



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

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*Reserved on: 28th February, 2025
Pronounced on: 11th March, 2025*

+ CRL.M.C. 3135/2021

DINESH KUNDRA

.....Petitioner

Through: Mr. Vikas Jain & Mr. Kamal Mahajan,
Advocates

Versus

STATE & ORS.

.....Respondents

Through: Mr. Shoaib Haider, Additional Public
Prosecutor for Respondent-State

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Petition under Section 482 read with Section 427 of the *Code of Criminal Procedure, 1973* ('Cr.P.C.' hereinafter) has been filed by the Petitioner seeking a direction that the Sentence awarded in Complaint Case Nos.461958/2016 and 461959/2016, shall run concurrently and not consecutively.

2. *Briefly stated*, Petitioner entered into a Collaboration Agreement for construction of Plot bearing No. F-8/1, Malviya Nagar, New Delhi, measuring 126 square yards, with its Owner Mohar Singh. The Petitioner approached the Complainant Sanjay Gulati and his Brother Sandeep Gulati



to invest the amount in the said Project and they entered into Memorandum of Understanding dated 04.11.2012 (*henceforth referred to as the "MoU"*) and they jointly paid a sum of Rs.22,00,000/- to the Petitioner.

3. In terms of the MoU, the Petitioner was under the obligation to transfer and sell the entire Second Floor with one Parking space at stilt area (share of the Petitioner under the Collaboration Agreement with the Owner) in the name of the Complainant and his Brother. However, Petitioner sold the said portion of the property to a third party without consent of the Complainant and his Brother.

4. The Petitioner issued two Cheques in the sum of Rs.10,00,000/- each in the name of the Complainant and his Brother, which on presentation were dishonoured for "*insufficiency of funds*".

5. Respondent No.2/Complainant- Sanjay Gulati and Respondent No.3- Sandeep Gulati preferred two separate Complaints under Section 138 of the Negotiable Instruments Act, 1881 (*henceforth referred to as the "NI Act"*) being CC No. 461959/2016 and CC No. 461958/2016 in respect of dishonour of Cheque bearing Nos. 000282 and 000283, dated 23.02.2016, respectively for a sum of Rs.10,00,000/- each drawn on HDFC Bank, Sheikh Sarai, New Delhi issued by the Petitioner.

6. The learned Metropolitan Magistrate *vide* two separate Judgments, both dated 23.03.2018, held the Petitioner guilty of the offence and *vide* two separate Orders on Sentence both dated 28.03.2018, directed the Petitioner to substantive sentence of imprisonment of 02 years and imposed compensation under Section 357 of Cr.P.C. to the tune of Rs.12,00,000/-



each to be paid within one month and in default of payment of fine, to undergo further imprisonment of six months in each Complaint.

7. The Petitioner preferred two separate Appeals being Crl.A.164/2018 and Crl.A. 163/2018; against the Judgments and Order on Sentence dated 23.03.2018 and 28.08.2018, passed in the two CC No. 461959/2016 and CC No.461958/2016 respectively; which were dismissed *vide* two separate Orders dated 16.08.2018; thereby upholding the sentence awarded by the learned MM.

8. In the present Petition, the Petitioner has filed the present Petition assailing the Judgments and Order on Sentence dated 23.03.2018 and 28.08.2018 in CC No. 461959/2016 and CC No.461958/2016, arising out of Memorandum of Understanding dated 04.11.2012 to the limited effect that the sentences passed therein, may run concurrently and not consecutively.

9. Learned Counsel for Petitioner submitted that the Petitioner had issued two cheques in discharge of single liability and on presentation, these cheques were dishonoured. However, two separate Complaints were filed by the Complainants, wherein Petitioner has been directed to undergo imprisonment of 02 years with Compensation of Rs.12,00,000/- each and in default of payment of compensation, to undergo substantive sentence of six months and; as such Petitioner cannot be directed to go consecutive sentence of 04 years and substantive sentence of 01 year for a “*single transaction*”.

10. Learned Counsel further submitted that Petitioner completed **sentence of two years awarded in CC No.461958/2016 on 18.10.2021** and on its completion, substantive sentence of two years awarded in CC. No.



461959/2016 commenced on 19.10.2021. However, sentence of 06 months in default of payment of fine is still pending.

11. It was submitted that in cases where different Complaints are made in respect of a single transaction, where different cheques were issued to discharge single liability and an offence was committed in respect of those cheques under Section 138 of NI Act, on conviction the sentence passed in all such complaints, shall run concurrently and not consecutively, as has been spelt out in V.K. Bansal Vs. State of Haryana and Anr. (2013) 7 SCC 211.

12. Reliance has also been placed on decisions of this Court in Mukesh Bhatia Vs. State and Anr. 2016 (in CRL. M.C. No.5124/2015) and Bihari Lal Vs. State (in Crl.M.C. No.4524/2015) and Sudhir Sharma Vs. CBI (in Crl. Rev. P.282/2021).

13. **Submissions heard and record perused.**

14. Two provisions of law, Section 31 Cr.P.C. and Section 427 Cr.P.C. provide for the consecutive and concurrent running of the sentences.

15. **Section 31 Cr.P.C. provides** that if a person is convicted at one trial for one or more offences, the Court may sentence him for such offences to the several punishments prescribed therefor and one such punishment may commence after expiration of the other, unless the Court directs that such punishments shall run concurrently.

16. **Section 437 Cr.P.C.** deals with situations where an accused who is already undergoing a sentence of imprisonment, is sentenced on a subsequent conviction to imprisonment or imprisonment for life. It provides that 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.*

17. **Section 427 Cr.P.C. reads as under:-**

“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.”

18. The afore-noted provisions thus, make it clear that the Courts are well within their rights and discretion to determine the manner of running of sentences and unless the Court orders the sentence to be concurrent, one sentence may run after the other, as the Court may direct.

19. The Apex Court in an Appeal preferred by the State of Punjab in the case of *State of Punjab Vs. Madan Lal* (2009) 5 SCC 238 upheld the Order



passed by the learned Single Bench of Punjab and Haryana High Court, wherein all the cheques were issued by different family members of the Accused to the Complainant and different Complaints were filed and convictions under Section 138 of the NI Act were recorded by separate Courts, *the High Court had directed that the sentences shall run concurrently.*

20. The Apex Court has held that the exercise of discretion has to be to the benefit of prisoner and has justified the concurrent running of sentence in cases where the conviction arises out of a single transaction, no matter different complaints in relation thereto, might have been made.

21. In the case of **V.K. Bansal v. State of Haryana** (2013) 7 SCC 211 the Apex Court observed that different cheques were issued by a Borrower Company through the Appellant/accused and were dishonoured on presentation. The Appellant was sentenced for the offence under Section 138 NI Act, but the transactions can be regarded arising out of same loan transaction. But where another Borrower Company also issued such cheques through the Appellant/accused, it would constitute a separate and independent transaction and sentence awarded under Section 138 of NI Act, cannot be directed to run concurrently. The Apex Court thus held as under:-

“18. Applying the principle of single transaction referred to above to the above fact situations we are of the view that each one of the loan transactions/financial arrangements was a separate and distinct transaction between the complainant on the one hand and the borrowing company/appellant on the other. If different cheques which are subsequently dishonoured on presentation, are issued by the borrowing company acting through the appellant, the same could be said to be



arising out of a single loan transaction so as to justify a direction for concurrent running of the sentences awarded in relation to dishonour of cheques relevant to each such transaction. That being so, the substantive sentence awarded to the appellant in each case relevant to the transactions with each company referred to above ought to run concurrently.”

22. In light of the above, it is abundantly clear that where the cheques have been given under one transaction by an accused to different Complainants, and even though separate Complaints are filed by the person in whose favour cheques have been given, it is essentially one transaction and in such cases, the sentence may be directed to run concurrently.

23. The Apex Court in **V.K. Bansal** (*supra*) further clarified that direction regarding concurrent running of sentence shall be limited to the substantive sentence only and payment of fine/ compensation shall not be affected as provisions of Section 427 Cr.P.C. do not permit a direction for concurrent running of substantive sentences with sentences awarded in default of payment of fine/ compensation.

24. Also in **V.K. Bansal** (*supra*), the Apex Court has discussed decision of Gujarat High Court in State of Gujarat Vs. Zaverbhai Kababhai 1996 CrL.L.J. 1296 wherein it has been observed that the rule with regard to sentencing concurrently will have no application, if the transaction relating to offence is not the same and facts constituting the two offences are quite different.

25. The Apex Court in **V.K. Bansal** (*supra*) has also discussed another decision of Gujarat High Court in Sumlo @ Sumla Himla Bhuriya and Ors.



Vs. State of Gujarat and Ors. 2007 CrI.L.J. 612, wherein the offence was committed at three different places, resulting in three different prosecution before three different Courts and held that the rule of Single Transaction, even if stretched to any extent, will not bring the cases under the umbrella of “Single Transaction” .

26. The Apex Court in **V.K. Bansal** (*supra*) held as under:-

“13. There are also cases where the High Courts have depending upon whether facts forming the basis of prosecution arise out of a single transaction or transactions that are akin to each other directed that the sentences awarded should run concurrently. As for instance the High Court of Allahabad has in Mulaim Singh v. State [1974 Cri LJ 1397 (All)] directed the sentence to run concurrently since the nature of the offence and the transactions thereto were akin to each other. Suffice it to say that the discretion vested in the Court for a direction in terms of Section 427 can and ought to be exercised having regard to the nature of the offence committed and the facts situation, in which the question arises.”

27. In the present case, indisputably the parties had entered into Memorandum of Understanding dated 04.11.2012, whereunder the Complainants Sanjay Gulati and Sandeep Gulati had given 40% of the sale consideration amount. The disputes arose in respect of the MoU and consequently, the accused/ Petitioner issued two cheques in the sum of Rs.10 Lacs each, in favour of two Complainants.

28. Clearly, it is one transaction and the two cheques though given to two Complainants, were part of the same transaction. Because there were two Complainants in whose favour the Petitioner had issued two cheques, two



separate Complaints under Section 138 of NI Act were preferred, wherein the learned MM *vide* two separate Judgments dated 23.03.2018 held the Petitioner guilty of the offence and *vide* two separate Orders on Sentence dated 28.03.2018, directed him to undergo substantive sentence of 02 years and to pay a compensation of Rs.12,00,000/- each in terms of Section 357 (3) Cr.P.C. within one month and in default of payment of fine, to undergo further imprisonment of six months in each Complaint .

29. From the above narration, it is abundantly clear that the two cheques were issued as part of the one transaction and as has been held in **V.K. Bansal** (*supra*), the benefit of sentence being concurrent can be granted in the two Complaint cases.

30. It is pertinent to observe here that as per Nominal Roll of the Petitioner, the substantive sentence of two years awarded to the Petitioner in *CC No. 461958/2016*, is already complete and sentence in default of payment of fine is still pending. Also, the Petitioner has already completed substantive sentence of one year five months in *CC No. 461959/2016*, though some part of substantive sentence still remains to be served and sentence in default of payment of fine is also pending.

31. In view of aforesaid, it is directed that the benefit of the substantive sentence awarded to the Petitioner in the afore-noted two Complaints, to run concurrently, be given to the Petitioner. However, it is clarified that he will have to undergo sentence in default of non payment of fine in two Complaints separately.

32. With aforesaid, the present Petition and pending Application, if any are accordingly disposed of.

2025:DHC:1961



(NEENA BANSAL KRISHNA)
JUDGE

MARCH 11, 2025/r