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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 91/2024**

SMT MANJU RANI

.....Petitioner

Through: Mr. Avinash Kumar and Mr. Pramod
Kumar Tiwari, Advocates.

versus

**STATE GOVT OF NCT OF DELHI THROUGH SECRETARY OF
STATE**

.....Respondent

Through: Mr. Hitesh Vali, APP for State.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

12.08.2024

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1. This petition has been filed seeking direction for concurrent running of sentences pronounced in CC no. 4970/17, CC NO. 4972/17, CC NO. 4974/17 and CC NO. 4342 /18, all for offence under Section 138 of the Negotiable Instruments Act. The petitioner was convicted by judgments dated 4th October 2023 in the first three matters and judgment dated 26th October 2023 in the respective complaints.
2. The respective sentencing orders awarded a punishment of 2 months SI plus Rs. 2,96,000/- fine, 3 months SI plus Rs. 3,25,000/- fine, 3 months SI plus Rs. 3,70,000/- fine and 4 months SI plus Rs. 7,00,000/- fine and sentences in default of payment of fine thereof.
3. The counsel for petitioner points out that the first three convictions arise out of the same transaction with the same party Manoj Kumar, arising



out of one single loan of Rs. 6,70,000/-, for which allegedly the three cheques were given.

4. The fourth transaction though with a different party, during the order of sentencing, the period already undergone of one month, was set off.

5. As a result, counsel for the petitioner states that they have already been in custody for about 12 months and which should cover the maximum sentence of 4 months which was awarded in these matters and 8 months of the cumulative sentences in default.

6. For this, he relies upon the decision of the Supreme Court in ***Benson v State of Kerala***, (2016) 10 SCC 307 which has been relied upon by a decision of co-ordinate bench of this Court in ***Yamin v The State (Govt. of NCT of Delhi)*** pronounced on 11th January 2021, **2021: DHC:86**.

7. In the said judgment of the Supreme Court, sentence in at least 12 cases were directed to run concurrently, in exercise of powers under Section 427 Cr.P.C.

8. The Court in ***Yamin (supra)*** cited the Full Bench judgment of the Bombay High Court in ***Satnam Singh Puran Singh Gill v. State of Maharashtra*** : 2009 SCC OnLine Bom 52 where it was observed as under:

“21. The provisions of Section 427 of the Code are titled to provide a benefit in favour of a convict. Whether the sentence awarded earlier or the sentence awarded on subsequent conviction to run consecutive or concurrent is a matter of importance not only from the point of view of the accused but even administration of criminal justice. The Court has been vested with this power and is expected to apply this provision in every case at the time of awarding the sentence. The obligation cast upon the Court is of a mandatory nature as it has the impact of granting or



declining to grant a benefit to a convict. Thus, it may not be appropriate to read into the provisions of Section 427 any restriction or limitation on the discretion of the Court which has not been specifically imposed by the Legislature.

22. As we have already noticed, the Legislature in its wisdom has not imposed any bar or limitation on the basis of which case of any subsequent conviction would fall outside the ambit or scope of Section 427. On the contrary, to apply these provisions to different cases is the very intent behind this provision. Sub-section (2) of Section 427 requires mandatorily that life imprisonment in two different cases shall run concurrently. To hold that the provisions of Section 427(1) would not apply to any case would be an interpretation which would neither be permissible on any principles or any accepted canons of interpretation of statutes nor with reference to the legislative intent behind this provision.

23. We are unable to see any statutory restriction on the powers of the Court or legislative mandate to exclude any class of cases from the provisions of Section 427 of the Code once the ingredients of the provision are satisfied. It is not for the Court to read into the provisions what is not stated unless it becomes imperative due to the rule of implied construction. On its plain reading, the language of the provision does not admit any direct or implied restriction. Of course, the Court has to exercise its discretion guided by law and legal principles. It must be governed by rules, not by humour and cannot be arbitrary, vague and fanciful. It essentially has to be legal, regular and according to the rules of reason and justice. (See Ramji Dayawala & Sons (P) Ltd. v. Invest Import, (1981) 1 SCC 80).”

9. Counsel for the petitioner states that the petitioner is a lady of 50 years of age, with school going children and has already suffered 12 months of incarceration.



10. APP for State submits that the default sentences cannot be directed to be run concurrently as per law. Further, he states that the sentencing Court was not oblivious of the fact that there were three cheques given for the same transaction.

11. In these circumstances and having perused the record of the case, the sentences in these 4 matters are directed to run concurrently. Needless to state this will not apply to sentences in default of payment of fine.

12. Keeping in view of the peculiar facts and circumstances of the case, the decisions cited above, and custody of 12 months already undergone by the accused, who is a lady with school going children, the said directions are being passed.

13. It is noted that the respondent no.2 and 3 had been served, as noted by order dated 22nd February, 2024, however, they have not appeared.

14. Petition is disposed of. Pending applications (if any) are disposed of as infructuous.

15. Order be uploaded on the website of this Court.

ANISH DAYAL, J

AUGUST 12, 2024/RK

Click here to check corrigendum, if any