

114 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2323-2023 (O&M)
DATE OF DECISION:-01.02.2024

Baldev Singh

...Petitioner.

vs.

State of Punjab and another

...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vipin Kumar Sharma, Advocate,
for the petitioner.

HARKESH MANUJA, J. (Oral)

1. Challenge in the present revision petition is to the judgment dated 17.07.2023 passed by the court of learned Sessions Judge, Shaheet Bhagat Singh Nagar, whereby the appeal filed against the judgment of conviction and order of sentence dated 16.08.2022 passed by learned Judicial Magistrate Ist Class, Balachaur, stood partially dismissed, thereby upholding the judgment of conviction and order of sentence passed therein.

2. The facts of the case are that on account of dishonour of cheque bearing No.0339441 dated 03.10.2017 of Canara Bank of India, Branch Balachaur, amounting to Rs.3,50,000/- a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, "NI Act) came to be filed at the instance of respondent-complainant against the petitioner.

3. On the basis of the evidence recorded, learned Trial Court vide judgment/order dated 16.08.2022, convicted the petitioner along with his wife under Section 138 of the NI Act and sentenced them to undergo RI for a period

of 01 year each, besides payment of compensation of Rs.3,50,000/-.

4. Aggrieved thereof, the petitioner along with his wife filed first appeal before the court of Sessions Judge, Shaheed Bhagat Singh Nagar, which was partly dismissed, thereby, upholding the conviction and sentence of the petitioner, whereas, the wife of the petitioner was acquitted.

5. Impugning the aforementioned judgments passed by both the Courts below, learned counsel for the petitioner submits that the defence put forth by the petitioner was that the cheque in question was stolen away by the complainant and misused thereafter for the purpose of filing the present complaint. It has further been submitted that the said plea raised by the petitioner was not dealt with by the Courts below in its proper perspective. Learned counsel also prayed for the sentence to be run concurrently along with sentence awarded to the petitioner in two other cases involving dishonour of separate cheques.

6. I have heard learned counsel for the petitioner and gone through the paper book as well as the records.

7. Once, the defence put forth by the petitioner was that the cheque in question was stolen and misused by the complainant, the said defence should have been put to the complainant in his cross-examination while he appeared as CW-3. Cross-examination of complainant-CW-3 is reproduced hereunder:-

*“CW-3 Parphool Kumar Recalled for cross examination.
XXXXX by Adv Sh. BS Machhal Counsel for the accused.*

I am an agriculturist as well as having business of cloth merchant. Previously my father was in cloth business and after his death myself and my brother use to run that business. The customers of local Balachaur as well as of the adjoining villagers used to purchase the clothes from our shop. Previously our father and at present we are

running the business of clothes for the last about 60 years. Almost customers from all the villages of our sub division used to purchases the clothes from our shop including village namely Sujowal, Mehatpur, Uladani, Garhi Kanungo and chankoi Etc. Both the accused used to purchase clothes from our shop and they used to give cash for their purchase. Other customers of village Sujowal also used purchase clothes from our shop but we do not required to ask their names as we deal only in cash transactions. Same is the answer regarding other aforesaid villages. I know Pardeep Dhiman MC Balachaur. I do not know any person in the name of Sohan Lal commerade, Jasbir Kumar, Jaswinder Singh. I also do not know the person in the name of Harvinder Singh Son of Kuldip Chand of Balachaur. Same is the answer regarding Baldev Singh Son of Faqir Chand of Village Chankoi. I have no relative in village Sujowal. I had visited at the time of marriage of the son of the accused. I know the accused for last about 25-30 years. I had given the sum of Rs. 3,50,000 Lacs to both the accused through account payee cheque of central Bank of India Branch Balachaur. I had given the cheque to both the accused from my personal account. I do not remember the exactly my personal account number aforesaid. I have only one account in the said bank. I had given the cheque to the accused on 29.07.2017. We use to maintain the account of income as well as the expenditure of the shop. We are income tax payer. There is no need to show the transactions in the personal capacity before the income tax department however if the transaction belongs to the current account of the shop it is necessary to show that. I had not obtain any writing from the accused when I gave the cheque to them, but they had issued the present cheque to me. They had signed the cheque after getting it filled of 03.10.2017 but the cheque was given to me on 29.07.2017.

It is wrong to suggest that there is no legal liability upon the accused and that the accused had not

received any amount in cash or through cheque. And that a false case has been filed inconviance with the bank officials as well as Pardeep Dhiman, Ramesh Dhiman, Jaswinder Singh, Harvinder Singh, Jasbir Kumar, Sohan Lal and Baldev Singh above [said.it](#) is wrong to suggest that I have deposed falsely.”

A perusal of entire cross-examination of the complainant (CW-3), which was recorded on 06.01.2020 shows that no such suggestion was put to him that the cheque in question was stolen & misused and as such, the petitioner having failed to even prima facie put forth and establish his defence so as to rebut the statutory presumption attached to the cheque in question whereupon signature were not disputed by the petitioner, no illegality or perversity can be found with the judgments passed by the Courts below. Mere raising of a plea or putting forth this version in his statement under Section 313 Cr.P.C. by the petitioner has no evidentiary value merely being an after thought and that too in the absence of any cross-examination to this effect upon the respondent-complainant with there being even no evidence of any complaint made or proved by the complainant in this regard.

8. Now coming to the question whether sentences should be made to run concurrently involving two other transactions of dishonor of cheques given by the petitioner; let's have a look at law propounded in different judgments by Hon'ble Supreme Court and this Court.

Hon'ble Apex Court in the case of **Nagpal Traders vs Davinder Singh, 2014(4) R.C.R(Criminal) 96** opined that when separate transactions are there then sentences should not run concurrently. Relevant paragraph is reproduced as :-

“11. So far as the question of concurrency is concerned, it is clear from averments made in the complaints and the

judgments of the trial court and lower appellate court that the cheques in question do not relate to one single transaction. The judgments cited by learned counsel for the respondent have, therefore, no application to this case. Besides the respondent has shown disrespect to this court. Taking an overall view of the matter we are inclined to set aside the impugned order and restore the orders of the trial court.”

Further this Court in case of **M/s Piyush Infrastructure Pvt. Ltd and another vs Shyam Lal, 2021(1) R.C.R (Criminal) 379** while relying on judgment of Hon’ble Supreme Court involving the question of concurrent sentences was of the view that concurrent running of sentence can only be considered when separate offence arises out of same transaction. Relevant paragraph is reproduced as :-

*“10. The Apex Court in **Mohd. Akhtar Hussain v. Assitant Collector of Customs, 1988 (4) SCC 183** held that the concurrent running of sentences is recognized if the conviction arises out of single transaction. It was further observed that the said benefit would have no application if the transaction relating to offences is not the same or the facts constituting the two offences are different. The relevant portion of the judgment reads thus:-*

“The basic rule of thumb over the years has been the so called single 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 if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.”

Furthermore, this Court in case of **Vishwanath Jha vs State of**

Haryana and another, 2018(4) R.C.R (Criminal) 39 decided on the prayer made by petitioner for sentences to run concurrently that different transactions cannot be construed as one single transaction even done on different occasions between the parties. Relevant paragraph is reproduces as :-

“27. Perusal of Ex.C1 and C4 (Annexure R-1) makes it apparently clear that the material was supplied under various bills on more than 200 (two hundred) different occasions as per the requirement of the petitioner w.e.f 01.04.2011 to 16.11.2012 and thus, the same cannot be construed as a single transaction; rather these are different transactions during the business dealings between the parties and the petitioner is neither inclined to make payment of compensation; nor willing to undergo the total sentence, rather he wants to escape from the entire liability simply by undergoing the sentence of six months’ simple imprisonment, which shows that the intentions of the petitioner are not bona fide and not in the interest of business dealings. Such incidents are increasing day-by-day and in case undue sympathy is shown to the persons like the petitioner, then the faith of the Society shall be eroded systematically and that will be too disastrous for the economy of the country.”

Even further, this Court in case of **Vijay Kumar vs Vijay Sharma & Anr, CRR No. 493 of 2018 (O&M) & other connected cases** while relying on judgment of Supreme Court case denied concurrent running of sentences. Relevant paragraph is reproduced as :-

“[8]. The Hon’ble Apex Court in Nagpal Traders vs. Davinder Singh, (2017) 11 Supreme Court Cases 431 held that the benefit of concurrency cannot be granted as different cheques are involved in different transactions. Admittedly no amount has been paid. The amount covered by the cheques remained unpaid and it depends upon

lookout of the trial Court that the offence under Section 138 of the Act should be of such nature as to give proper effect to the object of the legislation.”

9. In the present case, from the evidence and the records, it can't be made out that the three different cheques, issued on different dates to three different individuals by the petitioner were forming part of one single transaction. Moreover, even the conduct of the petitioner, disentitles him of any such relief, who himself having compromised the matter at one stage during trial, having agreed to pay the settled amount, failed to honour the same. Resultantly, no merit can be found in the prayer made on behalf of the petitioner to order the sentences run concurrently.

10. In view of the discussion made herein-above, finding no illegality or perversity with the concurrent findings of fact recorded by the Courts below which are based on law applicable, there being no overlooking of the material available on record, re-appreciation of the evidence being impermissible, the present revision being devoid of merits is thus dismissed and the prayer made for sentences to run concurrently is also denied.

01.02.2024
sonika

whether speaking/reasoned: Yes/No

whether reportable: Yes/No

(HARKESH MANUJA)

JUDGE