2026:PHHC:108592

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

**215** **CRR 2893 of 2015**
**Date of Decision: 10.08.2026**
**Uploaded on:-13.08.2026**

Rajat Kandhari and another ...Petitioners

Versus

M/s Sapna Avertising and others ... Respondents

**CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present : Mr. I.S.Kooner, Advocate, for the petitioners.

Ms. Seema Pasricha, Advocate, for the respondent No. 1 and 2/complainant.

Mr. J.S. Toor, Sr. Advocate with
Mr. Adhiraj Toor, Advocate, and
Mr. Jasbir Singh, Advocate, for U.T., Chandigarh.

**N.S.SHEKHAWAT, J. (Oral)**

1. The petitioners have filed the present revision petition against the judgment dated 27.07.2015 passed by the Court of Sessions Judge, Chandigarh, whereby the judgment of conviction dated 24.05.2014 passed by the learned Judicial Magistrate First Class, Chandigarh, was upheld. However, the order of sentence dated 28.05.2014 was modified to the extent that the sentence awarded to the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as **'the Act'**) was reduced from imprisonment for a period of six months to

imprisonment for a period of five months. The remaining part of the order of sentence was maintained.

2. The brief facts of the present case as mentioned in the judgment passed by the appellate Court are that respondent-complainant has been engaged in advertising business and is having friendly relations with the petitioner-accused. The petitioner-accused being close acquaintance of respondent-complainant used to take loans for a short period from time to time and the total amount of loan taken by the petitioner-accused comes to more than Rs.40,00,000/-. Lastly, the petitioner-accused took friendly loan from the respondent-complainant in the month of April, 2009 and promised to return the same within a period of six months. The petitioner-accused in discharge of his existing legal liability towards the said loan, issued cheque Nos. 031484 dated 25.09.2009 for Rs.15,00,000/- and 000241 dated 30.09.2009 for Rs.7,00,000/- both drawn at Bank of Baroda. The respondent-complainant presented the above stated cheques for clearance through its banker, but the same were returned unpaid by banker of accused with remarks "Payment Stopped By the Drawer" & "Funds Insufficient" respectively vide returning memos dated 03.12.2009. Thereupon, respondent-complainant issued legal notice dated 11.12.2009 to accused, demanding the payment of amounts mentioned in all the cheques through registered post. Despite receipt of above said legal notice, the petitioner-accused has failed to make

the payment of the cheque amount. Accordingly, the respondent-complainant brought the complaint against the accused under Section 138 of the Act.

3. After preliminary evidence was led by the complainant-respondent, the trial Court ordered the summoning of the petitioner for commission of offence punishable under Section 138 of the Act.

4. In order to prove the accusations against the petitioner, the respondent examined himself as CW1 and tendered his affidavit Ex.C-A in examination-in-chief. He also tendered documents (Exhibits C-1 to C-14). He supported the averments as made in the complaint by him.

5. After closure of the prosecution evidence, the statement of the petitioner was recorded under Section 313 Cr.P.C., and he denied all incriminating evidence appearing against him. He stated that the cheque was not issued to the respondent-complainant, rather the same had misplaced/stolen, and a DDR in this regard was also registered by the police. Apart from that, by way of publication in the newspapers, he had notified the said fact to the general public as well. Since the respondent-complainant is having business relations with him, the respondent-complainant received the said cheques through someone and had misappropriated the same by filing the present complaint. Thereafter, the petitioner appeared as DW1 before the trial Court and closed his defense evidence.

6. Learned counsel for the petitioner had vehemently argued that both the Courts had completely failed to appreciate that the presumption under Sections 118 and 139 of the Act were completely rebuttable and by leading cogent evidence, the defence had been able to rebut the said statutory presumptions. In fact, the consideration and debt did not exist and petitioner had led sufficient evidence to prove the said fact. Further, there was sufficient evidence to show that the cheques, which are subject matter of the complaint were misplaced/stolen, and a DDR was got registered by the petitioner in this regard, and he also got a notice published in the newspapers. Rather, the respondent owed him Rs. 22 lakhs and for settlement of the dues, he had issued a notice to him regarding the payment due to him concerning advertisements, which were got printed by the respondent-complainant from the petitioner. Learned counsel further submitted that even from the testimony of CW1, it is apparent that he had taken contradictory stand with regard to the payment of money to the present petitioner. On the one hand, he had stated that he had paid the friendly loan by way of cash except of one occasion. However, in his cross-examination, he stated that he paid money to the petitioner in May and July 2009 and he could not recall exactly in what manner and how he had paid money to the petitioner. Still further, he also admitted in his cross-examination that in the cheques (Ex. C1 and C2), the amount in words and figures is in the same ink as signed by the drawer of the cheque, but the name of the payee and date are with

different ink. Apart from that, the complainant had not reduced separate ledger account maintained by him with respect to the business transactions with the petitioner, and there was no liability to pay the amount to the respondent-complainant.

7. On the other hand, learned counsel appearing on behalf of the respondent-complainant had referred to the detailed findings recorded by the trial Court as well as the appellate Court and submitted that all the factual submissions made by the petitioner have already been appreciated and dealt with by both the Courts, and there was no scope for interference in the impugned judgment. Learned counsel further submitted that the powers of the revisional Court are limited and the findings recorded by the lower Courts could be interfered with only if there was some apparent illegality or perversity, which is not the case here. Thus, the revision petition filed by the petitioner is liable to be dismissed by this court.

8. I have heard learned counsel for the parties and perused the record with their able assistance.

9. In the present case, the cheques (Ex. C-1 and C-2) were issued by the petitioner in favor of M/s Sapna Advertising, i.e., the complainant, for a sum of Rs. 15 lakhs and 7 lakhs, respectively, from the account maintained by M/s Global Media and Marketing Services, through its proprietor, with Bank of Baroda, Sector 22-B, Chandigarh. The said cheques, dated 25.09.2009 and 30.09.2009, were presented

by the complainant-respondent for encashment and were dishonored on 03.12.2009, i.e., within the period of their validity. As per memos (Ex. C-3 and C-4), the reasons for dishonoring of the cheques was “payment stopped by the drawer” and “funds insufficient”, respectively. After the dishonor of the cheque, the respondent-complainant sent notice by way of registered post on 11.12.2009, and the postal receipts Ex. C-6 to Ex. C-10 were properly proved on record. Even, after the issuance of notice, the petitioner did not make the payment within 15 days of receipt of the summons. Thus, the basic ingredients of the offence under Sections 138 and 142 of the Act were fulfilled. In fact, even during the course of arguments, the only main issue raised by learned counsel for the petitioner was with regard to the fact that the cheques in question were not issued and discharged for legally enforceable debt or liability. However, it is an admitted fact that the factum of execution of the said cheques was admitted by the petitioner and was duly proved by the respondent-complainant in the present case. Once the factum of execution of the said cheques is proved, the appellate Court rightly held that the statutory presumptions under Sections 118 and 139 of the Act would arise and it would be presumed that it was supported by a valid consideration. No doubt, the said statutory presumptions can be rebutted by the petitioner-accused by raising a probable defence. However, no such evidence was led by the petitioner to prove the same. The petitioner utterly failed to discharge any initial onus of proving by showing non-existence of the consideration in the present case. Moreover, learned counsel for the petitioner had vehemently argued that the cheques were misplaced/stolen and the petitioner had recorded a DDR in this regard, apart from the publications in various newspapers. Apart from that, even the complainant-respondent owed him Rs. 22 lakhs and for the settlement of the dues, he had issued a notice regarding the payment due from him concerning advertisements. However, I find no substance in the argument raised by the learned counsel for the petitioner. In fact, as per the admitted case of the petitioner, the cheques in question along with few other cheque leaves/documents were lost/misplaced/stolen in January 2009. However, the matter was finally reported by the petitioner vide DDR number 19 dated 21.09.2009 and there was a delay of eight months in lodging the DDR in this regard. The petitioner as well as the complainant-respondent are businessmen of Chandigarh and have been running the companies and it is not understandable as to why the petitioner waited for eight months before lodging the DDR in respect of stolen cheques. Still further, it appears that in order to create a false defence, the petitioner not only reported the matter to the police falsely but also got the advertisements published in the newspapers. Thus, findings recorded by the trial Court as well as the appellate Court in this regard are affirmed and upheld.

10. Apart from that, during the course of arguments, learned counsel for the petitioner has referred to certain minor inconsistencies in the statement of the prosecution witness/respondent and the same have already been dealt with by both the Courts. In his cross-examination, the complainant-respondent had admitted that in fact, ink used in mentioning the amount in words and figures in exhibits C1 and C2 was different from the ink used in mentioning the name of payee and date. In fact, such difference in ink can never be a ground for acquitting the petitioner and the argument raised by learned counsel for the petitioner is liable to be rejected. Still further, in the present case, the complainant-respondent had been successful in proving the fact that the cheques were issued/drawn/executed by the petitioner in discharge of his legally enforceable debt/liability. Still further, said statutory presumption could not be rebutted by the petitioner in any manner. Apart from that, I have carefully perused the findings recorded by the trial Court as well as appellate Court and there is no illegality, infirmity or perversity in the impugned judgments.

11. As a consequence of above discussion, the present petition is ordered to be dismissed.

12. Still further, the applicant/petitioner had moved an application (CRM-1305 of 2020) under Section 427 read with Section 482 Cr.P.C. with a prayer to make the sentences of convictions run

concurrently, passed vide judgments dated 27.07.2015 by the Court of Sessions Judge, Chandigarh in Criminal Appeal No. 212 of 01.07.2014, titled as ***"Rajat Khandari versus M/s Sapna Advertising"***, and Criminal Appeal No. 213 of 17-2014, titled as ***"Rajat Khandari versus M/s Sapna Advertising"***, as they arise out of same transaction and were between the same parties.

13. Learned counsel for the applicant-petitioner had submitted that vide judgments and orders dated 24/28.05.2014, the petitioner was convicted by the trial Court for the commission of offences punishable under Section 138 of the Act and was sentenced to undergo imprisonment for a period of six months with fine of Rs.5,000/- in Criminal Complaint No. 47621 of 2010 and also in Criminal Complaint No. 47622 of 2010. Even on appeals, the appellate Court, i.e., the Court of Sessions Judge, Chandigarh, upheld the judgments of convictions of the applicant-petitioner. However, the sentence was ordered to be reduced from 06 months to 05 months in Criminal Appeal No. 212 dated 01.07.2014 filed against Criminal Complaint No. 47621 of 2010 and from 06 months to 04 months in Criminal Appeal No. 213 of of 01.07.2014, filed against Criminal Complaint No. 47622 of 2010. Thus, both the sentences in above-stated complaints may be ordered to run concurrently.

14. On the other hand, learned counsel for the respondent-complainant had submitted that the petitioner had not paid the amount

of compensation awarded and two separate complaints were instituted leading to separate appeals and two separate judgments of convictions have been passed. Thus, there was no justification to order the sentences to run concurrently.

15. From a perusal of the record, it is apparent that the conviction of the petitioner in both the cases is well founded and based on evidence on record. In ***'Shyam Pal v. Dayawati Besoya and anr. (Criminal Appeal Nos.988-989 of 2016 (arising out of SLP (Crl.) Nos.6226-27 of 2016) decided on 28.10.2016)',*** the Hon'ble Supreme Court has held as under:-

> *"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.*

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

*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 where under 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.*

*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 herein above under Section 138 of the Act is serving out the sentences awarded and that the period of his custody is as hereunder:*

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

*(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.*

*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:*

*"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."*

*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 v. State of Haryana and Another 2013 (3) RCR (Civil) 1052 : 2013 (3) RCR (Criminal) 983 : 2013 (4) Recent Apex Judgments (R.A.J.) 680 : (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 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 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.*

*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 herein above 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".*

16. In ***'Dalip Kumar v. Sachin Singal (bearing CRM-M-35360-2022 decided on on 17.08.2023),*** it was held as under:-

*"13. Admittedly, the transaction in each of the complaints is between the same parties and regarding the same ledger/account. The three cheques leading to the filing of two complaints were issued within a span of a few days and the complaints themselves had also been filed within a gap of a couple of months. In fact, as per the orders dated 10.10.2019 (Annexure P-7 and P-8) and the statement of the complainant of the even date (Annexure P-9), the Court has held and the complainant has agreed that the complaint was between the same parties and the allegations were also similar. The complainant did not have any objection if the cross-examination conducted in one complaint was read in the*

*other complaint as well. Therefore, the Court had held that the evidence recorded till date in one complaint was to be read in both the complaints verbatim.*

*Further, even if the proceedings in both the complaints were to go on separately and two judgments of conviction were recorded, in view of the judgments In Re: (supra), Shyam Pal (supra), Benson (supra) V.K. Bansal (supra) and Ravinder Singh (supra) the sentences would in all probability, be ordered to run concurrently the transactions being the same.*

*14. On the other hand, the facts in the judgment in K. Padamaja Rani (supra) are different. Firstly that was a case pertaining to four cases. These were several transactions over a period of time for supply of raw material for which the petitioner had tendered cheques towards payments. In the instant case, there were three cheques issued within a span of a few days which culminated in two complaints filed within a span of a couple of months. Similarly, the judgment in Vishwanath Jha (supra) will not come to the aid of the respondent. Firstly, V.K. Bansal (supra) has not been considered. Secondly, the Court has not considered the anomalous situation that would arise where instead of multiple cheques being issued for the Rs. 12,42,289/- debt a single cheque had been issued. If a single cheque had been issued for the entire debt, then there would have been a single trial and the imposition of a single sentence which would not have exceeded two years.*

*Even otherwise, if the substantive sentence is ordered to run concurrently nothing prohibits the Court from imposing a sentence of fine to be paid as compensation* *upto twice of the cheque amount for all the cheques comprising different complaints as is evident from a plain reading of Section 138 of the Negotiable Instruments Act along with a judgment in* ***Gaurav Khullar v. Eleven V Industries & others, decided on 28.02.2023, CRR-1631-2016.***

*15. In view of the above discussion, no useful purpose would be served by permitting the continuation of two separate trials and therefore, it would be just and expedient if the trial emanating out of complaint http://No.COMP/9225/2018 dated 05.07.2018 and the summoning order dated 06.07.2018 be clubbed with the trial emanating out of complaint http://No.COMP/6718/2018 dated 15.05.2018 and summoning order dated 17.05.2018. The Trial Court would then proceed to hear the arguments in each case and pass one judgment".*

17. In view of above discussion, the sentences imposed by the appellate Court, shall run concurrently. However, sentence on payment of compensation shall remain intact.

18. All pending applications, if any, are disposed off, accordingly.

**10.08.2026** **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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