



**CRR-1062-2024 (O&M) &
CRR-1852-2024 (O&M)**

238 (2 cases)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR-1062-2024 (O&M)
Date of Decision : 07.11.2024**

SUNITAPetitioner

VERSUS

HASTNA ARORA AND ANOTHERRespondents

CRR-1852-2024 (O&M)

SUNITAPetitioner

VERSUS

HASTNA ARORA AND ANOTHERRespondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Rajesh Dhankar, Advocate with
Mr. Nihal S. Choudhary, Advocate,
for the petitioner.

Mr. Rajesh Lamba, Advocate and
Mr. P.K. Chugh, Advocate
for respondent no.1.

Mr. Abhinash Jain, DAG, Haryana
for respondent no.2.

KULDEEP TIWARI, J.(Oral)

1. Since both the petitions are preferred by the same petitioner,
namely Sunita, wherein, a common legal issue has been raised, therefore,



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being amenable for a common decision, same are being taken up together for final disposal.

2. Through the instant revision petitions, challenge is thrown to the verdict of conviction, and consequent thereto, order of sentence dated 08.01.2019, whereby, the learned Judicial Magistrate Ist Class, Hisar (hereinafter referred to as 'the learned trial court concerned'), has convicted the petitioner for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'N.I.Act'), in private complaint cases bearing Nos.NACT/222/2017, and case no.NACT/197/2017 respectively, and, sentenced her to undergo simple imprisonment for 01 year respectively, with further direction to pay compensation of Rs.7,00,000/- and Rs.10,00,000/-, respectively.

3. In addition, the petitioner has also assailed the verdict dated 06.05.2024, whereby, the learned Sessions Judge, Hisar, has dismissed the statutory appeal filed by the petitioner, and upheld the verdict of conviction and order of sentence (*supra*), which propelled the present petitioner to file the instant revision petitions.

4. For sake of brevity the facts of the instant case are being are being taken from CRR no.1062 of 2024, to adjudicate the legal issue as raised by learned counsel for the petitioner.

5. At the very outset, learned counsel for the petitioner submits without going into the merits of the case, that the petitioner is not



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assailing the verdict of conviction in both the revisions, as her grievances is only with regard to the part of sentence awarded to her vide order of sentence (*supra*) in both the petitions.

6. He further submits that the respondent no.1/complainant, in the instant case, is the same person who has filed two different complaints *qua* the cheques in question, and are arising out of same transaction, as per the allegation, the petitioner had issued two cheques (*supra*), in discharge of her loan liability towards respondent no.1/complainant.

7. By referring to the judgment passed by this Court in the case of “**Manoj Jain vs. State of UT, Chandigarh and another**” (in CRM-M-44318-2022, decided on 14.06.2024), learned counsel for the petitioner submits that in the instant matters, the convictions in both the complaint cases arise out of a single transaction. Therefore, the learned trial court concerned, ought to have considered the case of concurrence at the time of pronouncing the order of sentence, however, that exercise has not been done.

8. The submissions made by learned counsel for the petitioner were opposed by learned counsel for respondent no.2/complainant. He submits that the petitioner has rightly been convicted by the learned trial court concerned, and there is no illegality or perversity in the verdicts of sentence, which require any interference of this Court. However, he fairly admits that both the cheques, *qua* which two different complaints (*supra*),



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has been filed by respondent no.2/complainant, arises out of a single transaction.

9. Before embarking upon the legal submissions, as raised by the learned counsel for the petitioner, it is apt to note the factual matrix of the instant case.

10. Both the private complaints filed by respondent no.2/complainant under Section 138 of the NI Act, the allegations which were culled out by the learned trial court concerned, while passing the verdict of conviction (*supra*), is extracted hereinafter:-

“The brief facts of the complaint are that Smt. Pushpa Rani w/o Birbal, R/o Mamanpura, Hansi had borrowed a sum of 17 lacs from the complainant on 20.2.2016 and she had mortgaged her land with the complainant and executed an agreement to this effect in which accused Sunita was also a witness. Complainant had arranged said money after entering into an agreement to sell her shop, situated in Rajguru Market, Hisar. Thereafter, accused and her mother developed bad intention and started moving false applications to Police refusing of having taken any loan or having executed any agreement, which were found false by Police. It is averred that a Panchayat was also convened at the house of complainant on 13.12.2016 in which, accused had admitted having taken loan amount. Though amount was borrowed till 20.2.2021, but due to bad intention of accused, complainant started convening Panchayats for getting return her money. On 2.1.2017, a Panchayat was convened in the presence of Rohtash s/o Sube Singh and Deepak s/o Krishan Dev, in which, present accused had handed over two cheques and out of which, one cheque bearing no.054656 dated 4.1.2017, amounting to 7 lacs, drawn on SBI, Mandi Road Branch, Hisar was issued by accused in favour of complainant in order to discharge outstanding legal liability of her mother namely Smt.Pushpa, with the assurance that on its presentation for collection, it will be honoured. Believing upon the assurance of accused, complainant presented the said cheques in her Bank i.e. with BOI, Lahoria Chowk, Hisar for collection of cheque amount, but it was dishonoured with remarks "Funds Insufficient" vide memo date 5.1.2017. Thereafter, complainant contacted the accused and requested for payment, but she flatly refused to make any payment. It is further averred that a legal notice dated 18.1.2017 was issued by the complainant to accused calling her to making the payment of cheque within stipulated period of 15 days from the receipt of notice, but despite expiry of notice period, accused has not made the payment of cheque in question. Hence the present complaint.”



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11. The petitioner was summoned to face the trial for aforesaid offence, and upon her appearance before the learned trial court concerned, notice of accusation for the commission of offence punishable under Section 138 of the NI Act, was served upon her, to which she did not plead guilty and claimed trial.

12. Respondent no.2/complainant besides examining herself as PW1 in after-charge evidence, also examined one Rohtash as PW2, to substantiate the allegations as alleged in the instant complaints. Whereas, the petitioner/accused while recording her statement under the provisions of Section 313 Cr.P.C. took a defence that neither she, nor her mother, had ever obtained any loan of Rs.17 lakhs from respondent no.2/complainant, and furthermore her mother has never executed any mortgage deed, in favour of the complainant. It was further pleaded by petitioner/accused that the complainant is running a lottery system, and she had obtained an amount of Rs.15 lakhs on interest from respondent no.2/complainant, for joining the same, and at that time, she had handed over a sale deed of the land of her mother alongwith two blank cheques to respondent no.2/complainant, as a security. The petitioner/accused further took a defence that the respondent no.2/complainant forged her signature, and that of her husband, Vijay, on document Ex.C-1. She also denied the factum of panchayat as alleged to have been held on dated 13.12.2016. In defence, the petitioner/accused opted to examine three witnesses, namely



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Ram Kishan Khanna, Manager of Janta Dharamshala, Bhuna as DW-1, Sandeep as DW-2 and Const.Gulab Singh as DW-3.

13. Learned trial court concerned, after considering the submissions of rival parties, found the petitioner guilty for the commission offence punishable under Section 138 of the NI Act. Resultantly, she was convicted and sentenced vide judgment and order (*supra*).

14. It is apt to note here that on the same facts an additional complaint bearing no.NACT/197/2017, was also filed regarding the second cheque, which was issued by the petitioner to respondent no.2/complainant, arising out of same transaction, and the fate of the said complaint was also the same, as the petitioner was held guilty by recording the verdict of conviction and the order of sentence of the even date (*supra*). Even the appeal, as preferred by the petitioner/accused, was dismissed. The verdicts of the courts below, have also been assailed by filing a separate petition bearing CRR no.1852 of 2024, which is also being taken up together, for its disposal.

15. Before penning down any observation regarding the relief sought for concurrence of sentence passed in two different complaint cases (*supra*), it is deemed apt at this juncture, to make a survey study of the relevant provisions of the Cr.P.C. i.e. Section 427 which deals with the powers of the Court to impose a sentence upon a convict person



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which shall either run concurrently or consecutively. Section 427 of the Cr.P.C. is reproduced hereunder:-

“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.”

16. A perusal of the hereinabove extracted Section reflects that it endows discretionary power upon Court to, in a scenario where a convict who is already undergoing a sentence of imprisonment, is sentenced on a subsequent conviction to imprisonment or imprisonment for life, order such subsequent sentence(s) to run concurrently or consecutively.

17. The nature and scope of Section 427 of the Cr.P.C. has been elaborately discussed by the Hon’ble Supreme Court in **“V.K. Bansal Vs. State of Haryana and another”**, (2013) 7 Supreme Court Cases 211, wherein, it has been held that no straitjacket formula can be laid down for the Court to exercise its discretion under Section 427(1) of the Cr.P.C., rather such discretion has to be exercised along the judicial line and not in a mechanical manner. The relevant portion of this verdict is reproduced hereinafter:-



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“10. We are in the case at hand concerned more with the nature of power available to the Court under Section 427(1) of the Code, which in our opinion stipulates a general rule to be followed except in three situations, one falling under the proviso to sub-section (1) to Section 427, the second falling under sub-section (2) thereof and the third where the Court directs that the sentences shall run concurrently. It is manifest from Section 427(1) that the Court has the power and the discretion to issue a direction but in the very nature of the power so conferred upon the Court the discretionary power shall have to be exercised along judicial lines and not in a mechanical, wooden or pedantic manner. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the Courts. There is no cut and dried formula for the Court to follow in the matter of issue or refusal of a direction within the contemplation of Section 427(1). Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed, and the fact situation in which the question of concurrent running of the sentences arises.”

18. In **“Mohd. Zahid v. State”, (2022) 12 SCC 426**, the Hon’ble Supreme Court has further interpreted the provisions of Section 427 of the Cr.P.C. in the following terms:-

“Thus from the aforesaid decisions of this Court, the principles of law that emerge are as under:

(i) if a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced;
(ii) ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the court directs the subsequent sentence to run concurrently with the previous sentence;
(iii) the general rule is that where there are different transactions, different crime numbers and cases have been decided by the different judgments, concurrent sentence cannot be awarded under Section 427 Cr.P.C.;

(iv) under Section 427(1) of Cr.PC the court has the power and discretion to issue a direction that all the subsequent sentences run concurrently with the previous sentence, however discretion has to be exercised judiciously depending upon the nature of the offence or the offences committed and the facts in situation. However, there must be a specific direction or order by the court that the subsequent sentence to run concurrently with the previous sentence.”

19. From these judicial dispensations of the Hon’ble Supreme Court, two inferences are clearly surging forth that: (i) the general rule is that different transactions, different crime numbers and different



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judgments create a constraint for awarding concurrent sentence under Section 427 Cr.P.C.; and (ii) the convicting court is seized of discretionary powers to issue a direction that subsequent term of imprisonment shall either commence at the expiration of the previous imprisonment, or, run concurrently with the previous sentence.

20. The precedent law laid down by various High Courts and by the Hon'ble Supreme Court recognized the basic rule of conviction arising out of a single transaction, for ordering concurrent running of sentences awarded to offender. Gainful reference in this regard can be made to "**Mohd. Akhtar Hussain v. Collector of Customs (Prevention)**", (1988) 4 SCC 183, wherein, the Hon'ble Supreme Court examined the issue relating to single transaction rule for concurrent sentence and held as under:-

"10. The basic rule of thumb over the years has been the so-called transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different."

21. The above view was reiterated by the Hon'ble Supreme Court in "**State of Punjab Vs. Madan Lal**", (2009) 5 Supreme Court Cases 238.

22. Now, the issue arises that what would tantamount to a single transaction for the Court to pass an order of concurrence of sentence awarded to an offender. In order to simplify this issue and to make an



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answer thereto, reference can be made to the verdict rendered by the Hon'ble Supreme Court in "**State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and another**", (1964) 3 SCR 297, whose relevant portion is reproduced hereunder:-

"According to Mr. Chari Section 235(1) cannot be construed as having an overriding effect on Section 239 because whereas it contemplates acts so connected together as to form the same transaction resulting in more offences than one, Section 239(d) contemplates offences committed in the course of the same transaction and nothing more. The question is whether for the purposes of Section 239(d) it is necessary to ascertain anything more than this that the different offences were committed in the course of the same transaction or whether it must further be ascertained whether the acts are intrinsically connected with one another. Under Section 235(1) what has to be ascertained is whether the offences arise out of acts so connected together as to form the same transaction, but the words "so connected together as to form" are not repeated after the words "same transaction" in Section 239. What has to be ascertained then is whether these words are also to be read in all the clauses of Section 239 which refer to the same transaction. Section 235(1), while providing for the joint trial for more than one offence, indicates that there must be connection between the acts and the transaction. According to this provision there must thus be a connection between a series of acts before they could be regarded as forming the same transaction. What is meant by "same transaction" is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any Court which has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction. The connection between a series of acts seems to us to be an essential ingredient for those acts to constitute the same transaction and, therefore, the mere absence of the words "so connected together as to form" in Clause (a), (c) and (d) of Section 239 would make little difference. Now, a transaction may consist of an isolated act or



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may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently they would not form part of the same transaction but would constitute a different transaction or transactions. Therefore, even if the expression "same transaction" alone had been used in Section 235(1) it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression "same transaction" occurring in Clauses (a), (c) and (d) of Section 239 as well as that occurring in Section 235(1) ought to be given the same meaning according to the normal rule of construction of statutes. Looking at the matter in that way, it is pointless to inquire further whether the provisions of Section 239 are subject to those of Section 235(1). The provisions of sub-sections (2) and (3) of Section 235 are enabling provisions and quite plainly can have no overriding effect. But it would be open to the court to resort to those provisions even in the case of a joint trial of several persons permissible under Section 239."

23. Also, in **"Balbir Vs. State of Haryana and another", (2000) 1 Supreme Court Cases 285**, it has been held that the test which has to be applied to find out whether several offences are part of the same transaction, is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. The relevant portion of this verdict reads as under:-

"For several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is commonality of purpose of design, where there is continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction."

24. On the touchstone of the above precedent laws, this Court has examined the facts of the instant case.

25. It is not under dispute that both the cheques *qua* which two different complaints have been filed, arise out of a single transaction, as the petitioner is alleged to have given these cheques in discharge of loan



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liability. Therefore, this Court has no hesitation to hold that in the case in hand, the order of convictions require interference.

26. A perusal of the instant impugned verdict of conviction (*supra*), clearly reflects that the Court has not exercised its discretionary powers endowed under the provisions of Section 427 of the Cr.P.C. In the instant case, the convicting court has not considered about the previous sentence, to ably exercise its discretionary powers under the provisions of Section 427 of the Cr.P.C. In order to curb such irregularities this Court has already given a common direction to all courts below in **Manoj Jain's case** (*supra*). The relevant extract thereof, reads as under:-

39. A conjoint reading of the Sections reproduced hereinabove reflects that the previous conduct of an accused is not permissible to be brought on record until and unless the condition(s) embodied in Section 236 of the Cr.P.C. is fulfilled. Notably, in the trials launched for commission of offence punishable under Section 138 of the N.I. Act, the trial courts hardly inquire about accused's previous conduct before passing the order of sentence, whereas, it is significant to do so to exercise the discretionary power endowed by Section 427 of the Cr.P.C. In the instant case, had the convicting courts inquired about the petitioner's previous conviction and sentence either from the prosecution or from the defence, it could have ably exercised its discretionary jurisdiction under Section 427 of the Cr.P.C. Therefore, to curb this irregularity and to avoid occurrence of any such situation, as occurred in the cast at hand, this Court deems it apt to issue the following directions to all the trial courts, which deal with the trials of Section 138 of the N.I. Act:-

(i) In the event of a trial concluding in conviction of accused for commission of offence punishable under Section 138 of the N.I. Act, the trial court shall, before drawing the order of sentence, adjourn the case, thus enabling the prosecution/ defence to place on record material pertaining to previous conviction of accused; (ii) On the adjourned date, the trial court shall draw the order of sentence but by appending a note therein as to whether any material pertaining to convict's previous conviction is placed on record or not and if any such material is placed on record, it shall within the legal parameters exercise the discretionary power under Section 427 of the Cr.P.C.



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27. In the instant case, since both the cheques arise out of a single transaction, therefore, in the touchstone of the above law, **this Court deems it appropriate to modify the order of sentence dated 08.01.2019, passed in complaint case no.NACT/222/2017, to the extent that the sentence of simple imprisonment for 01 year awarded to the petitioner, shall run concurrent with sentence awarded to her vide order of even date in complaint case No.NACT/197/2017.** However, the order of sentence to pay compensation of Rs.7.00 lakhs shall remain the same.

28. **Ordered** accordingly, and **disposed of**.

29. All pending application(s), if any, also stand disposed of accordingly.

30. A photocopy of this order be placed on the file of the connected case.

November 07, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No