IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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(I) CRM-M-44318-2022
Reserved on: 20.05.2024
Date of Decision: 14.06.2024

MANOJ JAIN **-PETITIONER**

V/S

STATE OF UT CHANDIGARH AND ANOTHER **-RESPONDENTS**

(II) CRM-M-16633-2023

NAVEEN SHARMA **-PETITIONER**

V/S

STATE OF HARYANA AND OTHERS **-RESPONDENTS**

(III) CRM-M-21383-2024

SANJAY **-PETITIONER**

V/S

STATE OF HARYANA AND ANOTHER **-RESPONDENTS**

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. R.S. Cheema, Sr. Advocate with
Mr. Siddharth Bhukkal, Advocate
for the petitioner (in CRM-M-44318-2022).

Mr. Sanjeev Roy, Advocate for
Mr. I.P.S. Doabia, Advocate
for the petitioner (in CRM-M-16633-2023).

Mr. Vikas Lochab, Advocate
for the petitioner (in CRM-M-21383-2024).

Mr. Anil Kumar Lamdharia, Addl. P.P., U.T. Chandigarh with
Mr. Krishan Garg, Advocate.

Mr. Bhupender Singh, D.A.G., Haryana.

KULDEEP TIWARI, J.

1. The amenability of all these petitions for being decided through a common verdict originates from common questions of law being ingrained therein, besides originating from identical prayers being made therein.

2. To be precise, the relief(s) predominantly yearned in all these petitions is that, despite the petitioner(s) being convicted and sentenced in numerous cases of alike nature, wherein all the sentences are running consecutively, yet a claim for concurrence of all the sentences imposed upon him by the learned convicting courts concerned has been made, by invoking the inherent power of this Court envisaged under Section 482 of the Cr.P.C. For the sake of brevity, the facts are being extracted from the lead petition, i.e. CRM-M-44318-2022.

3. The prayer made in the petition at hand relates to issuance of directions for ordering the sentences awarded to the petitioner in ten different cases, for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'N.I. Act'), to run concurrently.

4. For ready reference, the details of all the ten cases, wherein, the petitioner has been convicted under Section 138 of the N.I. Act and ordered to undergo consecutive sentences, are extracted hereinafter:-

Sr. No.	Complaint No.	Court	Date of Decision	Sentence	Sentence in default of payment of fine
1	3782/2017	JMIC, Chandigarh	22.08.2019	R.I. for 02 years	

2	202/2018	JMIC, Ambala	29.11.2019	S.I. for 1½ years	
3	251/2017	JMIC, Ambala	29.11.2019	S.I. for 1½ years	
4	608/2017	JMIC, Ambala	19.12.2019	S.I. for 02 years	03 months
5	2082/2016	JMIC, Ambala	16.01.2020	S.I. for 02 years	03 months
6	201/2019 & COMA-1655-2017	JMIC, Ambala	13.08.2020	Imprisonment for the period he already remained in custody i.e. from 09.04.2019 till 13.08.2020	S.I. for 01 month
7	8047/2016	JMIC, Chandigarh	19.12.2018	R.I. for 01 year	
8	508/2018 COMA/511 of 2018	JMIC, Ambala	31.07.2020	01 year	S.I. for 03 months
9	507/2018 COMA/510 of 2018	JMIC, Ambala	31.07.2020	S.I. for 01 year	S.I. for 03 months
10	557/2017 COMA/595 of 2017	JMIC, Ambala	31.07.2020	To the period already remained in custody i.e. since 05.08.2019 till 31.07.2020	S.I. for 01 month

5. The petitioner’s conviction, as extracted hereinabove, shows that he has been primarily awarded total **12 years** of civil imprisonment as substantive sentence, besides becoming awarded sentence of 01 year and 02 months in case of default of payment of fine.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE PETITIONER(S)

6. By referring to the provisions of Section 427 of the Cr.P.C., the learned senior counsel for the petitioner submits that, once the petitioner became convicted by the learned trial Court concerned for commission of offence punishable under Section 138 of the N.I. Act, the learned trial Court

concerned ought to have, while convicting the petitioner in the subsequent nine cases of a similar nature, borne in mind the factum of his previous conviction. However, as is evident from the conviction verdicts of those subsequent nine cases, no reference has been made by the learned trial Court to the petitioner's previous conviction, for the reason that either the said plea did not become raised by the petitioner, or if raised, did not find favour with the learned trial Court concerned.

7. The learned senior counsel for the petitioner also draws attention of this Court towards the cases mentioned at Sr. Nos.8 to 10 of the conviction table extracted hereinabove, wherein, the decision has been based on a plea of admission of guilty and accordingly, the learned trial Court concerned passed the order of concurrence of the sentences in these three cases.

8. Furthermore, the learned senior counsel for the petitioner submits that, only in one case mentioned at Sr. No.7 of the conviction table (supra), the petitioner had filed an appeal, however, the same was subsequently withdrawn, and therefore, the question of plea under Section 427(1) of the Cr.P.C. becoming examined at any stage of appeal or revision does not arise at all. Consequently, the petitioner has been left with no other alternative efficacious remedy except to recourse the inherent jurisdiction of this Court envisaged under Section 482 of the Cr.P.C.

9. By referring to the conviction table (supra), the learned senior counsel submits that all the cases mentioned therein were/are pertaining to the same transaction, as loan was taken by the petitioner to re-setup his business, which was devastated by fire and therefore, the object and purpose

of obtaining the loan from various entities would render all the transactions to be the same transaction.

10. This Court had, at the very outset, posed a specific query to the learned senior counsel for the petitioner regarding maintainability of the instant petition under Section 482 of the Cr.P.C., specifically in view of the Full Bench's decision of this Court rendered in ***"Jang Singh Vs. State of Punjab", 2007(2) ILR Punjab and Haryana 550,*** to which he fairly conceded that, although the Full Bench of this Court has held that it is not open for a person to seek directions for concurrent running of sentences, as craved herein, by making a motion under Section 482/427 of the Cr.P.C., however, he also submits that much water has flown since then and the issue "*whether in the Full Bench decision (supra) of this Court, which is anchored upon decision of the Hon'ble Supreme Court rendered in case of "M.R. Kudva V/s State of A.P.", 2007(2) Supreme Court Cases 772, the ratio decidendi has been interpreted in its right perspective or not*" requires further consideration. Not only this, another issue structured by him for further consideration reads thus *"whether M.R. Kudva's case finally and authoritatively decides the legal issue with regard to maintainability/non maintainability of a petition invoking Section 482 of the Cr.P.C., thus seeking concurrence of sentences?"*

11. To assail the observations recorded by the Full Bench of this Court and to claim them being based upon incorrect interpretation of ***M.R. Kudva's case***, the learned senior counsel for the petitioner submits that, the Full Bench of Bombay High Court in the case of ***"Satnam Singh Puransing Gill V/s State of Maharashtra", 2009 SCC OnLine Bom 52,*** has

interpreted the decision of ***M.R. Kudva's case*** in view of the peculiar facts and circumstances recorded therein by the Hon'ble Supreme Court, thus for refusing to exercise its jurisdiction. Moreover, in ***Satnam Singh Puransing Gill's case,*** the Full Bench has penned down an ultimate conclusion that there is hardly any judgment laying down any universal principle or formula on the issue of maintainability of the cases like the one at hand. The relevant portion of ***Satnam Singh Puransing Gill's case*** are reproduced hereunder:-

> *"In the case of M.R. Kudva v State of A.P., 2007(1) RCR (Criminal) 868 : 2007(1) RAJ 612 : (2007)2 SCC 772, the Supreme Court was primarily concerned with entertaining an application, filed after dismissal of the Special Leave Petition, with a prayer to direct sentence already awarded to accused to run concurrently on the strength of provisions of Section 427 of the Code. While dismissing the application as not maintainable and that such provision had to be invoked in regular proceedings at the first instance by the Trial Court, the Court observed that the case of Amavasai (supra) was not the proposition of law that it is obligatory upon the Court to direct in these kind of cases that the sentences shall run concurrently and not consecutively. In the said case, the Appellant who was an employee of the Bank was involved in two cases under Section 120B/420, 468 and 471 of Indian Penal Code read with Section 5(1) of the Prevention of Corruption Act, 1947 while the subsequent case was also on similar charges registered against the accused.*
>
> *XX XX XX*
>
> *Thus, there is hardly any judgment brought to the notice of this court which lays universal principle that wherever the accused is convicted for two different transactions under two different enactments at two different points of time, then the court is divested of its power and jurisdiction under the provisions of section 427(1) of the Code. The emphasis in the language under section 427(1) is not on different offences but the application thereof is on the premise*

of undergoing sentence of imprisonment in a previous conviction and directing sentence of imprisonment on a subsequent conviction to run consecutively unless directed to run concurrently by the court of competent jurisdiction. The exclusion of the provisions of section 427(1) with reference to different transactions, different offences and different cases, is not comprehensible within the language, particularly, in view of the unambiguous and clear terms used by the legislature in section 427(1) of the Code. The section is probably intended to achieve a twin purpose, one which is beneficial to the accused where the court is expected to consider directing the imposition of subsequent sentences to run consecutively or concurrently with the previous sentence and secondly, a general and administrative concept that of overcrowded jails where under-trials and convicts are lodged so as to even require the State to act in the interest of administration of criminal justice system and not to frustrate the purpose of sentencing by ill-treating the convict. These alongwith the above-referred criteria are relevant consideration for exercise of jurisdiction but certainly are not determinative as they would have to be seen in the facts and circumstances of a given case. The court which exercises such jurisdiction has to be the court of competent jurisdiction and the matter essentially should fall within its jurisdiction. Exercise of judicial discretion presupposes legal and inherent jurisdiction to entertain such matters.

XX XX XX

In view of our detailed discussion, now we proceed to answer the question referred as under :

a) Neither the court of competent jurisdiction is divested of its power to pass appropriate order in terms of section 427(1) of the Code of Criminal Procedure, 1973 nor does the accused lose this statutory benefit of right of consideration by the Court, only on the ground that the accused has been tried in two or more cases separately and they arise from distinct and separate offences arising out of different transactions/incidents.

b) It is neither permissible nor possible to spell out universal principle or formula which would be applicable to all cases for exercise of power vested in Court under Section 427(1) of the Code.

> *Such power and judicial discretion has to be exercised in terms of the settled precepts of criminal jurisprudence, sentencing policy and with reference to the facts and circumstances of a given case, where the previous and subsequent sentences of imprisonment awarded to the accused are in two or more cases for distinct and separate offences arising out of different transactions/incidents and even under different enactments.*
>
> *XX XX XX"*

12. The learned senior counsel also referred to various decisions rendered by different High Courts, wherein, divergent opinions, that too some by Full Bench, have been adopted on the issue at hand and it has been specifically held that a petition under Section 482 of the Cr.P.C. is maintainable for the purpose of invoking provisions of Section 427 of the Cr.P.C. The judgments relied upon by the learned senior counsel for the petitioner are reproduced hereinafter:-

> *(i) Krishna Venkatesh and Another Vs. Balbhim Malvankar and Others (Bom. DB) 2019 SCC OnLine Bom 1819.*
>
> *(ii) K. Arasan Vs. The State of Tamil Nadu (Madras DB) 2012 (6) CTC 510.*
>
> *(iii) Abidkhan Salman Mukhtar Khan Pathan Vs. State of Maharashtra & Anr. (Bom. DB) 2013 SCC OnLine Bom 864.*
>
> *(iv) Arjun Ram Vs. State of Raj. & Ors. (Raj. DB) 2016 (1) RLW 723 (Raj.).*
>
> *(v) Sher Singh Vs. State of M.P. (Full Bench MP) 1988 SCC OnLine MP 163.*
>
> *(vi) State of Punjab Vs. Madan Lal (SC) (2009) 5 SCC 238.*

13. Furthermore, the learned senior counsel for the petitioner makes references to a recent pronouncement of the Bombay High Court, as

delivered in the case of ***"Aslam Salim Shaikh Vs. State of Maharashtra and another", 2023 SCC OnLine Bom 1446,*** wherein, the issue of maintainability of a petition akin to the one at hand, under Section 482 of the Cr.P.C., has been answered in affirmative. The relevant paragraph of this pronouncement is reproduced hereinafter:-

> *"16. Section 482 Cr.P.C. can be invoked to render complete justice. It can be exercised to give effect to an order under Cr.P.C.; to prevent abuse of the process of the Court; and, to secure the ends of justice. In short, Section 482 Cr.P.C. is a reminder to High Courts, that they are not merely Courts of law, but also Courts of justice and as such possess inherent powers to remove injustice. The petitioner, in the facts, has no other effective alternative remedy to redress his grievance/injustice, that will be caused to him. Inherent jurisdiction is to be exercised ex debito justitiae to do real and substantial justice for which alone, Courts exist."*

14. Advancing further his plea of maintainability of the instant petition, the learned senior counsel for the petitioner submits that the nature and scope of jurisdiction conferred by Section 482 of the Cr.P.C. has been extensively and rightly interpreted recently by the Hon'ble Supreme Court in case of ***"Arnab Manoranjan Goswami Vs. State of Maharashtra and others", (2021) 2 Supreme Court Cases 427.*** In this verdict, the Hon'ble Supreme Court has held that inherent power of High Court entrusted under Section 482 of the Cr.P.C. is a valuable safeguard for protecting liberty; to prevent the abuse of process of court; and/or to secure the ends of justice. The relevant paragraph of ***Arnab Manoranjan Goswami's case*** is reproduced hereinafter:-

> *"Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and*

procedure. Section 482 recognizes the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of the CrPC "or prevent abuse of the process of any Court or otherwise to secure the ends of justice". Decisions of this court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one - and a significant - end of the spectrum. The other end of the spectrum is equally important: the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure of 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognized the inherent power in Section 561A. Post- Independence, the recognition by Parliament of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower Courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is

> *something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum - the district judiciary, the High Courts and the Supreme Court - to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum - the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting."*

15. On the anvil of ***Arnab Manoranjan Goswami's case,*** the learned senior counsel for the petitioner submits that the question of applicability of Section 482 of the Cr.P.C. is yet open, as many a time in future also, when a convict may become subjected to unreasonably long period of sentence as a result of consecutive sentencing procedure, instead of concurrent sentencing, the need for exercise of jurisdiction under Section 427(1) of the Cr.P.C. would arise. He further submits that, it is the totality of the sentence, which shall persuade or compel the Court to examine the end situation. By referring to the case at hand, he submits that when the petitioner, owing to financial distress, failed to discharge his legal liability by making repayment of the debts, he has been convicted in ten cases and sentenced to consecutively undergo imprisonment of **12 years**, and, in

default of payment of fine, to undergo imprisonment of 01 year and 02 months. The facts and circumstances of the case at hand offend the letter and spirit of Article 21 of the Constitution of India. Therefore, in view of the legal pronouncement rendered in ***Arnab Manoranjan Goswami's case,*** the present is an apt case for this Court to exercise its inherent jurisdiction, thus curbing the abuse of process of court and securing the ends of justice.

16. Concluding his arguments, the learned senior counsel refers to a verdict rendered by a Three Judge Bench of the Hon'ble Supreme Court in the case of ***"Iqram Vs. State of Uttar Pradesh and Others", (2023) 3 Supreme Court Cases 184,*** thereby contending that since the legal position has radically been altered in that case, therefore, the verdict rendered by Full Bench of this Court in ***Jang Singh's case (supra)*** does not cause any legal impediment for this Court to adjudicate the prayer(s) in the present motion under Section 482 of the Cr.P.C.

REASONS FOR DISMISSING THE INSTANT PETITION(S)

17. This Court has made a meticulous analysis of the entire record and examined the core issue in totality. Before penning down the reasons for forming a negative inference upon the instant petition, it is deemed apt to, at this juncture, make a survey of Section 427 of the Cr.P.C., which is reproduced hereinafter:-

> *"**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. A perusal of the hereinabove extracted Section reflects that it endows discretionary power upon Court to, in a scenario where a convict who is already undergoing a sentence of imprisonment, is sentenced on a subsequent conviction to imprisonment or imprisonment for life, order such subsequent sentence(s) to run concurrently or consecutively.

19. The nature and scope of Section 427 of the Cr.P.C. has been elaborately discussed by the Hon'ble Supreme Court in ***"V.K. Bansal Vs. State of Haryana and another", (2013) 7 Supreme Court Cases 211,*** wherein, it has been held that no straitjacket formula can be laid down for the Court to exercise its discretion under Section 427(1) of the Cr.P.C., rather such discretion has to be exercised along the judicial line and not in a mechanical manner. The relevant portion of this verdict is reproduced hereinafter:-

"10. We are in the case at hand concerned more with the nature of power available to the Court under Section 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 straitjacket 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."*

20. In "***Mohd. Zahid v. State", (2022) 12 SCC 426,*** the Hon'ble Supreme Court has further interpreted the provisions of Section 427 of the Cr.P.C. in the following terms:-

> *"Thus from the aforesaid decisions of this Court, the principles of law that emerge are as under:*
>
> *(i) if a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced;*
>
> *(ii) ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the court directs the subsequent sentence to run concurrently with the previous sentence;*
>
> *(iii) the general rule is that where there are different transactions, different crime numbers and cases have been decided by the different judgments, concurrent sentence cannot be awarded under Section 427 Cr.P.C.;*
>
> *(iv) under Section 427(1) of Cr.PC the court has the power and discretion to issue a direction that all the subsequent sentences run concurrently with the previous sentence, however discretion has to be exercised judiciously depending upon the nature of the offence or the offences committed and the facts in situation. However, there*

> *must be a specific direction or order by the court that the subsequent sentence to run concurrently with the previous sentence."*

21. From these judicial dispensations of the Hon'ble Supreme Court, two inferences are clearly surging forth that: (i) the general rule is that different transactions, different crime numbers and different judgments create a constraint for awarding concurrent sentence under Section 427 Cr.P.C.; and (ii) the convicting court is seized of discretionary powers to issue a direction that subsequent term of imprisonment shall either commence at the expiration of the previous imprisonment, or, run concurrently with the previous sentence.

22. The precedent law laid down by various High Courts and by the Hon'ble Supreme Court recognized the basic rule of conviction arising out of a single transaction, for ordering concurrent running of sentences awarded to offender. Gainful reference in this regard can be made to ***"Mohd. Akhtar Hussain v. Collector of Customs (Prevention)", (1988) 4 SCC 183,*** wherein, the Hon'ble Supreme Court examined the issue relating to single transaction rule for concurrent sentence and held as under:-

> *"10. The basic rule of thumb over the years has been the so-called 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."*

23. The above view was reiterated by the Hon'ble Supreme Court in ***"State of Punjab Vs. Madan Lal", (2009) 5 Supreme Court Cases 238.***

24. Now, the issue arises that what would tantamount to a single

transaction for the Court to pass an order of concurrence of sentence awarded to an offender. In order to simplify this issue and to make an answer thereto, reference can be made to the verdict rendered by the Hon'ble Supreme Court in ***"State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and another", (1964) 3 SCR 297,*** whose relevant portion is reproduced hereunder:-

> *"According to Mr. Chari Section 235(1) cannot be construed as having an overriding effect on Section 239 because whereas it contemplates acts so connected together as to form the same transaction resulting in more offences than one, Section 239(d) contemplates offences committed in the course of the same transaction and nothing more. The question is whether for the purposes of Section 239(d) it is necessary to ascertain anything more than this that the different offences were committed in the course of the same transaction or whether it must further be ascertained whether the acts are intrinsically connected with one another. Under Section 235(1) what has to be ascertained is whether the offences arise out of acts so connected together as to form the same transaction, but the words "so connected together as to form" are not repeated after the words "same transaction" in Section 239. What has to be ascertained then is whether these words are also to be read in all the clauses of Section 239 which refer to the same transaction. Section 235(1), while providing for the joint trial for more than one offence, indicates that there must be connection between the acts and the transaction. According to this provision there must thus be a connection between a series of acts before they could be regarded as forming the same transaction. What is meant by "same transaction" is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not*

come across a single decision of any Court which has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction. The connection between a series of acts seems to us to be an essential ingredient for those acts to constitute the same transaction and, therefore, the mere absence of the words "so connected together as to form" in Clause (a), (c) and (d) of Section 239 would make little difference. Now, a transaction may consist of an isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently they would not form part of the same transaction but would constitute a different transaction or transactions. Therefore, even if the expression "same transaction" alone had been used in Section 235(1) it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression "same transaction" occurring in Clauses (a), (c) and (d) of Section 239 as well as that occurring in Section 235(1) ought to be given the same meaning according to the normal rule of construction of statutes. Looking at the matter in that way, it is pointless to inquire further whether the provisions of Section 239 are subject to those of Section 235(1). The provisions of sub-sections (2) and (3) of Section 235 are enabling provisions and quite plainly can have no overriding effect. But it would be open to the court to resort to those provisions even in the case of a joint trial of several persons permissible under Section 239."

25. Also, in ***"Balbir Vs. State of Haryana and another", (2000) 1 Supreme Court Cases 285,*** it has been held that the test which has to be applied to find out whether several offences are part of the same transaction,

is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. The relevant portion of this verdict reads as under:-

> *"For several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is commonality of purpose of design, where there is continuity of action, then all those persons involved can be accused of the same or different offences "committeed in the course of the same transaction."*

26. On the touchstone of the above law laid down by the Hon'ble Supreme Court, this Court has examined the issue at hand and **has no hesitation to hold that, in the case at hand, the petitioner's conviction is not the upshot of his default in respect of a single transaction**, which may constrain this Court to exercise its inherent jurisdiction for converting the consecutive sentences imposed upon him into concurrent sentences.

27. The reason for forming this conclusion is that, the backbone for conviction and sentence of the petitioner in ten different cases is not constituted by a single transaction or a single complaint, rather it is constituted by different transactions and different complaints, inasmuch as, the petitioner had issued different cheques to different complainants in discharge of his legal enforceable liability, however, the same were dishonoured. Therefore, the petitioner cannot be, by any stretch of imagination, taken to be convicted in respect of a single or common transaction, and as such, the consecutive sentences imposed upon him cannot be termed to be illegal.

28. Apart from the above, another issue which specifically requires consideration is ***"whether the instant petition under Section 482 of the Cr.P.C., thereby seeking concurrence of sentences awarded to the petitioner by different courts through different verdicts in different cases is maintainable?"***

29. In his claiming the instant petition to be maintainable, besides claiming the observations rendered in ***Jang Singh's case (supra)*** to be not causing any legal impediment for this Court to adjudicate the instant petition, the learned senior counsel has laid much emphasis upon the verdict rendered in ***Iqram's case (supra).*** This Court has thoroughly examined this verdict and the inference, as becomes generated therefrom is that, this verdict does not alter the legal position laid down by the Full Bench of this Court in ***Jang Singh's case (supra).*** In ***Iqram's case (supra)***, the accused was facing trial in nine different cases under Section 136 of the Electricity Act and Section 411 of the IPC and he agreed to a plea of bargain. The learned trial Court concerned passed nine separate judgments on the same day, thus convicting the accused therein under Section 136 of the Electricity Act and awarding him two years' simple imprisonment together with a fine of ₹ 1000 in each of the nine cases. However, the learned trial Court concerned did not record any finding as to whether the sentence(s) awarded to the accused shall run concurrently or consecutively. Fetching grievance from decision(s) of the learned trial Court concerned, the accused preferred a writ of habeas corpus before the High Court of Judicature at Allahabad, which resulted in a Division Bench of the High Court drawing a conclusion that, in view of the provisions of Section 427 of the Cr.P.C., each

subsequent term of conviction has to commence at the expiration of the imprisonment concurrently being undergone by the accused. Feeling yet dissatisfied, this decision of the High Court concerned was also assailed by the accused by filing a criminal appeal before the Supreme Court, whereupon, a Three Judge Bench speaking through Dr. D.Y. Chandrachud, Chief Justice of India, held that the High Court ought to have noticed the serious miscarriage of justice which would occur consequent upon the trial court not having exercised specifically its discretion within the ambit of Section 427(1). Finally, the criminal appeal was allowed and the decision of the High Court was set aside. The relevant portion of the verdict rendered in ***Iqram's case (supra)*** is reproduced hereunder:-

> *"The appellant agreed to a plea bargain. The Additional District and Sessions Judge, Hapur by nine separate judgments dated 5 November 2020, convicted the accused. The appellant was convicted of an offence under Section 136 of the Electricity Act. The accused had been confined in jail as undertrials for varying periods. The Additional Sessions Judge sentenced the appellant to two years' simple imprisonment together with a fine of Rs 1000/- in each of the nine cases. The Sessions Judge, however, directed that the period of custody as an undertrial shall be set-off against the period of sentence. Where the conviction was of an offence under Section 136 of the Electricity Act and Section 411 of the Indian Penal Code, 1860, the trial Judge directed that the sentence shall run concurrently.*
>
> *XX XX XX*
>
> *Section 427 provides that 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. In other words, sub-section (1) of Section 427 confers a discretion on the court to direct that the subsequent sentence following a conviction shall run concurrently with the previous sentence.

XX XX XX

The Trial judge, in the present case, granted a set-off within the ambit of Section 428/Section 31 CrPC. No specific direction was issued by the trial court within the ambit of Section 427(1) so as to allow the subsequent sentences to run concurrently. All the convictions took place on the same day.

Once the petitioner espoused the remedy of moving a Writ Petition under Article 226 of the Constitution, the High Court ought to have noticed the serious miscarriage of justice which would occur consequent upon the trial court not having exercised specifically its discretion within the ambit of Section 427(1). When the appellant moved the High Court, he was aggrieved by the conduct of the jail authorities in construing the direction of the trial court to mean that each of the sentences would run consecutively at the end of the term of previous sentence and conviction. The High Court ought to have intervened in the exercise of its jurisdiction by setting right the miscarriage of justice which would occur in the above manner, leaving the appellant to remain incarcerated for a period of 18 years in respect of his conviction and sentence in the nine sessions trials for offences essentially under the Electricity Act.

XX XX XX"

30. Now, what is to be noticed in ***Iqram's case (supra)*** is that, the accused was convicted on a plea of bargain and in view of Section 265-G of the Cr.P.C., a judgment delivered by court under this provision shall be final and no appeal (except special leave petition under Article 136 and a writ petition under Article 226/227 of the Constitution) shall lie against such judgment. Therefore, in view of this specific bar, the only remedy available with the accused in ***Iqram's case (supra)*** was to prefer a writ of habeas corpus. However, in the case at hand, the petitioner was well seized of a

statutory remedy of appeal/revision, which he has not availed.

31. Moreover, in ***Iqram's case (supra),*** it has nowhere been held that a petition under Section 482 of the Cr.P.C. is maintainable for claiming the relief of concurrence of sentences, as passed by different courts, through separately drawn verdicts, whereas, in ***Jang Singh's case (supra)*** the issue of maintainability of a petition under Section 482 of the Cr.P.C., thus seeking conversion of consecutive sentence into concurrent sentence, has been dealt with and answered in negative. Therefore, following judicial discipline, this Court is bound by the view adopted by Full Bench of this Court and consequently, the instant petition(s) is not maintainable in the present form.

32. This Court has also examined the verdict rendered in ***Arnab Manoranjan Goswami's case,*** wherein, the inherent power of High Court under Section 482 of the Cr.P.C. is held to be a valuable safeguard for protecting liberty; to prevent the abuse of process of court; and/or to secure the ends of justice. However, since the very existence and maintainability of the instant petition under Section 482 of the Cr.P.C. is already answered in negative, therefore, the verdict (supra) would not come to the rescue of the petitioner.

FINAL ORDER

33. For all the reasons (supra), this Court finds no merit in these petitions and is constrained to dismiss them. Consequently, all these instant petitions are **dismissed**.

34. However, before parting with this verdict, since some glaring issues warranting consideration of this Court have surfaced from the record

of the present case, therefore, this Court deems it apt to deal with the same also.

35. It is not under dispute that now, after dismissal of the instant petitions, the petitioner has to undergo actual imprisonment of **12 years**, apart from the sentences awarded for default in payment of fine. This situation has arisen because the case at hand is a case of multiple prosecutions in different cases and the courts pronouncing the subsequent orders of sentence upon the petitioner were not informed or made aware about the petitioner's previous conviction. This may be the reason behind failure of most of the convicting courts, except the court convicting the petitioner in the cases listed at Sr. Nos.8 to 10 of the conviction table extracted in paragraph No.4 of this verdict, to exercise their discretionary powers under Section 427(1) of the Cr.P.C. The order of concurrence of sentence in the cases listed at Sr. Nos.8 to 10 was possible only because the convicting court was the same. In case, the convicting courts were aware about the previous sentences of the petitioner, then the totality of the sentences would have persuaded or compelled it to examine the end situation.

36. From the facts of the case at hand, it is undeniable that the provisions of Section 427 of the Cr.P.C. often go unnoticed at the stage of passing order of sentence, both at the grassroot levels of trial court and the appellate court. As a general practice, trial court do not inquire about convict's previous conviction at the time of passing order of sentence, whereas, the issue of previous conviction and sentence is always relevant both for the purpose of exercising the discretionary power under Section

427 of the Cr.P.C. and for imposing harsher sentence in appropriate cases. This probably occurs for the reason that, the salutary provision of Section 54 of the Indian Evidence Act does not permit a reference to previous conduct of the accused at the stage of trial, except in reply, as laid down in the *ibid* Section. For ready reference, Section 54 of the Indian Evidence Act is reproduced hereunder:-

> *"**54. Previous bad character not relevant, except in reply.**— In criminal proceedings, the fact that the accused person has a bad character, is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.*
> *Explanation 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.*
> *Explanation 2. —A previous conviction is relevant as evidence of bad character."*

37. This Section made the bad character of an accused irrelevant and the evidence in this regard cannot be given unless his previous conduct is a fact in issue or unless evidence of good character has been given by him. This rule aims at achieving an object that the evidence of previous conduct may tend to prejudice the court against the accused and has tendency to interfere with the formation of opinion.

38. Likewise, Section 236 of the Cr.P.C. prohibits even the trial court to bring on record the previous conviction of an accused before conclusion of the trial and/or conviction of accused for the main charges. This Section imposes a restriction that charges of previous conviction can only be read over to accused only after he has been convicted for the main charges. Section 236 of the Cr.P.C. reads as under:-

> *"**236. Previous conviction**.—In a case where a previous conviction*

> *is charged under the provisions of sub-section (7) of section 211, and the accused does not admit that he has been previously convicted as alleged in the charge, the Judge may, after he has convicted the said accused under section 229 or section 235, take evidence in respect of the alleged previous conviction, and shall record a finding thereon:*
>
> *Provided that no such charge shall be read out by the Judge nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under section 229 or section 235."*

39. A conjoint reading of the Sections reproduced hereinabove reflects that the previous conduct of an accused is not permissible to be brought on record until and unless the condition(s) embodied in Section 236 of the Cr.P.C. is fulfilled. Notably, in the trials launched for commission of offence punishable under Section 138 of the N.I. Act, the trial courts hardly inquire about accused's previous conduct before passing the order of sentence, whereas, it is significant to do so to exercise the discretionary power endowed by Section 427 of the Cr.P.C. In the instant case, had the convicting courts inquired about the petitioner's previous conviction and sentence either from the prosecution or from the defence, it could have ably exercised its discretionary jurisdiction under Section 427 of the Cr.P.C. Therefore, to curb this irregularity and to avoid occurrence of any such situation, as occurred in the cast at hand, this Court deems it apt to issue the following directions to all the trial courts, which deal with the trials of Section 138 of the N.I. Act:-

> *(i) In the event of a trial concluding in conviction of accused for commission of offence punishable under Section 138 of the*

N.I. Act, the trial court shall, before drawing the order of sentence, adjourn the case, thus enabling the prosecution/ defence to place on record material pertaining to previous conviction of accused;

(ii) On the adjourned date, the trial court shall draw the order of sentence but by appending a note therein as to whether any material pertaining to convict's previous conviction is placed on record or not and if any such material is placed on record, it shall within the legal parameters exercise the discretionary power under Section 427 of the Cr.P.C.

Note: **A copy of this verdict be forthwith forwarded to all the District and Session Judges functioning under jurisdiction of this Court, for its becoming further forwarded to the courts under their respective jurisdictions, which are dealing with the trials of Section 138 of the N.I. Act, for information and compliance.**

(KULDEEP TIWARI)
JUDGE

14.06.2024
devinder

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