



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

% **Reserved on: 19th February, 2025**
Pronounced on: 30th May, 2025

+ **W.P.(CRL) 1997/2020, CRL.M.As. 1505/2023, 27304/2023**

RAJENDER MITTAL

S/o Late Sh. Deen Dayal Mittal,
 R/o H. No. 696, Sector 28, Noida,
 G.B. Nagar, Delhi.

.....Petitioner

Through: Mr. Asim Naeem, Ms Cherry Gupta
 and Ms. Anisa, Advocates.

versus

1. **UNION OF INDIA**

2. **STATE OF DELHI**

.....Respondents

Through: Mr. Udit Vaghela, Advocate for UOI.
 Dr. Amar Nath Gupta, Mr. Santosh
 Kumar Sahu, Mr. B. P. Singh and
 Mr. Rajiv Mitra, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CRL.M.A. 27305/2023

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(CRL) 1997/2020, CRL.M.A.1505/2023, 27304/2023

3. Writ Petition under Article 226 of the Constitution of India read with Section 482 Code of Criminal Procedure, 1973 (*hereinafter referred to as*



“Cr.P.C.”) has been filed by the Petitioner to challenge the Order dated 17.02.1998 under Section 27 of Consumer Protection Act, 1986 (*hereinafter referred to as the “CP Act, 1986”*), whereby total imprisonment for 182 years has been awarded in 344 Complaints.

4. The ***facts in brief*** are that M/s Tirupati Builders Pvt. Ltd., a construction Company, got incorporated under the Companies Act, 1956, on 10.04.1985 with five Directors, of which Petitioner was one of the Directors. The Petitioner and his wife, Rajshree Mittal resigned from the Directorship of the Company on 22.01.1986 and 01.12.1985, respectively and Form 32 was duly submitted with the Registrar of Companies.

5. The Petitioner submitted that years after his resignation as Director, *Rakesh Kumar, the sole Proprietor of M/s Tirupati Associates* published an Advertisement inviting public at large for purchase of plots in a proposed residential Colony known as *Tirupati Township*. Large number of persons applied for the booking in the aforesaid Scheme and made the investments. However, when they did not get any suitable response from the Company about the completion of the Project. 344 Complaints came to be filed by the Applicants against all the Directors including Petitioner, before the District Forum, praying for refund of the amount deposited by them for purchase of plots along with interest @ 18% per annum.

6. The Petitioner asserted that he was also made an Accused even though he was neither the Director of the Company at that point of time nor had anything to do with the floating of the aforesaid Scheme of the



Company. He had neither received a single penny from the investors either in cash or otherwise, in any of his bank account.

7. The **District Forum** disposed of all 344 Complaints *vide* common Order dated 13.03.1995 in Case No.1522/1991 holding the Petitioner as well as Sh. Rakesh Kumar Sharma, liable to refund the amount along with interest @ 18% per annum. Compensation of Rs. 20,000/- was also granted in each case. The Order was directed to be complied with within 30 days.

8. Aggrieved by the said Order, Petitioner filed ***Appeal No. 580/1995 and Appeal 194/95 before the State Commission, but the same was dismissed with costs, vide Order dated 02.11.1996/15.02.1997.***

9. The Petitioner then approached the **National Consumer Disputes Redressal Commission** *vide Revision Petition No. No.494/1998 against the Order dated 02.11.1996 of the State Commission, but it got dismissed vide Order Dated 24.05.2010. A Review petition No.148/2010 was filed which got dismissed on 09.07.2010.*

10. Petitioner then filed **Special Leave Petition (C) No. 35932-35934/2010 before the Hon'ble Supreme Court of India** on 04.10.2010, but that too got dismissed *in limine vide* Order dated 06.12.2010. A **Review Petition No. 1439-1441/2011** was filed against the dismissal of aforesaid SLP, but the same also got dismissed on 26.07.2011, as being devoid of merits.

11. The Order of District Forum dated **13.03.1995, thus, attained finality.**

Execution Proceedings Of Final Order Dated 13.03.1995:



12. In the meantime, **the Complainants filed an Execution Petition No.231/1997 before the Hon'ble District Consumer Forum** praying for action to be taken under Section 27 CP Act, 1986. The District Forum *vide* Order dated 17.02.1998, sentenced the Petitioner and Rakesh Kumar for 01 year each in 20 cases, and 06 months each in 324 cases. The District Forum further directed that the **sentences shall run “consecutively”**, which implied that the Petitioner would have to undergo the total incarceration of 182 years.

13. The Petitioner has asserted that such a sentence is not only arbitrary and bad in law, but was also against the provisions of Section 27 CP Act, 1986 which provides maximum sentence of 03 years and also Section 31 of Cr.P.C. which provides maximum sentence of 14 years in total for different sentences.

14. Petitioner filed a ***Writ Petition No.2377/1998*** before this Court to challenge Order dated 17.02.1998 of the Execution Petition, but the same got dismissed on 27.05.2003 on the ground that alternative remedy of Appeal was available under the CP Act, 1986.

15. The Petitioner again approached the **State Forum** against the Order dated 17.02.1998 by filing one Appeal, but State Commission directed the Petitioner to file separate Appeals in all cases by 01.09.2003. The Petitioner then filed ***separate Appeals in 2003*** against this Order of imprisonment before the **State Commission**, but the Order dated 17.02.1998 under Section 27 CP Act, 1986, was upheld and the ***Appeals were dismissed in limine on 03.09.2003*** by observing that they were devoid of merits.



16. *Petitioner has thus, challenged the Order dated 17.02.1998 for consecutive sentence of 182 years passed by District Forum under Section 27 of the CP Act, 1986.*

Contentions of the Petitioner:

17. It is submitted on behalf of the Petitioner that the total sentence comes to 182 years of imprisonment, which is in violation of Article 21(2) of the Constitution of India and defeats the very purpose as enshrined under the said Article, as well as the legislative intent of the framers of Constitution of India.

18. All the transactions were similar in nature arising out of one Advertisement and since all 344 Complaints were decided together by way of common Order, therefore, if there was any violation committed under the CP Act, 1986, it should be treated *as simultaneously and the sentence ought to have been directed to be run concurrently.*

19. It is further submitted that the direction for all the ***sentences to run “consecutively”*** is totally in violation of Fundamental Right guaranteed under Articles 14 and 21 of Constitution of India. Section 31 Cr.P.C. provides that when a person is convicted at one trial of two or more offences, the punishment for the several offences should not ordinarily be in excess of the punishment, which is competent to be inflicted on conviction of a single offence, provided no punishment should be in excess of 14 years.

20. Reliance has been placed on Maneka Gandhi vs. Union Of India, (1978) 1 SCC 248, wherein it has been held that Article 21 of the



Constitution of India provides that no person shall be deprived of his life and liberty except in accordance with the procedure established by law.

21. Further reference is made to Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti vs. Assistant Collector of Customs (Prevention) Ahmedabad & Ors., (1988) 4 SCC 183, wherein, it was held that if a given transaction constitutes two offences under two enactments, generally it is wrong to have consecutive sentences. In State of Punjab vs. Madan Lal, (2009) 5 SCC 238, it was held that when separate Complaints are filed in respect of the same transaction, the sentence so awarded shall run concurrently.

22. It is therefore, contended that since the powers of District Forum were limited by the provisions of Section 27 of the CP Act, 1986, directions for sentences to **undergo consecutively is a patent illegality**.

23. Reliance has also been placed on V. K. Bansal vs. State of Haryana and Another, (2013) 7 SCC 211; O. M. Cherian @ Thankachan vs. State of Kerala and Others, (2015) 2 SCC 501 and Benson vs. State of Kerala, (2016) 10 SCC 307.

24. In Neera Yadav vs Central Bureau of Investigation, (2017) 8 SCC 757, the Apex Court noted that the Sentencing Court has the discretion to direct concurrency and the investiture of such discretion, presupposes exercise on sound principles and not on whims. Since in Cr.P.C. no guidelines or specific provisions have laid down to suggest under what circumstances the various sentences of imprisonment shall be directed to run concurrently or consecutively, the discretion needs to be exercised judiciously.



25. In regard to the maintainability of the present Writ Petition, it is stated that since the Supreme Court has only decided whether it was not a fit case where Special Leave should be granted, it cannot be assumed that it had necessarily decided by implication all the questions in relation to the merits of the case.

26. Petitioner has placed reliance on Indian Oil Corporation Ltd. vs. State of Bihar and Ors., (1986) 4 SCC 146, wherein the Apex Court held that dismissal of an SLP *in limine* by a non-speaking Order, does not bar filing of a Writ Petition under Article 226 of the Constitution of India.

27. Similar view has been taken by the Apex Court in the case of Fuljit Kaur vs. State of Punjab & Ors., (2010) 11 SCC 455.

28. The Petitioner has further submitted that he is not in a position to return the money as he has become financially bankrupt and therefore, his case is squarely covered by the judgment in Jolly George Verghese & Anr. vs. The Bank of Cochin, (1980) 2 SCC 360, wherein, it has been held that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability, is too flagrantly violative of Article 21 of the Constitution of India unless there is proof of minimal fairness of his wilful failure to pay in spite of his sufficient means, which must have some element of bad faith beyond mere indifference to pay.

29. It is therefore, submitted that appropriate directions may be passed to declare the imposition of total sentence of 182 years under Section 27 CP Act, 1986 as null and void, as the maximum punishment that can be granted is three years only; and to further direct the Respondents to release the



Petitioner from the prison forthwith, as he has already undergone about seven years of imprisonment in a case of similar nature in FIR No. 468/1994, under Sections 420/406/120-B Indian Penal Code, 1860.

30. An opportunity was given to the Respondents to address arguments.

31. **Submissions heard on behalf of the Petitioner and Record perused.**

32. The proceedings in the present case shall be adjudicated under the erstwhile Consumer Protection Act, 1986 (which has been replaced by the Consumer Protection Act, 2019), since the incident pertains to the year 1995.

Maintainability of Writ Petition:

33. At the outset, a preliminary objection has been taken on behalf of the Respondent that the present Writ Petition is not maintainable as the matter has travelled upto the Supreme Court and has attained finality, which cannot be reconsidered in the present Writ Petition.

34. This contention is completely misplaced since the Petitioner is not challenging by way of present Petition, the final Orders of the District Consumer Forum dated 13.03.1995 which have already attained finality on being upheld by Apex Court by its Order dated 06.12.2010 (SLP filed by the Petitioner against Order of NCDRC was dismissed).

35. The impugned Order dated 17.02.1998 was made under Section 27 CP Act, 1986 in the Execution Petition. There is no question of re-opening the judgments on merits, as is the impression of the Petitioners in filing the present Petitions. This is confined to modification of the Orders dated



17.02.1998 made in the Execution Petitions, wherein the petitioner has sought that the Sentence awarded by District Forum be directed to run concurrently rather than consecutively and does not touch the merits of Orders of the District Forum.

36. The petition is therefore, held to be maintainable.

Consumer Protection Act, 1986:

37. To understand the contentions raised in the Present Petition, it would be appropriate to consider the Scheme of the CP Act, 1986. This Act, 1986 was enacted pursuant to the Consumer Protection Resolution No. 39/248 dated 09.04.1985 of General Assembly of United Nations Organization which provided for protect the interest of consumers who face imbalances in economic terms and bargaining hour, in the wake of globalisation.

38. In the case of A Registered Society vs. Union of India, [1997] 10 SCC 729, the Apex Court observed as under:

“The object of the legislation, as the Preamble of the Act proclaims, is “for better protection of the interests of consumers”. During the last few years preceding the enactment there was in this country a marked awareness among the consumers of goods that they were not getting their money's worth and were being exploited by both traders and manufacturers of consumer goods. The need for consumer redressal fora was, therefore, increasingly felt. Understandably, therefore, legislation was introduced and enacted with considerable enthusiasm and fanfare as a path-breaking benevolent legislation intended to protect the consumer from exploitation by unscrupulous manufacturers and traders of consumer goods. ...”



39. In the case of Re: the Special Courts Bill 1978 reported in [1979] 1 SCC 380 Shinghal, J. observed that the provisions of the Act clearly demonstrate that it would was enacted keeping in view the long necessity of protecting a common man from wrong, wherefrom the ordinary law for all its intent and purport had become illusory. In terms of the said Act, a consumer is entitled to participate in the proceedings directly as a result whereof his helplessness against a powerful business house may be taken care of.

40. In the case of State of Karnataka vs. Vishwabharathi House Building Cooperative Society and Others, 2003 (1) Scale 309, it was observed that the rights of the parties have been adequately been safeguarded under the Act in as much as although it provides for an alternate system of consumer jurisdiction on summary trial, they are required to arrive at conclusion based on reason. Even when quantifying damages, an attempt has to be made to serve the ends of justice not only to recompense the individual, but also to bring about a qualitative change in the attitude of the service provider.

41. In Laxmi Engineering Works vs. P.S.G. Industrial Institute (1995) 3 SCC 583, the Apex Court observed that the provisions of the Act disclose that quasi-judicial Authority has been created by the Act, which are known as District Forum, State Commission and the National Commission. They are not Courts, though invested with some of the powers of the Civil Court. These quasi-judicial Tribunals have been brought in to render inexpensive and speedy remedies to the consumers. They are not intended to supplant but supplement the existing judicial system. The entire Act revolved around



the consumer and was designed to protect their interest. It provided for “*business to consumer*” disputes rather than for “business to business” disputes.

42. In *Lucknow Development Authority vs. M.K. Gupta*, (1994) 1 SCC 243, the Apex Court observed that the importance of Act lies in promoting welfare of the Society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of the consumer which he faces against powerful business, described as ‘a network of rackets’ or a Society in which, ‘producers have secured power’ to ‘rob the rest’ and the might of public bodies which are degenerating into store house of inaction, where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked.

43. In the case of *Vishwabharathi House Building Cooperative Society*, (supra) after making a reference to aforesaid judgments, it was reaffirmed that the CP Act only provided a supplementary remedy and if the Complainant felt that he would have a better and effective remedy in a Civil Court, he may do so and seek his remedy by way of a Civil Suit in the Court. The constitutional validity of the CP Act, 1986 was been upheld.

Nature of Proceedings Under CP Act, 1986:

44. The CP Act, 1986 essentially provided remedies to the consumer to seek compensation for deficiency of service, which may be in the quality, nature and manner of performance of any service under a contract by the Respondent.



45. The Scheme of the CP Act, 1986 reflects that a *three-tier fora* comprising the District Forum, the State Commission and the National Commission came to be envisaged under the Act for redressal of grievances of consumers; the latter two exercised the Original as well as the Appellate jurisdiction.

46. *Section 13 CP Act, 1986* details the *Procedure* to be followed on receipt of a Complaint. Section 13(5) states that every proceeding before the District Forum *shall be deemed to be judicial proceeding within the meaning of Sections 193 and 228 of Indian Penal Code, 1860* and the District Forum *shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of Cr.P.C.*

47. *Further, 13(6) CP Act, 1986 reads as under:*

*“Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, **the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply** subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.”*

48. **Section 13 CP Act, 1986** lays down a detailed procedure as regards to mode and manner in which the complaints received by the District forum are required to be dealt with. **Section 14** provides for the directions which can be issued by the District forum on arriving at a satisfaction that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the deficiencies in services has been proved.



49. Therefore, ***it is abundantly clear that the proceedings under CP Act, 1986 are civil in nature and not criminal proceedings.***

Analysing Facts of The Present Case:

50. Now coming to the facts in hand, Learned District Forum had disposed of 344 Complaints filed by the Complainants against the Petitioner and directed the refund of the amounts along with 18% interest and compensation of Rs.20,000/-, *vide* common Judgement dated 13.03.1995.

51. Aggrieved, an Appeal was preferred by the Petitioner before the State Commission, but it got dismissed *vide* Orders dated 02.11.1996/15.02.1997. This Order was challenged before National Forum and Supreme Court of India, though unsuccessfully. The Order of District Forum has thus, attained finality.

Statutory Provisions For Enforcement:

52. The Respondents, filed the Execution Petitions before the District Forum, to seek Execution of Order dated 13.03.1995.

53. The big dilemma before every Court is the implementation of its Orders. This aspect was considered in Savitri vs. Gobind Singh Rawal, AIR (1986) SC 984 wherein Apex Court observed that every Court must be deemed to possess by necessary intendment, all such powers as are necessary to make its Order effective. This principle is embodied in the maxim '*ubi aliquid conceditur in since quo res ipsa isse non potest*' (where anything is conceded, there is conceded also anything without which the thing itself cannot exist) (*Vide* Earl Jowitt's Dictionary of English law, 1959 Edn., P.1797). Whenever anything is required to be done by law and it



is found impossible to do that thing unless something not authorised in express terms be also done then something else will be supplied by necessary intendment.

54. In the same context, it was observed in Arabind Das vs. State of Assam and Ors., AIR (1981) Gauhati 18 (Full Bench), that where a statute gives a power, such power implies all legitimate steps that may be taken to exercise that power even though these steps may not be clearly slept in the statute.

55. The mechanism for Execution of the Orders is given in **Section 25 of CP Act, 1986**, which reads as under:-

“25. Enforcement of orders of the District Forum, the State Commission or the National Commission.—

*(1)Where an interim order made under this Act is not complied with, the District Forum or the State Commission or the National Commission, as the case may be, **may order the property of the person**, not complying with such order **to be attached**.*

*(2)**No attachment** made under sub-section (1) shall remain in force **for more than three months** at the end of which, if the non-compliance continues, **the property attached may be sold** and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.*

(3)Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the



*person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the **Collector shall proceed to recover the amount in the same manner as arrears of land revenue.***”

56. The scope of Section 25 was considered in the case of Vishwabharathi House Building Cooperative Society, (supra), wherein it was concluded that the terminology of Section 25 to the effect “*in the event of its inability to execute it*” is of great significance. Section 25, on a plain reading, goes to show that the provision contained therein presuppose that the Forum or the Commission would be entitled to execute its order. It however, may send the matter for its execution to a court only in the event it is unable to do so. Such a contingency may arise only in a given situation, but the same does not lead to the conclusion that the Consumer Courts cannot execute its own Order and by compulsion it has to send all its Orders for execution to the civil courts. Such construction of Section 25 in our opinion would violate the plain language used therein and, thus, must be held to be untenable. Only in the event the Forum/State Commission or the National Commission is unable to execute its Order, it may send it to the Civil Court for its execution. However, not every case is required to be sent to the Civil Court.



57. *The Scheme of the CP Act, 1986, thus, provides that an Order made by District Forum/State Commission or National Commission shall be deemed to be a Decree or Order made by a civil court in a suit, execution of which may be effected under Section 25 CP Act after three months of non-compliance of the Order, by either getting the Property attached and sold to pay the amount to the Complainant or else may issue the Certificate for the said amount to the Collector of the district who **shall recover the amount in the same manner as arrears of land revenue.***

Penal Provisions under the CP Act, 1986:

58. Being conscious that mere attachment of Property or issuing a Recovery Certificate may not be sufficient for compliance, the legislature in addition, provided for punitive action under Section 27 of CP Act, 1986 which deals with the penalties and reads as under:-

“27. Penalties.—

*(1)Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply **with any order** made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant **shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousands rupees but which may extend to ten thousand rupees, or with both:***

*(2)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Forum or the State Commission or **the National Commission, as the case may be, shall have the power***



of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1974).

*(3) All offences under this Act may be tried **summarily** by the District Forum or the State Commission or the National Commission, as the case may be.”*

59. Thus, Section 27 CP Act, 1986 in addition, provides that in case of non-compliance of its Orders, the criminal powers may be exercised by imposing a sentence **of imprisonment or fine**, which is in addition to any other mode of recovery.

60. The nature of powers conferred upon District Forum/Commission under Section 25 and 27 of CP Act and the **interplay between these two Sections** was considered in detail by Coordinate Bench of this Court in Sanjeev Moses Davidson vs. Central Tihar Jail, 2003 SCC OnLine Del 932. **The main issue was** whether the sentence of fine imposed by the Forum could be directed to run concurrently or were required to run consecutively.

61. A detailed reference was made to Section 31 Cr.P.C (*sentence in cases of conviction for several offences at one trial*) and Section 69 IPC (*Termination of imprisonment on payment of proportional part of fine*), wherein it was specifically provided that the sentence awarded for default of fine cannot be consecutive.



62. Reference was made to Emperor vs. Akidullah 15 I.C. 263, in which this aspect was considered and it was held that Section 35 Cr.P.C. (akin to erstwhile Section 31 of Cr.P.C.) did not permit the passing of concurrent sentences of imprisonment in default of fines imposed for two or more offences. The logic given was in case of part payment of the fine, it would be difficult to estimate what portion of which term of imprisonment should terminate under Section 69, Indian Penal Code.

63. Likewise, in the case of Emperor vs. Subrao Sesharao AIR 1926 Bombay 62, the judgment of Emperor vs. Akidullah was quoted with approval and it was observed that concurrent punishments are not authorized in case of fines. In case the Magistrate wants to make the fine for second offence extremely light, he may do so by imposing nominal fine, but it cannot direct the running of sentence in default of fine to be concurrent. It was further stated that it was not mandatory for the Magistrate to give a default sentence in case of non-payment of fine. If the Magistrate intends to avoid giving a second term of imprisonment, he may refrain from making any direction of default sentence.

64. Likewise, in Emperor vs. Ghulam, AIR 1929 Sind 179, similar position of law was reiterated, wherein it was made clear that sentence of imprisonment in default of payment of fine should not run concurrently.

65. Likewise, Madras High Court in Perumal Mudaliar vs. South Indian Railway Co., AIR 1937 Madras 407 noted the same proposition of law and further observed that any direction for the sentence on default of fine to run concurrently, would be illegal. In the later judgment of Patna High Court in



N.L. Untwalia vs. K.K. Dutta, AIR 1967 Patna 286, the same law was reiterated.

66. In the case of Sanjeev Moses Davidson, (supra), it was observed that Section 27 was an extension of Section 25 which conferred additional powers on the Forum/Commission to execute its Orders. These provisions were akin to Order XXXIX Rule 2A or Contempt of Courts' Act or Section 51 read with Order 21 Rule 37 CPC. Section 25 has to be read in conjunction with Section 27. A reference was made to all the aforesaid judgments, ***to conclude that the default sentence for non-payment of fine cannot be directed to run concurrently.***

67. The Petitioner has placed reliance upon V.K. Bansal vs. State of Haryana and another, (2013) 7 SCC 211 wherein the Petitioner has been convicted in 17 Complaints filed under Section 138 of the Negotiable Instruments Act, 1881 and his *Sentence* ranged from 06 months in some cases to one year in other cases, besides imposition of fine in each Complaint Case. While challenging the conviction before the High Court, the contention was limited to the aspect that the sentences be directed to run concurrently rather than consecutively. Reference was made to Section 427 of the Cr.P.C. and it was held that while the substantive sentences can be directed to run concurrently, but the default sentence in regard to payment of fine or compensation cannot be so directed to run concurrently and has to be suffered consecutively.

68. *From the aforesaid discussion*, it emerges that if the conviction is under the criminal law, the substantive sentence can be directed to run



concurrently, but not a sentence in default of fine. However, though in exercise of powers under Section 27 CP Act, 1986, the sentence has been imposed in Execution proceedings only to ensure compliance of the Orders of District Forum, which is akin to the jurisdiction of Civil Courts and there is no question of these sentences being run concurrently. The judgement of V.K. Bansal, (supra) is in the criminal case and has no application to the facts in hand.

69. ***To sum up***, it emerges from the Scheme under the Act that the District Forum has all the powers of the civil Court to ensure the execution of its Order. In case the Order is not being complied with, it may even direct the imprisonment under Section 27 of the Act.

Application of Section 27 CP Act to the Impugned Order:

70. ***The question which next arises is what is the nature of the imprisonment directed under Section 27 in the impugned Order, wherein the Petitioner has failed to comply with the Final Order dated 13.03.1995 Of the District Forum.***

71. As discussed above, ***Section 25 CP Act, 1986 should be read in conjunction with Section 27.*** Since the Petitioners were not forthcoming with the compliance of the Order dated 13.03.1995 of the District Forum which had attained finality, the Complainants followed the due procedure under Section 27 of the Act to ensure the execution to impose the penalty of imprisonment in the 344 Execution Petitions. It also directed that the sentence shall run '*consecutively*', which implied that the sentence in each



Execution Petition shall commence after the sentence in the previous Complaint had been completed.

72. **The question which arises is** that *what is the nature of the Order committing the Petitioner to prison for not complying with the Orders of the Forum or the Commission.*

73. **The contention of the Petitioner is that the sentences should have been directed to run concurrently and not consecutively or else it would amount to incarceration of 182 years, which is not only arbitrary but also against all the tenets of law.**

74. In the case of Jolly George Varghese, (supra), the Petitioner was under the threat of civil imprisonment in Execution proceedings for recovery of a money decree. Warrants for his arrest were issued. The Apex Court made a reference to *Article 11 of International Covenant on Civil and Political Rights* and *Article 21 of Constitution of India* to humanise the law being Section 51 and Order XXI Rule 37 of CPC. It was held that *ex facie*, from the perspective of International Law and *Article 21 of the Constitution of India*, the enforcement of a contractual liability by sending a person to imprisonment without determining whether the debtor had the means to pay and yet was avoiding the payments, would be neither fair nor just or reasonable, to commit a person to jail. It was held that to cast a person in prison because of his poverty and consequent inability to meet the contractual liability is appalling; to be poor in this land of *daridra narayan* is no crime and to recover debts by the procedure of putting one in the prison is too flagrant a violation of *Article 21 of Constitution of India*.



Unless there is proof of minimal fairness of his **wilful failure to pay** in spite of his sufficient means and absence of more terribly pressing claims of claims on his means such as medical bills, to treat cancer on other grave illnesses, sentencing a person to jail is not justifiable.

75. Therefore, the Apex Court read into the words “**or has since the debt of the decree, the means to pay the amount of the decree**” in Section 51 CPC, the requirement for the Court to determine whether there was an element of bad faith beyond mere indifference to pay. Some deliberate or reculant disposition in the past or alternatively, current means to pay the decree or a substantial part thereof, must be on record. The law therefore, has to be tempered with a justice and harmonised with Constitution.

76. In Sanjeev Moses Davidson, (supra), while referring to the judgment of Jolly George Verghese (supra), this Court further noted that Section 27 CP Act is akin to Section 51 read with Order 21 Rule 37 CPC (Execution of decrees and Orders). Furthermore, indigence without intervening dishonesty on bad faith in liquidating the liability fastened by the District Forum or State/National Commission, is no ground to incarcerate a person. Hence, investigation must be done by the District Consumer Forum regarding the current financial position of the Petitioner; does he have a mean to pay and still with *mala fide* intention is refusing to comply with the directions.

Conclusion:

77. As has already been discussed, the proceedings under CP Act, 1986 are Civil in nature and the impugned Orders have been made in the Execution. The Petitioner **has failed to pay the Fines** that were imposed



upon them by the District Forum while adjudicating the Complaints and Petitioner failed to execute the Orders.

78. Consequently, in exercise of the power for execution of its Orders under Section 27 of the Act, the District Forum had imposed the penalty of sentence varying from 06 months to one year, in the 344 Complaints. It is evident that these sentences imposed in exercise of jurisdiction under Section 27 of the CP Act, 1986 were in the nature of default sentence on account of non-payment of Fine in Civil proceedings. ***These sentences being for default of fine, cannot under the law be directed to run concurrently as it is not punitive in nature but only intended to ensure compliance. Therefore, no such direction as sought by the Petitioners, can be made.***

79. However, as discussed in the case of Sanjeev Moses Davidson, (supra), the remedy with the Petitioner is to approach the District Forum and move an Application to show that it genuinely does not have the financial capacity to pay or also satisfy that there is no *mala fide* in non-payment of the fine and accordingly, seek modification.

80. There is no merit in the present Petition as no directions can be given under Law for the default sentence to run concurrently. Petition is accordingly dismissed along with pending Application(s).

(NEENA BANSAL KRISHNA)
JUDGE

2025:DHC:4922



MAY 30, 2025

R/N