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

Date of decision: 14.05.2024

+ CRL.M.C. 4944/2022
KARI YADAV

..... Petitioner

Through: Mr.Nitin Saluja, Adv.
(DHCLSC) with Ms.Ishita Soni
& Ms.Sanskrti Bansal, Advs.

versus

THE STATE & ANR.

..... Respondents

Through: Mr.Aman Usman, APP.
Ms.Suman, proxy counsel for
R-2 with respondent no.2 in
person.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 427(1) read with 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying therein that the substantive sentence awarded to the petitioner vide order of sentence dated 07.02.2020 in CC No. 1682/2017 and CC No. 1683/2017, both titled as ***Dinesh Singh v. Kari Yadav***, passed by the learned Metropolitan Magistrate-01, Patiala House Courts, New Delhi (hereinafter referred to as the 'Trial Court'), be directed to run concurrently in terms of Section 427 of the Cr.P.C.



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Factual Background

2. The above complaint has been filed by respondent no.2 alleging therein that in the month of October 2015, the petitioner had offered to sell a plot of land ad-measuring 50 square yards situated in Khasra No.2241, at F-Block, Aya Nagar, New Delhi. The Respondent no.2 paid the petitioner an amount of Rs.12.21 lakhs in four instalments. Pursuant to the payment of the final instalment, a receipt-cum-agreement to sell and a separate acknowledgment receipt, both dated 03.02.2016, were also executed by the petitioner. The sale formalities were to be completed on or before 30.04.2016. The Respondent no.2 alleged that it then came to his knowledge that the aforesaid plot, for which he had entered into the agreement, did not belong to the petitioner. On confrontation, the petitioner accepted his fault and in order to discharge his liability in part, he issued a cheque bearing no. 982989 dated 18.11.2016 (in CC No. 1682/17) and a cheque bearing no. 982990 dated 21.11.2016 (in CC No. 1683/2017), both drawn on the State Bank of India, Vasant Kunj Branch, New Delhi. The said cheques, however, on presentation, were returned unpaid with the remarks '*fund insufficient*'. The Respondent no.2, thereafter, proceeded to file the above two complaints.

3. The said two complaints were decided on the same day by the learned Metropolitan Magistrate, convicting the petitioner of offence under Section 138 of the Negotiable



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Instruments Act, 1881 (in short, 'NI Act') in both the Complaint Cases. In both the above cases, by its subsequent order(s) dated 07.02.2020, the learned Trial Court sentenced the petitioner to undergo simple imprisonment of 1 year and a fine of Rs.12 lakhs (in CC No. 1682/2017) and simple imprisonment of 1 year and a fine of Rs.9 lakhs (in CC No. 1683/2017) to be paid as compensation to respondent no.2 within a period of four months from the date of the order, and in default thereof, to undergo simple imprisonment for a period of three months in both the Complaints, respectively.

4. The petitioner challenged the conviction and sentence in the form of appeals, being CRL.A. Nos.74/2020 and 75/2020, both titled ***Kari Yadav v. State & Anr.*** The said appeals were dismissed by the learned Additional Sessions Judge vide order dated 24.08.2022.

5. The petitioner has now filed the present petition claiming the benefit under Section 427 of the Cr.P.C. for the sentence in the two complaint cases to run concurrently.

Submissions of the learned counsel for the Petitioner

6. The learned counsel for the petitioner, placing reliance on the judgments of the Supreme Court in ***Mohd. Akhtar Hussain v. Asst. Collector of Customs***, (1988) 4 SCC 183; ***V.K. Bansal v. State of Haryana & Anr.***, (2013) 7 SCC 211; and of this Court in ***Mukesh Bhatia v. State of Anr.***, 2016 SCC OnLine Del 13; and ***Dr.Suresh Chand Kuntal v. The State***, 2017 SCC OnLine Del 7945, submits that as cheques in question were



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issued in discharge of the same transaction, the sentence awarded to the petitioner in the two Complaint Cases should be directed to run concurrently.

Earlier proceedings in this petition:

7. This Court issued notice on the present petition to respondent no.2 vide order dated 27.09.2022.

8. By an order dated 10.08.2023, this Court was pleased to suspend the sentence awarded to the petitioner, observing therein that the petitioner had already undergone 8 months and 9 days in the second Complaint, while in the first complaint/conviction, he had undergone his substantial sentence of one year.

9. In spite of the opportunity granted, no reply has been filed by respondent no.2. The learned counsel for respondent no.2 prays for an adjournment today. This request cannot be granted as adequate opportunity has already been given to respondent no.2 to file reply/make submissions.

Analysis and Findings

10. I have considered the submissions made.

11. Section 427 of the Cr.P.C. reads as under:-

“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.”

12. The Supreme Court in ***Mohd. Akhtar Hussain*** (Supra), has observed that the basic rule of thumb has been for the sentence to run concurrently where it is awarded for the so-called single transaction. I may quote from the judgement as under:-

“10. 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 relating to offences is not the same or the facts constituting the two offences are quite different.”

13. Applying the above principle, in ***V.K. Bansal*** (Supra), the Supreme Court held that the discretion to direct the sentence to



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run concurrently should be exercised in favour of the prisoner where the prosecution is based on a single transaction, no matter different complaints in relation thereto may have been filed, as is the position in cases involving the dishonour of cheques issued by the borrower towards repayment of a loan to the creditor. It further held as under:-

“18. Applying the principle of single transaction referred to above to the above fact situations we are of the view that each one of the loan transactions/financial arrangements was a separate and distinct transaction between the complainant on the one hand and the borrowing company/appellant on the other. If different cheques which are subsequently dishonoured on presentation, are issued by the borrowing company acting through the appellant, the same could be said to be arising out of a single loan transaction so as to justify a direction for concurrent running of the sentences awarded in relation to dishonour of cheques relevant to each such transaction. That being so, the substantive sentence awarded to the appellant in each case relevant to the transactions with each company referred to above ought to run concurrently. We, however, see no reason to extend that concession to transactions in which the borrowing company is different no matter the appellant before us is the promoter/Director of the said other companies also. Similarly, we see no reason to direct running of the sentence concurrently in the case filed by the State Bank of Patiala against M/s Sabhyata Plastics and M/s Rahul Plastics which transaction is also independent of any loan or financial assistance between the State Financial Corporation and the borrowing companies. We make it clear that the direction regarding concurrent running of sentence shall be limited to the substantive sentence



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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 Cr.P.C. 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.”

14. The same principle was followed by this Court in **Mukesh Bhatia** (Supra) and **Dr.Suresh Chand Kuntal** (Supra).

15. Applying the same principle to the facts of the present case, it is found that the cheques in both the complaints were issued in respect of the same transaction between the petitioner and respondent no.2. The two complaints have been decided on the same day, awarding similar sentences to the petitioner. Therefore, the same should have been directed to run concurrently in terms of Section 427 of the Cr.P.C. Of course, as far as the sentence in the event of default in payment of compensation/fine is concerned, the same cannot run concurrently.

16. As per the Nominal Roll of the petitioner, he has completed his substantive sentence awarded in CC No. 1682/2017 as on 16.11.2022. Thereafter, his substantive sentence in CC No. 1683/2017 was started on 17.11.2022, and as on 25.07.2023, he had undergone 8 months and 9 days of the substantive sentence in that case.

17. As noted hereinabove, his sentence was suspended by this Court vide order dated 10.08.2023.



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18. Giving him the benefit of the substantive sentence in the two Complaint Cases to run concurrently, the petitioner would, therefore, have completed his sentence, both substantive (1 year in all) and also in default of payment of fine/compensation (three plus three months).

Conclusion

19. Accordingly, it is directed that the substantive sentence awarded to the petitioner vide the order dated 07.02.2020 passed by the learned Trial Court in CC No. 1682/2017 and CC No. 1683/2017 shall run concurrently. It is also recorded that the petitioner had undergone his full sentence, substantive sentence as also the sentence to be undergone in case of default in payment of fine/compensation, in the above two Complaint Cases.

20. The petition is allowed in the above terms.

21. A copy of this order be sent to the Jail Superintendent for the purpose of information and record.

NAVIN CHAWLA, J

MAY 14, 2024/rv/ss

Click here to check corrigendum, if any