

114-b IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2357-2023 (O&M)
DATE OF DECISION:-01.02.2024

Baldev Singh

...Petitioner.

vs.

State of Punjab and others

...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 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.348386 dated 01.12.2016 of Canara Bank, Branch Balachaur, amounting to Rs.7,00,000/- 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 under Section

138 of the NI Act and sentenced him to undergo RI for a period of 02 years, besides payment of compensation of Rs.7,00,000/-.

4. Aggrieved thereof, the petitioner filed first appeal before the court of Sessions Judge, Shaheed Bhagat Singh Nagar, which was dismissed, thereby, upholding the judgment of conviction and order of sentence passed against the petitioner.

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-1. Cross-examination of complainant-CW-1 is reproduced hereunder:-

“CW-1 Statement of Sohan Lal recalled for cross examination.

XXXX by Sh.B.S.Machhal, Advocate counsel for the accused.

I am social worker and agriculturist. I am owned of 12 kanals of land which is agriculturable. I used to sow crop in the same i.e. wheat and

paddy crops alongwith popler trees. About 300/350 popler trees can be planted in 12 kanals. The popler trees may mature for sale within 4/5 years. I do not know if popler trees may mature in six years. It is the will of persons who can sale it prior to this. It is wrong to suggest that in which land popler trees stand, paddy crop cannot be planted. I have already cut and remove popler trees aforesaid four months ago. Prior to this I have soled popler trees in year, 2015. Be can earn about Rs.3/3 1/2 from the popler trees so planted in 12 kanals. My children are in abroad. I used to purchased/sell the property in the area. I have purchased 3-4 residential plot of about 5-5 Marlas. One brother of mine is Jasvir Kumar who is lambardar of village Uladhani Tehsil Balachaur. We are residing in the same village. House of Jasvir Kumar is at some distance from my house. He is also agriculturist and his children is also in abroad. I know Baldev Singh accused since 2014-2015. We are belong to same caste that is why we known to each other. I do not know if Ramesh Dhiman and Pardeep Dhiman are belong to our caste. My wife contested the election of Sarpanchi in our village and she elected as Sarpanch of the village. I know all the persons residents in the our village. I know Jaswinder Singh son of Piara Lal r/o Village Uladhani who is having of his office in market of Gurudwara Sahib of Village Mehandipur at the distance of two shops of my office. I do not known but is the business of Jaswinder Singh aforesaid. I also known by people in the name of Sohan Lal Camred. I do not know Baldev Singh Camred son of Faquir Singh r/o Village Chankoi but I know Baldev Singh accused. I also do not know Harwinder Singh son of Kuldeep Chand r/o Balachuar. I also do not know Perfool Kumar son of Tarlok Chand cloths merchant Balachaur. I do not know if 6/7 persons filed complaints under section 138 NI Act against Baldev Singh accused. I do not know if Baldev Singh accused get anticipatory bail in aforesaid complaints but I know that in present case Baldev Singh filed anticipatory bail and I had appear in the same in the court of Sessions Judge, Nawanshahar. In anticipatory bail of accused at Nawanshahar, accused did not admitted but in the court the concerned appellant court suggested for compromised between the parties. I remained in Govt. job in Punjab Roadways, Nawanshahar Depot. I do not know whether I have suspended from my job or not. I have terminated from my services by the department I have filed the case against the termination and demanded pension from the same in Ropar Court. The same is decided but I do not know whether the same is decided in my favor or against. I have already applied for copy of the same. I do not know if case under section 354 IPC was registered against me I was terminated from my service on the basis of aforesaid case. I remained behind the bar in aforesaid

case for about six months. I was convicted in aforesaid case for imprisonment of two years. I proffered an appeal against aforesaid conviction and my imprisonment was reduced to nine months.

At this stage further cross examination deferred on the request of defence counsel.”

A perusal of entire cross-examination of the complainant (CW-1), which was recorded on 30.01.2020 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. Assistant 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
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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No