C.No. 1904 of 2019	Simple Imprisonment of one year and to pay a cheque amount of Rs.22,67,000/- as compensation, in default to undergo Simple Imprisonment for three months.

20.The above sentence was confirmed by the learned Additional District and Sessions Judge, (FTC), Kumbakonam, in C.A.Nos.100, 101, 102, 103, 104 and 105 of 2021. Therefore, in these cases the above issuance of 18 cheques arose out of single transaction and also issued to discharge the total liability of Rs.1,80,00,000/-. This Court inclines to accept the argument of the learned counsel for the petitioner and modify the nature of sentence of imprisonment alone in cases in S.T.C.Nos.1850, 1866, 1851, 1852, 1870 and 1904 of 2019 that the sentences shall run concurrently.

21. Accordingly, these Criminal Revision Cases are allowed in part in the following terms:

21.1. The conviction passed in S.T.C.Nos.1850, 1866, 1851, 1852, 1870 and 1904 of 2019 are confirmed.

21.2. Further, the imposition of fine and compensation with default, as imposed by the Court below is confirmed.

21.3. The Substantive Sentence of rigorous imprisonment to undergo one year in S.T.C.Nos.1850, 1866, 1851, 1852, 1870 and 1904 of 2019 is also confirmed, but, the same shall run concurrently.

Consequently, connected miscellaneous petitions are closed.

22.01.2024

NCC :Yes / No
Index :Yes / No
Internet :Yes / No

sbn/vsg

K.K.RAMAKRISHNAN, J.

sbn/vsg

Crl.RC.(MD).Nos.664 to 669 of 2023

22.01.2024