

(2013) 07 SC CK 0039

In the Supreme Court Of India

Case No : Criminal Appeal No's. 836-851 of 2013 (Arising out of S.L.P. (Criminal) No's. 10023-10038 of 2011)

V.K. Bansal

APPELLANT

Vs

State of Haryana and Others etc. etc.

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 122, 427, 427(1), 427(2), 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 376

Citation : (2013) 3 ACR 3188 : (2013) 8 AD 39 : AIR 2013 SC 3447 : (2013) AIRSCW 4585 : (2013) 1 BC 679 : (2013) 3 BLJ 524 : (2013) CriLJ 3986 : (2013) 4 JCC 185 : (2013) 4 JLJR 76 : (2013) 10 JT 4 : (2013) 9 JT 313 : (2013) 3 KHC 34 : (2013) 2 LW(Cri) 486 : (2013)

Hon'ble Judges : T.S. Thakur, J;Gyan Sudha Misra, J

Bench : Division Bench

Advocate : D.N. Ray, Subodh Patil and Sumita Ray, for the Appellant; Jitendra Kumar, Dushyant Parashar, Surya Kant and Kamal Mohan Gupta, for the Respondent

Final Decision : Allowed

Judgement

T.S. Thakur, J.—Leave granted.

2. The short question that falls for determination in these appeals by special leave is whether the High Court was right in declining the prayer made by the Appellant for a direction in terms of Section 427 read with Section 482 of the Code of Criminal Procedure for the sentences awarded to the Appellant in connection with the cases u/s 138 of the Negotiable Instruments Act filed against him to run concurrently.

3. The material facts are not in dispute. The Appellant is a Director in a group of companies including Arawali Tubes Ltd., Arawali Alloys Ltd., Arawali Pipes Ltd. and Sabhyata Plastics Pvt. Ltd. The Appellant's case before us in that in connection with his business conducted in the name of the above companies, he

had approached the Respondent, Haryana Financial Corporation for financial assistance and facilities. The Corporation had accepted the requests made by the Companies and granted financial assistance to the first three of the four companies mentioned above. Several cheques towards repayment of the amount borrowed by the Appellant in the name of the above companies were issued in favour of the Haryana Financial Corporation which on presentation were dishonoured by the banks concerned for insufficiency of funds. Consequently, the Corporation instituted complaints u/s 138 of the Negotiable Instruments Act against the Appellant in his capacity as the Director of the borrowing companies. These complaints were tried by Judicial Magistrates at Hissar culminating in the conviction of the Appellant and sentence of imprisonment which ranged between 6 months in some cases to one year in some others besides imposition of different amounts of fine levied in each complaint case and a default sentence in the event of non payment of amount awarded in each one of those cases.

4. Aggrieved by his conviction and the sentence in the cases filed against him the Appellant preferred appeals which were heard and dismissed by the Additional Sessions Judge, Hissar in terms of separate orders passed in each case. In some of the cases the Appellate Court reduced the sentence from one year to nine months.

5. The Appellant then approached the High Court by way of revision petitions. The High Court dismissed 15 out of 17 revisions petitions in which the Appellant was convicted. The remaining two revision petitions are still pending before the High Court. The High Court noticed that the Appellant had not questioned the correctness of the conviction before the appellate Court which disentitled him to do so in revision. That position was, it appears, not disputed even by the Appellant, the only contention urged before the High Court being that instead of the sentences awarded to him running consecutively they ought to run concurrently. That contention was turned down by the High Court holding that the sentence of imprisonment awarded to the Appellant was not excessive so as to warrant its reduction or a direction for concurrent running of the same. The High Court noted:

As regards sentence, keeping in view the amount of cheques, sentence of simple imprisonment for six months in each case cannot be said to be excessive so as warrant reduction or direction for concurrent running of the sentences in all the 8 cases. Even sentence in default of payment of fine, which is huge amount, also cannot be said to be excessive.

6. The revision petitions filed by the Appellant along with the criminal miscellaneous applications moved u/s 482 of the Code of Criminal Procedure were accordingly dismissed. The present appeals assail the correctness of the orders passed by the High Court which are no doubt separate but in similar terms.

7. Learned Counsel appearing for the Appellant strenuously argued that the High

Court has committed an error in declining the prayer made by the Appellant for an appropriate direction to the effect that the sentences awarded to the Appellant in the cases in which he was found guilty ought to run concurrently and not consecutively. It was urged that the trial Court and so also the appellate and the revisional Courts were competent to direct that the sentences awarded to the Appellant should run concurrently. The power vested in them to issue such a direction has not been properly exercised, contended the learned Counsel. Reliance in support was placed upon the decision of this Court in *State of Punjab Vs. Madan Lal*,

8. Section 427 of the Code of Criminal Procedure deals with situations where an offender 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. Section 427 may at this stage be extracted:

427. Sentence on offender already sentenced for another offence - (1) when a person already undergoing 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 u/s 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.

9. That upon a subsequent conviction the imprisonment or imprisonment for life shall commence at the expiration of the imprisonment which has been previously awarded is manifest from a plain reading of the above. The only contingency in which this position will not hold good is where the Court directs otherwise. Proviso to Sub-section (1) to Section 427 is not for the present relevant as the same deals with cases where the person concerned is sentenced to imprisonment by an order u/s 122 in default of furnishing security which is not the position in the case at hand. Similarly Sub-section (2) to Section 427 deals with situations where 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. Sub-section (2) provides that the subsequent sentence

shall in such a case run concurrently with such previous sentence.

10. We are in the case at hand concerned more with the nature of power available to the Court u/s 427(1) of the Code, which in our opinion stipulates a general rule to be followed except in three situations, one falling under the proviso to Sub-section (1) to Section 427, the second falling under Sub-section (2) thereof and the third where the Court directs that the sentences shall run concurrently. It is manifest from Section 427(1) that the Court has the power and the discretion to issue a direction but in the very nature of the power so conferred upon the Court the discretionary power shall have to be exercised along judicial lines and not in a mechanical, wooden or pedantic manner. It is difficult to lay down any strait jacket approach in the matter of exercise of such discretion by the Courts. There is no cut and dried formula for the Court to follow in the matter of issue or refusal of a direction within the contemplation of Section 427(1). Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed, and the fact situation in which the question of concurrent running of the sentences arises. High Courts in this country have, therefore, invoked and exercised their discretion to issue directions for concurrent running of sentence as much as they have declined such benefit to the prisoners. For instance a direction for concurrent running of the sentence has been declined by the Gujarat High Court in *Sumlo @ Sumla Himla Bhuriya and Others Vs. The State of Gujarat and Another*, that related to commission of offences at three different places resulting in three different prosecutions before three different Courts. The High Court observed:

The rule of 'single transaction' even if stretched to any extent will not bring the cases aforesaid under the umbrella of 'single transaction' rule and therefore, this application fails. The application is rejected.

11. Similarly a direction for concurrent running of sentence has been declined by the same High Court in *State of Gujarat Vs. Zaverbhai Kababhai*, which related to an offence of rape committed at different places resulting in conviction in each one of those offences in different prosecutions. The High Court observed:

...It is true that it is left to the discretion of the Court while ordering the sentence to run either consecutively or concurrently. However, such discretion has to be exercised judicially, having regard to the facts and circumstances of the case. As observed by the Supreme Court, the rule with regard to sentencing concurrently will have no application, if the transaction relating to offence is not the same and the facts constituting the two offences are quite different. The Respondent-accused is found to be guilty for the offence punishable u/s 376 of the Indian Penal Code in two different and distinct occurrences on two different dates, and the transactions relating to the commission of the offences have no nexus with each other...

12. 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 Vs. State*, 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.

13. We may at this stage refer to the decision of this Court in *Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs (Prevention), Ahmedabad* and another, in which this Court recognised the basic rule of convictions arising out of a single transaction justifying concurrent running of the sentences. The following passage is in this regard apposite:

The basic rule of thumb over the years has been the so called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.

14. In *Madan Lal's case* (supra) this Court relied upon the decision in *Akhtar Hussain's case* (supra) and affirmed the direction of the High Court for the sentences to run concurrently. That too was a case u/s 138 of the Negotiable Instruments Act. The State was aggrieved of the direction that the sentences shall run concurrently and had appealed to this Court against the same. This Court, however, declined interference with the order passed by the High Court and upheld the direction issued by the High Court.

15. In conclusion, we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor.

16. Applying the above test to the 15 cases at hand we find that the cases against the Appellant fall in three distinct categories. The transactions forming the basis of the prosecution relate to three different corporate entities who had either entered into loan transactions with the State Financial Corporation or taken some other financial benefit like purchase of a cheque from the Appellant that was on presentation dishonoured. The 15 cases that have culminated in the conviction of the Appellant and the award of sentences of imprisonment and fine imposed upon him may be categorised as under:

1) Cases in which complainant-Haryana State Financial Corporation advanced a loan/banking facility to M/s. Arawali Tubes Ltd. acting through the Appellant as its Director viz. No. 269-II/97; No. 549-II/97; No. 393-II/97; No. 371-II/97; No.

372-II/97; No. 373-II/97; No. 877-II/96; No. 880-II/96; No. 878-II/96; No. 876-II/96; No. 879-II/96; No. 485-II/96

2) Cases in which complainant-Haryana State Financial Corporation advanced a loan/banking facility to the Appellant to M/s. Arawali Alloys Ltd. acting through the Appellant as its Director viz. No. 156-II/1997 and No. 396-II/1998

3) Criminal complaint No. 331-II/97 in which complainant-State Bank of Patiala purchased/dischonoured the cheque offered by Sabhyata Plastics acting through the Appellant as its Director.

17. 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. We, however, see no reason to extend that concession to transactions in which the borrowing company is different no matter the Appellant before us is the promoter/Director of the said other companies also. Similarly we see no reason to direct running of the sentence concurrently in the case filed by the State Bank of Patiala against M/s. Sabhyata Plastics and M/s. Rahul Plastics which transaction is also independent of any loan or financial assistance between the State Financial Corporation and the borrowing companies. We make it clear that the direction regarding concurrent running of sentence shall be limited to the substantive sentence only. The sentence which the Appellant has been directed to undergo in default of payment of fine/compensation shall not be affected by this direction. We do so because the provisions of Section 427 of the Code of Criminal Procedure do not, in our opinion, permit a direction for the concurrent running of the substantive sentences with sentences awarded in default of payment of fine/compensation.

18. In the result, these appeals succeed but only in part and to the following extent:

1) Substantive sentences awarded to the Appellant by the Courts of Judicial Magistrate, First Class, Hissar and Additional Chief Judicial Magistrate, Hissar, in Criminal complaint cases No. 269-II/97; No. 549-II/97; No. 393-II/97; No. 371-II/97; No. 372-II/97; No. 373-II/97; No. 877-II/96; No. 880-II/96; No. 878-II/96; No. 876-II/96; No. 879-II/96; No. 485-II/96 relevant to the loan transaction between Haryana Financial Corporation and Arawali Tubes shall run concurrently.

2) Substantive sentences awarded to the Appellant by the Court of Judicial

Magistrate, First Class, Hissar in Criminal complaint cases No. 156-II/1997 and No. 396-II/1998 between Haryana Financial Corporation and Arawali Alloys relevant to the transactions shall also run concurrently;

3) Substantive sentences inter se by the Court of Judicial Magistrate, First Class, Hissar in the above two categories and that awarded in complaint case No. 331-II/97 shall run consecutively in terms of Section 427 of the Code of Criminal Procedure.

4) No costs.