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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 2239/2023**

SHAHEEN AKHTAR

..... Petitioner

Through: Mr.Faraz Maqool, Advocate (DHCLSC)

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Mr. Nawal Kishore Jha, APP for State
with SI Anil Kumar

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

09.04.2024

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1. By way of present petition filed under Section 482 Cr.P.C., the petitioner who has been convicted in 5 complaints filed under Section 138 NI Act, seeks concurrent running of sentences.

2. Notably, the petitioner was accused and convicted in following 5 cases:-

S.No.	Case	Judgment	Sentence date	Substantive sentence	Fine / Compensation	Default sentence
1.	914/2011	12.02.2014	12.02.2014	10 Months	Rs.7,50,000	6 Months
2.	913/2011	NA	12.02.2014	10 Months	NA	6 Months
3.	16/2011	10.02.2014	04.03.2014	6 Months	Rs.10,00,000	6 Months
4.	617049/2011	24.07.2017	25.09.2017	1 Month	Rs.60,00,000	6 Months
5.	615767/2011	16.05.2018	01.06.2018	12 Months	Rs.35,00,000	5



						Months
TOTAL				3 Years 3 Months		2 Years 5 Months

3. Learned counsel for the petitioner, on instructions, submits that the petitioner thereafter challenged the conviction, however, the challenge to the judgment on conviction by way of appeal/revision were withdrawn and no SLP was ever filed or is pending as on date. Learned counsel reiterates that as on date, besides the present petition, no other petition is pending in any other court.

4. Learned counsel for the petitioner submits that petitioner is about 50 years of age and has been incarcerated since 17.07.2019 except for the period when he was released on parole by this Court.

5. Status report alongwith the nominal roll has been filed from time to time. The status of the petitioner's conviction and the sentence undergone alongwith the remission earned is detailed below:-

13.	DETAILS OF OTHER CONVICTED CASE (IF ANY)			JUDICIAL CUSTODY/ SUBSTANTIVE SENTENCE		REMISSION EARNED			STATUS		
	FIR NO.	U/S	P.S.	FROM	TO	YY	MM	DD	SI	FOR	10
	CC.NO. 913/11	138 NI ACT	KALKAJI	30.06.15	13.08.15	00	01	06	MONTHS & FINE 7,50,000/- I/D 06 MONTHS SI. SUBSTANTIVE & FINE SENTENCE COMPLETED.		
				17.07.19	26.02.20						
				FINE SENTENCE COMPLETED							
				21.05.22	20.11.22						
CC NO.	138	TILAK	27.02.20	29.10.20	00	01	27	51	FOR	10	



	914/11	NI ACT	MARG	FINE SENTENCE COMPLETED				MONTHS & FINE 7,50,000/- I/D 06 MONTHS SI SUBSTANTIVE & FINE SENTENCE COMPLETED.
				1.11.22	20.05.23			
	CCNO. 615767/2016, C.A. NO. 308/2018	138 NI ACT	SHAHEEN AKHTAR V/S STATE	16.04.21 TO 26.04.22 (INCLUDING PAROLE PERIOD)	00	01	00	SI FOR 12 MONTHS & FINE 35,00,000/- I/D OS MONTHS SI SUBSTANTIVE SENTENCE COMPLETED.
				FINE SENTENCE REMAINING & WILL START				
				24.06.24	23.11.24			
	617049/16 CR NO S08/17	138 NI ACT	JAMIA NAGAR	27.04.22	20.05.22	00	00	06
				FINE SENTENCE IS UNDERGOING				
				24.12.23	23.06.24			
	TOTAL REMISSION EARNED IN ALL FIVE CASES				00	05	07	SI FOR 01 MONTHS & FINE 60,00,000/- I/D 06 MONTHS SI SUBSTANTIVE SENTENCE COMPLETED. (FINE SENTENCE 06 MONTHS SI IS PRESENTLY UNDERGOING

6. Though learned counsel for the petitioner had contended that default sentences be made to run concurrently, however, the said submission was not pressed in view of the decision of the Supreme Court in Dumya @ Lakhan @ Inamdar, Etc v. State of Maharashtra passed in **Criminal Appeal Nos.818-820 of 2021** and Sharad Hiru Kolambe v. State of Maharashtra & Ors. reported as **(2018) 18 SCC 718**.



7. From above, it is apparent that the petitioner has undergone substantive sentences in all the five cases as well as the default sentences in three cases. Presently, he is undergoing default sentence of 6 months in CC No. 617049/16 for non-payment of fine. Apparently, the petitioner was convicted and granted sentence of SI for one month in the said matter. The appellant is to undergo default sentence of 5 months for non-payment of fine in CC No. 615767/2016 which is meant to begin from 24.06.2024. Considering that only 1 month is remaining, the default sentence in CC No. 617049/16 is modified to the period already undergone. The petitioner's default sentence in CC No. 615767/2016, which was to begin on 24.06.2024 will now begin from 10.04.2024.

8. Learned counsel for the petitioner submits that the petitioner is in custody since 17.07.2019 and is the sole bread earner of the family. It is further stated that the petitioner has an aged mother and teenage son, who need to be looked after.

9. The Supreme Court in Sharad Hiru Kilambe (Supra), while considering the financial condition of the appellant therein, while maintaining the quantum of fine imposed, reduced the default sentence imposable. In a similar vein is the decision in Dumya @ Lakhan @ Inamdar (Supra), wherein also the Supreme Court reduced the default sentence imposable upon the appellant therein, considering their financial condition. The relevant extract of the said decision reads as under:-

“...In terms of the decision taken by this Court in Sharad Hiru Kilambe, the default sentence cannot be directed to run concurrently. The discussion in that behalf is to be found in paragraphs 17 and 18 of said decision which for facility are quoted hereunder:



“17. In the circumstances, we reject the submission regarding concurrent running of default sentences, as in our considered view default sentences, inter se, cannot be directed to run concurrently. However, considering the financial condition of the appellant, a case is certainly made out to have a sympathetic consideration about the quantum of default sentence.

18. The quantum of fine imposed in the present case in respect of offences punishable under Sections 364-A, 395, 397 and 387 IPC is not excessive and is quite moderate. However, in our view, the default sentence for non-payment of such fine, ought to be reduced to the level of one month on each of those four counts in respect of the appellant. We now come to the imposition of fine and default sentences for the offences punishable under Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act. The text of these sections shows that these provisions contemplate, upon conviction, mandatory minimum fine of Rs. 5 lakhs on each count. We do not therefore find anything wrong with the imposition of fine of Rs. 5 lakhs in respect of each of those three counts under the MCOC Act. We however find that the imposition of default sentences of three years is slightly on a higher scale. We therefore reduce the default sentence to a period of one year each in respect of these three counts of the offences under the MCOC Act.”

However, the default sentence given to the concerned accused of three years each on three counts was found to be excessive.

Similar situation obtains in the present matter and financial conditions of the appellants are also on the same lines. We therefore, proceed to grant similar relief to the present appellants and direct that the default sentences awarded to each of the appellants on aforesaid three counts shall be one year each in respect of such counts....”

10. In view of the above, it is clear that the Court is empowered to reduce the default sentence granted in a certain case, considering the overall facts



and other relevant factors including the financial and familial situation of the accused person.

11. Considering the aforesaid, petitioner's default sentence for non-payment of fine in CC No. 615767/2016, is reduced to the period of 2 ½ months.

12. The petition is disposed of in the above-mentioned terms.

13. A copy of this order be communicated electronically forthwith to the concerned Jail Superintendent for information and necessary compliance.

MANOJ KUMAR OHRI, J

APRIL 9, 2024

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