

SHYAM PAL

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v.

DAYAWATI BESOYA & ANR.

(Criminal Appeal Nos. 988-989 of 2016)

OCTOBER 28, 2016

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[DIPAK MISRA AND AMITAVA ROY, JJ.]

*Sentence/Sentencing – Concurrence of sentence – Two complaints u/s. 138 of Negotiable Instruments Act – Against appellant-accused in respect of two transactions – Conviction under both the cases – Sentence of simple imprisonment for 10 months and fine of Rs. 6,50,000/- as compensation – Default sentence was six months imprisonment – Appellate court upheld the conviction and sentence – In Revision High Court upheld the order of conviction and sentence – However, reduced the default sentence from 6 months to 3 months – Plea of the accused that the sentences should have run concurrently rejected by High Court – On appeal, held: s. 427 Cr.P.C. provides for concurrent sentence – In the present case, both the cases in respect of two transactions, though undertaken at different points of time, should be deemed as a singular transaction – Therefore, in the facts of the case, the accused is entitled to benefit u/s. 427 Cr.P.C. – Sentences of 10 months simple imprisonment in the two complaint cases would run concurrently – Code of Criminal Procedure, 1973 – s.427 – Negotiable Instruments Act, 1881 – s.138.*

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**Partly allowing the appeals, the Court**

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**HELD:** 1.1 The materials on record leave no manner of doubt that the complaints filed by the respondents stem from two identical transactions between the same parties whereunder the respondent had advanced loan of Rs.5 lacs each to the appellant on two different dates against which the latter had issued cheques to discharge his debt and that the cheques had been dishonored. The facts pleaded and proved do unassailably demonstrate that the loans advanced had been in the course of a series of transactions between the same parties on same terms and conditions. Significantly in both the cases, following the conviction of the appellant under Section 138 of the Negotiable

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A Instruments Act, the same sentences as well have been awarded. There is thus an overwhelming identicalness in the features of both the cases permitting the two transactions, though undertaken at different points of time, to be deemed as a singular transaction or two segments of one transaction. This deduction understandably is in the singular facts of the case. [Para 10][423-D-F]

2. The law on the orientation of two sentences awarded to an offender following his conviction successively, to define the cumulative duration thereof is envisaged in Section 427 Cr.P.C. The appellant is entitled to the benefit of the discretion contained in Section 427 Cr.P.C., in view of 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. It is thus ordered that the substantive sentences of 10 months simple imprisonment awarded to the appellant in the two complaint cases would run concurrently. The appellant would be entitled to all consequential reliefs with regard to his release from custody as available in law based on this determination. [Paras 12, 16 and 17][424-B-C; 426-A-C]

*V.K. Bansal v. State of Haryana and Another* [2013] 7 SCR 617 : (2013) 7 SCC 211; *Benson v. State of Kerala* [2016] 8 SCR 166 : 2016 (10) SCC 307 – relied on.

Case Law Reference

2013 (7) SCR 617	relied on	Para 13
[2016] 8 SCR 166	relied on	Para 15

F CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 988-989 of 2016.

From the Judgment and Order dated 08.02.2016 of the High Court of Delhi at New Delhi in Crl. Rev. P. 403 of 2015.

G Jayant K. Sud, Honey Khanna, Ajay P. Tushir, Mrs. Priya Puri, Advs. for the Appellant.

The Judgment of the Court was delivered by

AMITAVA ROY, J. 1. The instant appeals call in question the judgment and order dated 08.02.2016 passed by the High Court of Delhi in Criminal Revision Petition No.403 of 2015, sustaining the conviction

of the appellant under Section 138 of the Negotiable Instruments Act, 1988 (hereafter referred to as the "Act") as recorded by the Trial Court and affirmed in appeal by the District and Sessions Judge, Saket Court, New Delhi. The High Court while maintaining the substantive sentence of simple imprisonment for 10 months and fine of Rs.6,50,000/- as compensation as awarded by the Trial Court, however has reduced the default sentence from six months simple imprisonment to that of three months. The order dated 22.02.2016 rendered by the High Court declining the prayer for modification of the above decision by directing the release of the appellant, he having already served the sentence in all being in custody from 25.02.2015 has been assailed in the present appeals as well.

2. We have heard Mr. Jayant K. Sud, learned counsel for the appellant. None appeared for the respondents.

3. The recorded facts divulge that the respondent No.1 had filed two complaints, both under Section 138 of the Act against the appellant in the Court of the Chief Metropolitan Magistrate (South East), Patiala House Court, New Delhi which were registered as C.C. No.407 of 2011 and C.C. No.430 of 2011 alleging that on 31.07.2008 the appellant had visited the residence of the complainant and had requested for a loan of Rs.5 lacs to meet his personal needs which he promised to return on 13.11.2009. On this, as the complaint reads, the respondent/complainant reminded him that she had already lent a sum of Rs.5 lacs to him on 01.05.2008 and that she had no funds to accede to his request for the second installment. However, having regard to the friendly relations, the respondent/complainant on the persuasion of the appellant, did advance a further amount of Rs.5 lacs to him as loan on that date, by somehow arranging the same.

4. According to the respondent/complainant in connection with the loans advanced, the appellant had issued two cheques bearing Nos.97357 and 97358 for Rs.5 lacs each and drawn on State Bank of Bikaner and Jaipur, Arnar Colony, New Delhi. Both these cheques when presented at the appropriate time, were dishonored with the remarks "funds insufficient". Thereafter, the respondent/complainant issued legal notices and as the same though served, remained unresponded, complaints were filed.

5. As eventually the arguments in the present appeals have

- A centered around the sentence alone, we do not wish to burden the present rendering with avoidable facts.

6. The Trial Court after a full dress adjudication, in the two proceedings, returned a finding that the signatures on the cheques were not disputed by the appellant and indeed were issued in discharge of legally recoverable debts subsisting against him and acting on the presumption available under Section 139 of the Act convicted him of the offence under Section 138 of the Act. Consequently, he was awarded simple imprisonment for 10 months and fine of Rs.6,50,000/- as compensation in both the cases. In case of default of payment of compensation, the appellant was ordered to suffer simple imprisonment of six months in each case. This was by judgments and orders dated 21.01.2014.

7. The appellant having unsuccessfully appealed against his conviction and sentence before District and Sessions Judge (South East), Saket Court, New Delhi, in both the cases, approached the High Court in revision.

8. To reiterate, the appellant preferred two revision petitions before the High Court corresponding to his convictions in the two complaint cases, being Criminal Revision Petition No.403 of 2015 (pertaining to the present appeals) and Criminal Revision Petition No.404 of 2015. By separate orders dated 08.02.2016, both these revision petitions were disposed of by maintaining the conviction but moderating the default sentence from simple imprisonment of six months to that of three months. In both the petitions as well, by separate orders dated 22.02.2016, the High Court declined to release the appellant by acting on his plea that he meanwhile had served the substantive as well as default sentence, if construed to have run concurrently. It is a matter of record, that the special leave petition filed against the orders dated 08.02.2016 and 22.02.2016 rendered by the High Court in Criminal Revision Petition No.404 of 2015 has since been dismissed by this Court and, therefore, the conviction and sentence awarded to the appellant in the corresponding complaint case has attained finality.

9. The learned counsel for the appellant has urged that as both the complaints filed by the respondents have arisen out of successive transactions in a series between the same parties and had been tried together on the basis of same set of evidence, the sentences awarded

ought to run concurrently, the High Court had failed to appreciate the same. It has been submitted that the appellant is in custody since 25.02.2015 and if the two substantive sentences are construed to run concurrently, he has served not only the substantive sentences but also the sentence in default of fine as on date. That the appellant comes from a poor financial background, as well as is the sole bread earner of the family and that if the two sentences are to run consecutively, he would suffer grave injustice, has been emphasized. No argument, noticeably has been advanced, as abandoned before the High Court as well, impeaching the conviction. A B

10. We have extended our required consideration to few facts and the submissions made. C

The materials on record leave no manner of doubt that the complaints filed by the respondents stem from two identical transactions between the same parties whereunder the respondent had advanced loan of Rs.5 lacs each to the appellant on two different dates against which the latter had issued cheques to discharge his debt and that the cheques had been dishonored. The facts pleaded and proved do unassailably demonstrate that the loans advanced had been in the course of a series of transactions between the same parties on same terms and conditions. Significantly in both the cases, following the conviction of the appellant under Section 138 of the Act, the same sentences as well have been awarded. There is thus an overwhelming identicalness in the features of both the cases permitting, the two transactions, though undertaken at different points of time, to be deemed as a singular transaction or two segments of one transaction. This deduction understandably is in the singular facts of the case. D E F

11. The Custody Certificate dated 06.05.2016 issued by the Deputy Superintendent of Prison, Central Jail No.5, Tihar, New Delhi appended to the appeal petition mentions that the appellant on being convicted in the complaint cases referred to hereinabove under Section 138 of the Act is serving out the sentences awarded and that the period of his custody is as hereunder: G

(1) 25.02.2015 to 13.12.2015 (As convict in CC No. 430/11)

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A (2) 14.12.2015 till date i.e. 06.05.2016 (As convict in CC No. 407/11)

That meanwhile the appellant had been on interim bail for 10 days from 05.10.2015 to 14.10.2015 as granted by the High Court has also been stated.

B 12. The law on the orientation of two sentences awarded to an offender following his conviction successively, to define the cumulative duration thereof is envisaged in Section 427 of the Code of Criminal Procedure, 1973 (for short "Code") in following terms:

C **"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:

E 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.

F (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."

G 13. Though this provision has fallen for scrutiny of this Court umpteen times, we can profitably refer to one of the recent pronouncements in *V.K. Bansal vs. State of Haryana and Another* (2013) 7 SCC 211 where it was held that though it is manifest from Section 427(1), that the Court has the power and discretion to issue a direction that a subsequent sentence shall run concurrently with the previous sentences, the very nature of the power so conferred, predicates

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that the discretion, would have to be exercised along judicial lines or not in a mechanical or pedantic manner. It was underlined that there is no cut and dried formula for the Court to follow, in the exercise of such power and that the justifiability or otherwise of the same, would depend on the nature of the offence or offences committed and the attendant facts and circumstances. It was however postulated, that the legal position favours the exercise of the discretion to the benefit of the prisoners in cases where the prosecution is based on a single transaction, no matter even if different complaints in relation thereto might have been filed. The caveat as well was that such a concession cannot be extended to transactions which are distinctly different, separate and independent of each other and amongst others where the parties are not the same.

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 vs. State of Kerala* – 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

- A 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.
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17. It is thus ordered that the substantive sentences of 10 months simple imprisonment awarded to the appellant in the two complaint cases referred to hereinabove would run concurrently. Needless to say, the appellant would have to serve the default sentences, if the fine by way of compensation, as imposed, has not been paid by him. The appeals are thus allowed to this extent. The appellant would be entitled to all consequential reliefs with regard to his release from custody as available in law based on this determination.
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- D Kalpana K. Tripathy

Appeals partly allowed.