

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of decision: 13.09.2010

1. CRR No. 231 of 2010

Sanjeev Kumar *Petitioner*
Versus
State of Punjab and another *Respondent(s)*

2. CRR No. 237 of 2010

Sanjeev Kumar *Petitioner*
Versus
State of Punjab and another *Respondent(s)*

3. CRR No. 235 of 2010

Sanjeev Kumar *Petitioner*
Versus
State of Punjab and another *Respondent(s)*

4. CRR No. 236 of 2010

Sanjeev Kumar *Petitioner*
Versus
State of Punjab and another *Respondent(s)*

5. CRR No. 68 of 2010

Sanjeev Kumar *Petitioner*
Versus
State of Punjab and another *Respondent(s)*

Coram: Hon'ble Ms Justice Nirmaljit Kaur

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Present: Mr. Naveen Batra, Advocate
for the petitioner (in all the matters)

Mr. K S Pannu, DAG, Punjab
for the respondent State

Mr. Ramneek Vasudev, Advocate
for the complainant (in all the matters)

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1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether the judgement should be reported in the Digest?

Nirmaljit Kaur, J. (Oral)

This order shall disposed of all the aforesaid five criminal revision petitions filed by the present petitioners against the common judgement and order dated 10.02.2009 passed by Sub Divisional Judicial Magistrate, Anandpur Sahib, thereby convicting and sentencing the petitioner separately in all the five complaint cases filed by the complainant under Section 138 of the Negotiable Instruments Act.

For facility of reference, facts are being taken from CRR No. 231 of 2010.

Respondent No. 2 filed five complaints against the present petitioner under Section 138 of the Negotiable Instrument Act before the Sub Divisional Judicial Magistrate, Anandpur Sahib.

After perusing the entire evidence, the trial Court convicted the accused petitioner and appeal against the judgement and order convicting

the petitioner was also dismissed.

Learned counsel for the petitioner at the outset did not contest the case on merit. However, filed an application under Section 482 of the Code of Criminal Procedure read with Section 427 of the Code of Criminal Procedure with a prayer that the sentence awarded in the separate complaint cases be ordered to run concurrently in the interest of justice.

Learned counsel for the complainant, however, vehemently opposed the prayer made by the learned counsel for the petitioner and relied on the Full Bench Judgement of this Court rendered in the case of *Jang Singh v. State of Punjab* reported as **2008(1) RCR (Criminal) 323** to state that it was not upon the person to seek such direction for making the sentences to run concurrently by moving an application under Section 482 of the Code of Criminal Procedure read with Section 427 of the Code of Criminal Procedure. Reliance is also placed on the judgement rendered by the Hon'ble Supreme Court in the case of *M R Kudva v. State of Andhra Pradesh* reported as **2007(1) RCR (Criminal) 868**, wherein, it was also held that the High Court could not exercise its inherent powers under Section 482 of the Code of Criminal Procedure for ordering the running of the sentences concurrently awarded in different cases especially where the said power was not exercised while passing the judgement in an appeal.

Learned counsel for the parties are heard.

Details of the cases and sentence awarded to the petitioner in different complaints are as under:-

<i>Sr. No.</i>	<i>Complaint</i>	<i>Under Section</i>	<i>decided on</i>	<i>Sentenced awarded by the trial Court</i>
1	Criminal Complaint No. 50	Under Section 138 of the Negotiable Instruments Act	10/02/09	To undergo RI for one year and to pay fine of Rs.1000/-, in default of payment of fine, to further undergo simple imprisonment for one month.
2	Criminal Complaint No. 48	-ditto-	10/02/09	-ditto-
3	Criminal Complaint No. 49	-ditto-	10/02/09	-ditto-
4	Criminal Complaint No. 39	-ditto-	10/02/09	-ditto-
5	Criminal Complaint No. 38	-ditto-	10/02/09	-ditto-

Hon'ble the Full Bench in the case of *Jang Singh* (supra) held that a person cannot seek direction for making the sentences to run concurrently by moving an application under Section 482 of the Code of Criminal Procedure read with Section 427 of the Code of Criminal Procedure.

However, the said question or dispute does not arise in the present cases. Along with the applications under Section 427 of the Code of Criminal Procedure read with 428 of the Code of Criminal Procedure praying for the sentence to run concurrently, Revision petitions have also been filed. The counsel at the outset did not choose to argue the revision petitions on merit but prayed that the sentences may be ordered to run concurrently in view of the facts of the case.

In para 18 of the judgement rendered in the case of *Jang Singh* (supra), the Full Bench of this Court held: -

“18. The consensus of the judicial opinion, as may

emerge from different judgements passed by various High Courts and the Hon'ble Supreme Court, seems to be that normal rule, as per Section 427 Cr.P.C., is that a person who is undergoing a sentence of imprisonment and is sentenced on a subsequent conviction to an imprisonment or an imprisonment for life, then such imprisonment or imprisonment of life shall commence after the expiration of the imprisonment, to which he has been previously sentenced. This, however, would not be so if the Court directs that the subsequent sentence shall run concurrently with the previous sentence. Such direction to make the sentences to run concurrently, as per various decisions noted above, can be exercised by the trial Court or by the appellate Court or a revisional Court at the time of exercising appellate or revisional jurisdiction as well. However, if the trial Court does not pass any such direction for making the sentences to run concurrently and appeal or revision against said decision is also decided, then it may not be open for a person to seek such direction for making the sentences to run concurrently by moving an application under Section 482/427 Cr.P.C. The view taken by one set of the High Courts that such an application can be entertained while exercising inherent powers under Section 482 Cr.P.C. would no more appear to be a good law in view of the decision of the Hon'ble Supreme Court in *M.R.Kudva'* case (Supra). We are, thus, bound to take this view that this discretion though available with the trial Court, appellate Court or the revisional Court while holding trial or entertaining appeal or revision but would not be so available to be exercised in isolation when application in this regard is moved either under Section 482 or 427 Cr.P.C. What principle and consideration will govern the

exercise of this discretion, as already noted above, can not be exhaustively enumerated. Certain relevant factors, as can be culled out from different judgements referred to above, may give an indication where such discretion may be exercised. These factors generally would be the nature or character of the offences committed, the prior criminal record of the offender, character, his age and sex etc. ghastly nature of the crime. The offender being habitual would also be the factor, which can be relevantly taken into consideration. It may be stated at the cost of repetition that these are not the only reasons for which the Court can exercise this discretion.” Discretion always is open to be exercised by any Court dependent upon the facts and circumstances of each case on any relevant or valid consideration as may be considered so by the Court while holding the trial or deciding the case at the stage of appeal or revision. It may require a notice that Section 427 Cr.P.C., as observed by Hon'ble Supreme Court, is aimed at amelioration and this aspect may also require to be kept in view while exercising the discretion.”

And further left the same to judicial discretion by observing in para 19 as under:-

“19. There are, thus, no set guidelines, principles available which would govern the exercise of discretion under Section 427 (1) Cr.P.C. Section leaves a judicial discretion with the courts to exercise such discretion depending on the facts and circumstances of each case. Some indication of such consideration is available from judicial pronouncements as enumerated above, which we would approve to be relevant and valid for taking into account while exercising discretion.”

Thus, the following facts emerge:-

1. The power to direct the Court that the sentence shall run concurrently cannot be exercised in an isolation when an application is moved under Section 482 Cr.P.C. Read with Section 427 Cr.P.C.
2. The power can only be exercised by the trial Court, appellate Court or the Revisional Court while holding trial or entertaining any appeal or revision.
3. A word of caution to be used by taking into account:-
 - i) the character of the offence committed;
 - ii) the prior criminal record of the offender, character, his age and sex etc.
4. Judicial discretion can be exercised depending on the facts and circumstances of the case.

Therefore, what has to be seen here is as to whether the aforesaid test laid down by the Full Bench (supra) can be applied in the facts of the present case.

The petitioner borrowed ₹1,25,000/-, ₹ 25,000/-, ₹ 50,000/-, ₹1,00,000/- and ₹1,00,000/- from the complainant on various dates. The details of the five cheques issued by the petitioner towards his liability are as under:-

<i>Sr. No.</i>	<i>Cheque No.</i>	<i>Dated</i>	<i>Drawn on</i>	<i>Amount in ₹</i>
1	145600	27.03.2002	Central Co-operative Bank Limited	1,25,000/-
2	711432	31.12.2001	State Bank of Patiala,	25,000/-
3	SB/17-854230	20.02.2002	-ditto-	50,000/-
4	RGM 020860	27.03.2002	Punjab National Bank	1,00,000/-
5	CC/B 907775	22.02.2002	State Bank of Patiala	1,00,000/-

The aforesaid cheques were dishonoured. As such, the present complaints were filed. The evidence led in all the cases was the same and the order convicting the petitioner in all the five complaints was also passed on the same date. The parties are also same. More over, there is no averment or indication or anything said in the reply filed by the complainant that the petitioner was a habitual offender or he had any previous criminal record.

Thus, the facts of the present case fully satisfy the test laid down in the case of *Jang Singh* (supra).

Hon'ble the Supreme Court in the case of *State of Punjab and Madan Lal* reported as **2009(2) RCR (Criminal) 602**, up held the order passed by the High Court, ordering the sentence awarded to the petitioner in different cases to run concurrently in somewhat similar circumstances, where the accused had issued three cheques in favour of the complainant and in pursuance to the fact that all the cheques were dishonoured, the accused were convicted separately in all three different complaints under Section 138 of the Negotiable Instrument Act by the Trial court.

Thus, after taking into account the judgement and order passed by the trial Court, vide which, the petitioner was convicted as also taking into account the judgement in appeal passed by the Sessions Judge, dismissing the appeal of the petitioner against the conviction and sentence order, the learned counsel for the petitioner has rightly not contested the petitions on merit.

Accordingly, all the Revision Petitions are dismissed and order of conviction is upheld.

However, in view of the above discussion and taking into account the totality of the circumstances as also the fact that the parties in all the five revision petitions are same and dispute relates to different complaints filed under same section *i.e.* Section 138 of the Negotiable Instrument Act as well as after applying the the test as laid down by the Full Bench of this High Court in the case of *Jang Singh* (Supra), sentence awarded to the petitioner vide five separate orders dated 10.02.2009 passed by the trial court, in the five complaints, are ordered to run concurrently.

The Revision Petitions are accordingly disposed of in the aforesaid terms.

Photo copy of the order be also placed on other connected petitions.

(Nirmaljit Kaur)
Judge

September 13, 2010

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