

CRR-1612-2022 (O&M)
CRR-1620-2022 (O&M)
CRR-1623-2022 (O&M)
CRR-1625-2022 (O&M)
CRR-1611-2022 (O&M)

2025:PHHC:014202



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 30.01.2025

1. CRR-1612-2022 (O&M)

Dinkar Kalia
.....Petitioner
Versus
The Punjab Agro Industries Corporation Limited
.....Respondent

2. CRR-1620-2022 (O&M)

Dinkar Kalia
.....Petitioner
Versus
The Punjab Agro Industries Corporation Limited
.....Respondent

3. CRR-1623-2022 (O&M)

Dinkar Kalia
.....Petitioner
Versus
The Punjab Agro Industries Corporation Limited
.....Respondent

4. CRR-1625-2022 (O&M)

Dinkar Kalia
.....Petitioner
Versus
The Punjab Agro Industries Corporation Limited
.....Respondent

5. CRR-1611-2022 (O&M)

Dinkar Kalia
.....Petitioner
Versus
The Punjab Agro Industries Corporation Limited
.....Respondent

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CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Akshay Chadha, Advocate
for the petitioner (in all the revision petitions).

Mr. Harsh Aggarwal, Advocate
for the respondent (in all the revision petitions).

HARPREET SINGH BRAR J. (Oral)

CRM-27922-2022 IN CRR-1612-2022
CRM-28036-2022 IN CRR-1620-2022
CRM-28040-2022 IN CRR-1623-2022
CRM-28047-2022 IN CRR-1625-2022
CRM-27919-2022 IN CRR-1611-2022

Prayer in these application(s) filed under Section 5 of the
Limitation Act read with Section 482 Cr.P.C., is for seeking condonation
of delay of 1213 days in filing the revision petition(s).

Heard.

For the reasons stated in the application(s), the same are
allowed and delay of 1213 days in filing the revision petition(s) is
condoned.

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1. Vide this common order, I intend to dispose of CRR
Nos.1612, 1620, 1623, 1625 and 1611 of 2022, as common questions of
law and facts are involved for adjudication. For the sake of
convenience, facts are taken from CRR No.1612 of 2022.

2. All the aforesaid revision petitions have been preferred by
the petitioner against the judgment(s) dated 21.01.2017 passed by the



learned Additional Sessions Judge, Ludhiana, vide which judgment(s) of conviction and order of quantum of sentence(s) dated 05.02.2015 passed by the learned Judicial Magistrate Ist Class, Ludhiana, in Criminal Complaints No.85 dated 25.03.2003, No.94 dated 04.04.2003, No.108/3 dated 29.04.2003, No.39 dated 24.02.2003 and No.157 dated 05.07.2003, have been upheld.

3. The petitioner was convicted and sentenced under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the NI Act') and was ordered to undergo simple imprisonment for a period of 01 year and to pay a fine of Rs.3,000/- each (in Criminal Complaints No.85 dated 25.03.2003, No.94 dated 04.04.2003, No.108/3 dated 29.04.2003, No.39 dated 24.02.2003 and No.157 dated 05.07.2003) along with default mechanism.

4. Brief facts of the case are that the respondent/complainant has filed five criminal complaints against M/s. Kuber Rice and General Mills, where the petitioner is named as a partner, under Section 138 of the NI Act. The complaints stem from a contract between the complainant and M/s. Kuber Rice and General Mills for the milling of rice for the crop year 2001-02. According to the agreement, M/s. Kuber Rice and General Mills were obligated to deliver the milled rice to the Food Corporation of India (FCI) on behalf of the complainant by 31.07.2002. However, they only delivered part of the rice and failed to complete the delivery within the extended period until 30.09.2002. To settle the shortage, M/s. Kuber Rice and General Mills issued two

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cheques, dated 27.08.2002, for Rs.1,00,00,000/- and Rs.70,00,000/-.

These cheques were dishonoured due to insufficient funds.

Acknowledging their liability, M/s. Kuber Rice and General Mills issued five post-dated cheques bearing No.944719 to 944723 each with different dates during the period of 31.10.2002 to 28.02.2003 for Rs.22,50,000/- each to discharge the remaining debt. However, the said cheques were presented by the complainant, but same were dishonoured with the remark "Funds Insufficient". The complainant subsequently issued statutory legal notice(s) demanding payment within 15 days. However, M/s. Kuber Rice and General Mills, along with the petitioner, failed to make the payment.

5. The petitioner was convicted vide judgement(s) dated 05.02.2015 by the learned trial Court, which has also been upheld by learned Lower Appellate Court vide judgment(s) dated 21.01.2017.

6. Learned counsel for the petitioner submits that the petitioner, as a partner in M/s. Kuber Rice and General Mills, cannot be personally held liable under Section 138 of the Negotiable Instruments Act. The cheques, in question were issued by the partnership firm to settle a debt, and the dishonour occurred due to insufficient funds in the firm's account and not due to any personal fault of the petitioner. The petitioner had no direct involvement in the financial transactions and therefore, the liability for the dishonoured cheques lies with the firm, and he should be discharged from all the criminal complaints filed under Section 138 of the NI Act as dispute between the parties and all



the cheques, in question are part of the same transaction. He further contends that a prayer for making the sentences concurrent was not made before the learned Lower 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 the petitioner has already undergone a total sentence of 04 months and is not involved in any other criminal activity.

7. *Per contra*, learned counsel for the respondent opposes the prayer of the petitioner for running the respective sentences concurrently on the ground that the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, which has also been upheld by the learned Lower Appellate Court and as such, he does not deserve any leniency. He further submits that in pursuance of the order passed by this Court on 16.09.2022, the petitioner has not made any effort to seek compounding of the offence under one time settlement policy of the respondent – Corporation.

8. In reply, learned counsel for the petitioner submits that the petitioner had sent several e-mails to the respondent – Corporation with regard to compounding of the offence under one time settlement policy, however, none of the e-mail sent by the petitioner has been responded by the respondent – Corporation and even the property of petitioner worth Rs.7.00 crores is lying attached.



9. Learned counsel for the respondent submits that he would supply the correct e-mail address to the petitioner in case the petitioner wants to avail the benefit of one time settlement with the respondent – Corporation.

10. Having heard the learned counsel for the parties and perusing the record with their able assistance, it transpires that the petitioner has been convicted and sentenced separately in five 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 judgment of conviction and order of sentence qua the petitioner, therefore, this Court do not find any valid and justifiable reasons for interference in the said judgment. However, the petitioner prays for the sentences to be ordered to have run concurrently.

11. 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.

12. 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.”

13. 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 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 between the same parties and the cheques are issued in terms of the agreement for the custom milling of Rice for the Crop Year 2001-02 and that the petitioner has already undergone sentence of 04 months, this Court is of the view that ends of justice will

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be met if the substantive sentence of all 05 criminal complaints are run concurrently.

- 14. Ordered accordingly.
- 15. In view of the above discussion, the present petition(s) are disposed of.
- 16. All the pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

30.01.2025
yakub

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