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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 18.01.2025

1. CRR No.1141 of 2024 (O&M)

Sumer Singh
.....Petitioner
Versus
Surinder Singh and another
.....Respondents

2. CRR No.1142 of 2024 (O&M)

Sumer Singh
.....Petitioner
Versus
Ram Swaroop and another
.....Respondents

3. CRR No.1149 of 2024 (O&M)

Sumer Singh
.....Petitioner
Versus
Sunita Devi and another
.....Respondents

4. CRR No.1134 of 2024 (O&M)

Sumer Singh
.....Petitioner
Versus
Anita Devi and another
.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. P.R. Yadav, Advocate
for the petitioner (in all the petitions)

Mr. Rohit Mittal, Advocate
for respondent No.1 (in all the petitions)

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Ms. Geeta Sharma, DAG, Haryana
for respondent No.2 (in all the petitions)

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.

2. PRAYER

In **CRR-1141-2024** the petitioner prays for setting-aside the judgment dated 29.05.2019, vide which he was convicted by Judicial Magistrate Ist Class, Narnaul under Section 138 of Negotiable Instruments Act, 1881 (for short 'the NI Act') and was sentenced to undergo simple imprisonment for a period of 01 year and to pay a fine of Rs.14.00 lacs along with interest @ 2% per month, to be paid to the complainant vide order of sentence dated 30.05.2019, as well as the judgment dated 09.01.2024, passed by the learned Additional Sessions Judge, dismissing the appeal preferred by the petitioner against the judgment of conviction dated 29.05.2019 and order of sentence dated 30.05.2019.

In **CRR-1142-2024** the petitioner prays for setting-aside the judgment dated 10.10.2019, vide which he was convicted by Judicial Magistrate Ist Class, Narnaul under Section 138 of the NI Act and was sentenced to undergo simple imprisonment for a period of 01 year and to pay the compensation amount of Rs.21.00 lacs, to be paid to the complainant vide order of sentence dated 11.10.2019, as well as the

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judgment dated 01.04.2024, passed by the learned Additional Sessions Judge, dismissing the appeal preferred by him against the judgment of conviction dated 10.10.2019 and order of sentence dated 11.10.2019.

In **CRR-1149-2024** the petitioner prays for setting-aside the judgment dated 20.08.2019, vide which he was convicted by Additional Chief Judicial Magistrate, Narnaul under Section 138 of the NI Act and was sentenced to undergo rigorous imprisonment for a period of 02 years and to pay compensation amount of Rs.20.00 lacs, to be paid to the complainant within a period of one month and in default of payment of fine to further undergo simple imprisonment for a period of 03 months vide order of sentence dated 21.08.2019, as well as the judgment dated 10.11.2023, passed by the learned Additional Sessions Judge, dismissing the appeal preferred by him against the judgment of conviction dated 20.08.2019 and order of sentence dated 21.08.2019.

In **CRR-1134-2024** the petitioner prays for setting-aside the judgment dated 10.10.2019, vide which he was convicted by Judicial Magistrate Ist Class, Narnaul under Section 138 of the NI Act and was sentenced to undergo simple imprisonment for a period of 01 year and to pay the compensation amount of Rs.21.00 lacs, to be paid to the complainant vide order of sentence dated 11.10.2019, as well as the judgment dated 01.03.2024, passed by the learned Additional Sessions Judge, dismissing the appeal preferred by him against the judgment of conviction dated 10.10.2019 and order of sentence dated 11.10.2019.

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3. FACTS OF THE CASE

I. CRR-1141-2024

The complainant has filed a complaint under Sections 138 and 142 of the NI Act, alleging that the accused/petitioner, who operates a brickyard in Maihara Jatuwas, purchased 5000 quintals of "Padari" for Rs.14,00,000/- from the complainant on 01.03.2015, with an agreement to pay the amount by that date. The agreement, executed in the handwriting of the accused and signed in the presence of two witnesses, also stipulated a 2% monthly interest if payment was delayed. When the accused failed to pay, he issued two cheques of Rs.7,00,000/- each, dated 05.03.2015 and 10.03.2015, assuring the complainant that the cheques would be honored. However, when the complainant presented the cheques on 29.04.2015, they were dishonoured due to insufficient funds in the petitioner's bank account. A legal notice was sent to the accused/petitioner on 13.05.2015, which he received on 22.05.2015, but he neither responded nor made any payment. The complainant alleges that the accused knowingly issued the cheques with insufficient funds, intending to cheat, thus committed offence under Sections 138 and 142 of the NI Act.

II. CRR-1142-2024

The complainant has filed a complaint alleging that he and the accused/petitioner had friendly relations, and the accused/petitioner, who owns an industry named Choudhary Bricks Udyog in village

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Mehada Jatuwas, contacted the complainant to purchase 5000 quintals of mustard crop residue (Padari) for his brick kiln business. On 12.02.2014, the accused agreed to buy the Padari at Rs.280 per quintal, totaling Rs.14,00,000/-, but he failed to make the payment. The accused/petitioner assured the complainant that he would pay the amount by 01.02.2015 and executed a written agreement in this regard. When the payment was not made, the complainant visited the accused on 05.02.2015 and demanded the payment. The accused admitted his liability and issued two cheques, one for Rs.7,00,000/- dated 05.02.2015 and another for Rs.7,00,000/- dated 10.02.2015, both drawn on the Bank of Baroda, Khetri branch, from the account of Choudhary Bricks Udyog in favor of the complainant. However, when presented, both cheques were dishonoured on 23.04.2015 due to insufficient funds. The complainant sent a legal notice to the accused on 09.05.2015 under Section 138 of the NI Act, demanding payment within 15 days, but the accused/petitioner failed to respond or make payment. As a result, the complaint was filed.

III. CRR-1149-2024

The complainant, Sunita Devi, has filed a complaint alleging that she and the accused/petitioner had familial ties. The accused is the owner of a brick kiln in village Mehada Jatuwas, operating under the name and style of "Chaudhary Brick Kiln." On the request of the accused/petitioner, the complainant, after consulting her

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family members, agreed to sell 5000 quintals of Padadi to the accused/petitioner at Rs.280 per quintal, for a total sum of Rs.14,00,000/-. The accused/petitioner received the entire quantity of Padadi by 25.04.2014 and executed a written agreement on a stamp paper of Rs.50, agreeing to pay the amount by 01.05.2015. However, when the accused/petitioner failed to make the payment, the complainant visited his house and demanded payment. In response, the accused/petitioner issued two cheques of Rs.7,00,000/- each, dated 05.05.2015 and 10.05.2015, in favor of the complainant. Upon presenting the cheques for encashment, both were dishonoured due to "exceeds arrangement" and returned to the complainant. A legal notice was then sent to the accused/petitioner on 29.06.2015, demanding payment within 15 days, but the accused/petitioner failed to make any payment. The complainant alleges that the accused/petitioner knowingly issued the said cheques despite being aware that they would be dishonoured, thus committed an offence under Section 138 of the NI Act.

IV. CRR-1134-2024

The complainant has filed a complaint alleging that the accused/petitioner owns an industry called "Choudhary Bricks Udyog" in village Mehada Jatuwas and required mustard crop residue (Padari) for his brick kiln business. On 01.04.2014, the accused/petitioner purchased 5000 quintals of Padari at the rate of Rs.280 per quintal,

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amounting to a sum of Rs.14,00,000/-. However, the accused/petitioner did not make the payment and assured the complainant that the payment would be made by 01.04.2015, executing an agreement in writing in this regard. When the accused/petitioner failed to make the payment, the complainant approached him and demanded the amount. The accused/petitioner admitted his liability and issued two cheques: one for Rs.7,00,000/- dated 05.04.2015 and the other for Rs.7,00,000/- dated 10.04.2015, both drawn on Bank of Baroda, Khetri branch, from the account of Choudhary Bricks Udyog in favor of the complainant. However, when the cheques were presented, both were dishonoured due to "Exceeds Arrangement," as indicated vide memos dated 19.05.2015. Following this, the complainant sent a legal notice to the accused/petitioner on 27.05.2015 under Section 138 of the Negotiable Instruments Act, demanding payment within 15 days, but he failed to make the payment. As a result, the complaint was filed.

4. 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 cheques issued for payment of mustard crop residue (Padari) purchased from the complainants and the judgments of conviction and order of sentences passed by the learned trial Courts and upheld by the learned Appellate Court in the four

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revision petitions i.e. CRR-1141-2024, CRR-1142-2024, CRR-1149-2024, and CRR-1134-2024, be set aside.

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, and prays that the sentence be reduced or modified in accordance with the facts of the case.

Learned counsel for the petitioner contends that a prayer for making the sentences concurrent was not made before the learned Appellate Court or the learned trial Court, which has caused a serious prejudice to the petitioner. He further submits that all complaints are similar in nature and pertains to the same year, the petitioner has already undergone a total sentence of 09 months and 03 days.

5. RESPONDENT’S SUBMISSIONS

Per contra, the learned counsel for respondent No.1 as well as learned State counsel opposes the prayer 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,

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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 honored. 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 does 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 four 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 and order of sentences qua the petitioner, therefore, this Court do not find any valid and justifiable reasons for interference in the said judgment(s). However, the petitioner 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

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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)***

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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, Ranjit Singh v. State of Punjab CRM-M-32996-2017 decided on 15.09.2017 and Shashi Bhushan v. State of Haryana and others 2020 (1) R.C.R (Criminal) 208, in view of the ratio laid down

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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 and that the petitioner has already undergone sentence of 09 months and 03 days, this Court is of the view that ends of justice will be met if the substantive sentence of all four criminal complaints are run concurrently.

Ordered accordingly.

Needless to say, the compensation amount to be paid by the petitioner to the complainants (in all the complaint cases) shall remain intact, the complainants (respondents) in all cases would be at liberty to recover the same in accordance with law.

In view of the above discussion, the present petitions are disposed of.

Pending miscellaneous applications, if any, also stands disposed of.

(HARPREET SINGH BRAR)
JUDGE

18.01.2025
yakub

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No