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AT CHANDIGARH**

**Date of decision: 18.02.2025**

1.      **CRR-1105-2017 (O & M)**

**BAKHSHISH SINGH**

**...PETITIONER**

**V/S**

**ANIL KUMAR AND ANOTHER**

**...RESPONDENTS**

2.      **CRR-1107-2017 (O & M)**

**BAKHSHISH SINGH**

**...PETITIONER**

**V/S**

**ANIL KUMAR AND ANOTHER**

**...RESPONDENTS**

3.      **CRR-1108-2017 (O & M)**

**BAKHSHISH SINGH**

**...PETITIONER**

**V/S**

**ANIL KUMAR AND ANOTHER**

**...RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present:      Mr. G.S. Sandhu, Advocate for the petitioner.  
(in all cases)

Mr. Deepak Nayar, Advocate for respondent No.1.  
(in all cases)

Mr. Nitesh Sharma, DAG, Punjab.

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**HARPREET SINGH BRAR, J. (ORAL)**

1.      By way of this common order, I shall dispose of the aforesaid revision petitions as common question of law and facts are involved for adjudication. For the sake of brevity, facts are borrowed from ***CRR-1105-2017 (O & M)*** titled as ***Bakhshish Singh vs. Anil Kumar and another.***

**2. PRAYER****(i) CRR-1105-2017**

Present revision petition is preferred against the judgment dated 17.11.2016 passed by learned Additional Sessions Judge, Amritsar, whereby, the judgment of conviction and order of sentence dated 05.08.2016 passed by learned Judicial Magistrate Ist Class, Amritsar in a case stemming out of complaint filed under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act') have been upheld, whereby, the petitioner was awarded RI for 01 year with a compensation of Rs.2,00,000/- along with default mechanism.

**(ii) CRR-1107-2017**

Present revision petition is preferred against the judgment dated 17.11.2016 passed by learned Additional Sessions Judge, Amritsar, whereby, the judgment of conviction and order of sentence dated 05.08.2016 passed by learned Judicial Magistrate Ist Class, Amritsar in a case stemming out of complaint filed under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act') have been upheld whereby, the petitioner was awarded RI for 01 year with a compensation of Rs.3,25,000/- along with default mechanism.

**(iii) CRR-1108-2017**

Present revision petition is preferred against the judgment dated 17.11.2016 passed by learned Additional Sessions Judge, Amritsar, whereby, the judgment of conviction and order of sentence dated 05.08.2016 passed by learned Judicial Magistrate Ist Class, Amritsar in a case stemming out of complaint filed under Section 138 of Negotiable Instruments Act, 1881

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(hereinafter referred to as 'NI Act') have been upheld whereby, the petitioner was awarded RI for 01 year with a compensation of Rs.2,75,000/- along with default mechanism.

**2. FACTUAL BACKGROUND****(i) CRR-1105-2017**

Briefly stated, the facts of the present case are that in terms of friendly relations, the petitioner had taken a loan of Rs.1,80,000/- from the complainant. Thereafter, in order to discharge his legal debt and liability, he issued a cheque bearing No.387704 dated 28.11.2013 for a sum of Rs.1,80,000/- drawn on Punjab National Bank, Amritsar, in favour of the complainant and assured him that as and when the cheque would be presented in the bank, the same would be encashed. Upon which, the complainant presented the said cheque for encashment, through his bank i.e. Corporation Bank, Amritsar, however, the cheque was dishonoured with the remarks "Funds Insufficient" and returned vide memo dated 17.12.2013. Thereafter, the complainant served the accused/petitioner with legal notice dated 15.01.2014 through registered A.D. post, but despite service, the accused petitioner failed to make the payment of said cheque. Hence, the complaint.

**(ii) CRR-1107-2017**

Briefly stated, the facts of the present case are that in terms of friendly relations, the petitioner had taken a loan of Rs.3,10,000/- from the complainant. Thereafter, in order to discharge his legal debt and liability, he issued a cheque bearing No.387710 dated 12.12.2013 for a sum of Rs.3,10,000/- drawn on Punjab National Bank, Amritsar, in favour of the complainant and assured him that as and when the cheque would be presented in the bank, the same would be encashed. Upon which, the complainant

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presented the said cheque for encashment, through his bank i.e. Corporation Bank, Amritsar, however, the cheque was dishonoured with the remarks “Funds Insufficient” and returned vide memo dated 27.12.2013. Thereafter, the complainant served the accused/petitioner with legal notice dated 15.01.2014 through registered A.D. post, but despite service, the accused petitioner failed to make the payment of said cheque. Hence, the complaint.

**(iii) CRR-1108-2017**

Briefly stated, the facts of the present case are that in terms of friendly relations, the petitioner had taken a loan of Rs.2,67,000/- from the complainant. Thereafter, in order to discharge his legal debt and liability, he issued a cheque bearing No.387708 dated 04.12.2013 for a sum of Rs.2,67,000/- drawn on Punjab National Bank, Amritsar, in favour of the complainant and assured him that as and when the cheque would be presented in the bank, the same would be encashed. Upon which, the complainant presented the said cheque for encashment, through his bank i.e. Corporation Bank, Amritsar, however, the cheque was dishonoured with the remarks “Funds Insufficient” and returned vide memo dated 20.12.2013. Thereafter, the complainant served the accused/petitioner with legal notice dated 15.01.2014 through registered A.D. post, but despite service, the accused petitioner failed to make the payment of said cheque. Hence, the complaint.

**3. PETITIONER’S SUBMISSIONS**

Learned counsel for the petitioner submits that the petitioner was convicted under Section 138 of the Negotiable Instruments Act, 1881, for dishonoring of cheques issued for payment of his liability to the complainant vide the judgments of conviction and order of sentences passed by the learned trial Courts and those were upheld by the learned Appellate Court. Aggrieved



by the same, the petitioner has approached this Court by way of these three revision petitions i.e. CRR-1105-2017 (O & M), CRR-1107-2017 (O & M) & CRR-1108-2017 (O & M).

Learned counsel for the petitioner *inter alia* contends that the petitioner has been convicted in three different cases in a complaint instituted by respondent No.1 under Section 138 NI Act and the cheques in question were issued with regard to the same transaction. The dispute arose between the parties was with regard to one agreement to sell and allegedly, pursuant to the sole transaction, three different cheques were issued. He further submits that in one case, he has already completed his sentence and he is not assailing the judgment of conviction and order of sentence dated 05.08.2016 on merits, however, he confines his prayer to the extent that the sentences be ordered to run concurrently as all the three petitions are between the same parties and the cheques in question were issued with regard to the same transaction. He relies upon the judgment passed by the Hon'ble Supreme Court in the case of ***V.K. Bansal vs. State of Haryana and others, 2014(1) CivCC 162*** and ***Narinder Kaur***

Learned counsel for the petitioner further submits that the dishonor of the cheques was due to temporary financial constraints, and not due to any fraudulent or dishonest intention. He also submits that the learned trial Courts have erroneously appreciated the evidence, leading to an unjust conviction as the petitioner had a genuine intention to make the payment, but was unable to do so due to unforeseen financial difficulties. Learned counsel for the petitioner respectfully contends that the sentence imposed by the trial courts is harsh and disproportionate to the circumstances.

**4. RESPONDENT'S SUBMISSIONS**

*Per contra*, the learned State counsel assisted by learned counsel for the complainant/respondent No.1 opposes the prayer made by the petitioner of running the respective sentences concurrently on the ground that the petitioner issued cheques, in question with the knowledge that his account had insufficient funds, which is a clear case of dishonesty. The defense raised by the petitioner regarding temporary financial constraints does not absolve him of his responsibility under Section 138 of the NI Act, as the cheques were issued intentionally with an assurance that they would be honoured. Further, the learned trial Court has correctly appreciated the evidence on record while passing the respective judgments of conviction and order of sentences and as such, the same do not require any interference.

**6. FINDINGS**

Having heard the learned counsels for the parties and perusing the record with their able assistance, it transpires that the petitioner has been convicted and sentenced separately in three criminal complaints filed under Section 138 of the NI Act. Since, the learned Courts below have rightly appreciated all the evidence available on record while passing the respective judgments of conviction(s) and order of sentences qua the petitioner, therefore, this Court do not find any valid and justifiable reasons for interference in the said judgments. However, the petitioners prays for the sentences to be ordered to have run concurrently. The adjudication of this issue requires examination of Section 427 of the Cr.P.C, which is reproduced below:

***Section 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.*

A two Judge bench of the Hon'ble Supreme Court in ***Shyam Pal and Dayawati Besoya and Another*, 2016(4) R.C.R(Criminal) 790** reaffirmed the ratio of law laid down in ***V.K. Bansal v. State of Haryana and Another*, 2013(3) R.C.R(Civil) 1052** to hold that the power bestowed upon the Courts under Section 427 of the Cr.P.C is discretionary in nature and should not be exercised in a mechanical fashion. Speaking through Justice Amitava Roy, the following was observed:

*“14. The imperative essentiality of a single transaction as the decisive factor to enable the Court to direct the subsequent sentence to run concurrently with the previous one was thus underscored. It was expounded as well that the direction for concurrent running of sentence would be limited to the substantive sentence alone.*



15. In a more recent decision of this Court in **Benson v. State of Kerala - 2016(4) RCR (Criminal) 602 : 2016(5) Recent Apex Judgments (R.A.J.) 716, Criminal Appeal No.958 of 2016 (since disposed of on 03.10.2016)** and the accompanying appeals, arising from the conviction of the appellant from his prosecution on the offences proved, this Court in the singular facts as involved and having regard to the duration of his incarceration and the remission earned by him, extended the benefit of such discretion and directed that the sentences awarded to him in those cases would run concurrently. It was noticeably recorded that the offences in the cases under scrutiny had been committed on the same day. The benefit of the discretion was accorded to the appellant therein referring as well to the observation in *V.K. Bansal (supra)* that it is difficult to lay down any straight jacket approach in the matter and that a direction that the subsequent sentence would run concurrently or not, would essentially depend on the nature of the offence or offences and the overall fact situation. Understandably, the appellant was required to serve the default sentence as awarded with the direction that if the fine imposed had not been deposited, the default sentence or sentences would run consecutively.

16. Reverting to the facts as obtained in the present appeal, we are of the comprehension, on an appreciation thereof as well as the duration of the appellant's custody, as is evidenced by the certificate to that effect, that the appellant is entitled to the benefit of the discretion contained in Section 427 of the Code. In arriving at this conclusion we have, as required, reflected on the nature of the transactions between the parties thereto, the offences involved, the sentences awarded and the period of detention of the appellant as on date.”

This Court in **Dayal Chand v. Punjab State Warehousing Corporation, Punjab, Chandigarh and Others 2018 SCC Online P&H 7549**



and *Shashi Bhushan v. State of Haryana and others 2020 (1) R.C.R (Criminal) 208*, in view of the ratio laid down by the Hon’ble Supreme Court, ordered for sentences to be run concurrently. Therefore, considering the fact that the nature of the complaints are similar, this Court is of the view that ends of justice will be met if the substantive sentence of all three criminal complaints are ordered to run concurrently.

In view of the above, judgment dated 17.11.2016 passed by learned Additional Sessions Judge, Amritsar as well as judgment of conviction and order of sentence dated 05.08.2016 passed by learned Judicial Magistrate Ist Class, Amritsar in all cases are upheld.

Needless to say, the compensation amount to be paid by the petitioner to the complainants (in all the complaint cases) shall remain intact and the complainants (respondent No.1) in all cases would be at liberty to recover the same in accordance with law.

Present petitions are disposed of in aforesaid terms.

Pending miscellaneous applications, if any, also stands disposed of. A photocopy of this order be placed on the file of other connected cases.

February 18, 2025  
manisha

(HARPREET SINGH BRAR)  
JUDGE

- |      |                           |        |
|------|---------------------------|--------|
| (i)  | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable        | Yes/No |