

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 24th OF APRIL, 2025

MISC. CRIMINAL CASE NO.4115/2025

RAMAKANT VIJAYWARGIYA

VS.

THE STATE OF MADHYA PRADESH

Appearance:

Shri Anil Khare, Senior Advocate with Shri Priyank Agrawal, Advocate for the petitioner.

Shri B.K. Upadhyay, Government Advocate for the respondent-State.

Reserved on: 18.03.2025

Pronounced on: 24.04.2025

ORDER

With the consent of learned counsel for the rival parties and looking to the issue involved in the matter, it is heard finally.

2. This petition has been filed under Section 528 r/w 467 of the Bharatiya Nagrik Suraksha Sanhita, 2023 read with Section 427 of Code of Criminal Procedure seeking a direction to run all sentences imposed on the petitioner concurrently.

3. A succinct portrayal of the case is that there are 22 cases decided by the trial court holding the petitioner guilty and awarding sentence in each case. As per the petitioner, out of one transaction, certain

complaints were filed by the complainants under Section 138 of the Negotiable Instruments Act,

3.1 In a Company named and styled as M/s Distinct Infrastructure Ltd. (for brevity “DIL”), the petitioner was a Director. The Company “DIL” has phenomenally completed several Residential & Commercial Projects in the cities of Bhopal, Ujjain and Indore since 1988. A project was introduced by the Company “DIL” in the name of Panchvati Enclave/Panchvati Phase-3, in which, various buyers entered into an agreement with DIL for purchasing the plots. After receiving the payment from the buyers, they were given allotment letters, agreement and other documents by DIL. Although for some reason and as per the allegations made by the complainants neither sale-deeds were executed in their favour nor the amount paid in advance was returned to them. The disgruntled buyers, 250 in number, being aggrieved with the failure of transaction, filed complaints and also got the FIR registered against the petitioner. The order dated 01.08.2018 passed by the Additional Sessions Judge, Bhopal contains that there are four trials pending against the petitioner i.e. S.T.Nos.367/2011, 205/2012, 404/2012 and 370/2012 and there is separate cluster of complaint cases under section 138 of N.I. Act. The court exercising the power under Section 219 of CrPC directed the Superintendent of Police, North Bhopal to instruct the competent officer of Police Station Kohefiza to submit separate charge-sheets before learned JMFC in connection with all the pending complaints except the said four pending trials. The petitioner stood convicted in some cases and conversely got acquitted in certain cases by the court below.

3.2 As per the petitioner, his intention was never treacherous towards anybody inasmuch as he has been in the business since 1988 and had

completed various projects and sold over 2800 plots to the buyers and earned an unblemished reputation in the society. However, in the year 2003, an agreement was entered into between the petitioner and three farmers for purchasing land of around 22 acres so as to develop the Panchvati Enclave (Panchvati Phase-3) and with *bona fide* belief that the land would be transferred to the DIL, executed agreements with the intending buyers, but those farmers betrayed and one of the Directors of M/s Shriram Bilcons namely Pramod Chichghare also did not comply with the conditions of agreement and somehow the petitioner failed to give possession of the plots to the buyers. The petitioner got entangled in a situation where neither he could get sale-deed executed nor could he pay back the money. The cheques issued in favour of buyers got dishonoured due to 'insufficient fund' which gave rise to proceedings under Section 138 of N.I. Act. The petitioner stood convicted in 22 cases. The description of such 22 cases has been depicted by making a listicle chart in the petition.

4. Learned senior counsel for the petitioner sanguinely submitted that the petitioner is aged about 70 years and his intent was not to beguile or cheat anybody, but as the luck would have it, time did not favour him and he stood convicted in those 22 cases and the appeals preferred also faced dismissal. He submitted that if the sentences awarded to the petitioner are allowed to run consecutively then his whole remaining life would be spent behind the bars. As per learned senior counsel, although the sentences are awarded in different cases, but their nature is similar and maximum sentence in such case is two years of SI and therefore the petitioner cannot be put to face the sentences awarded in all the cases consecutively. As per the learned senior counsel, looking to the nature of cases and the fact that cheque

issued by the petitioner on behalf of the company as an authorised signatory, the same persons have filed more than one complaint and sentence awarded to the petitioner and as such all these transactions, should be considered as a single transaction and this Court by exercising power provided under Section 427 of CrPC can direct that sentence in all these cases be run concurrently. He submitted that such power can be exercised even after final decision of the case by the court on merits and as such it is claimed that it is a fit case in which this court can exercise the power enshrined under Section 528 r/w 467 of B.N.S.S. r/w Section 427 of CrPC. To reinforce his contentions, learned senior counsel has placed reliance on the decision in the case of **V.K. Bansal v. State of Haryana and Another (2013) 7 SCC 211** and also on the decision of this Court in the case of **Radheshyam v. Smt. Veena Soni & Another** rendered in **Cri. Revision No.4684/2023** on 24.04.2024. Further, he relied upon the decisions of High Court of Rajasthan in case of **Dhiraj Singh v. State & Others** rendered in **S.B. Criminal Mis. (Pet.) No.2845/2020** on 28.01.2021 and **Rajkumar Daulatani v. State of Rajasthan** reported in **2020(1) RLW 224 (Raj.)**. On these premise, learned senior counsel for the petitioner submitted that this petition deserved to be allowed.

5. In contrast, learned counsel for the State submitted that although the nature of crime is similar but all cases are individual and registered separately and in all the cases, the petitioner since convicted individually, therefore, sentence awarded cannot be allowed to run concurrently and not consecutively.

6. To answer the legal question whether this court can issue direction in the existing circumstances by exercising the power provided under

Section 427 of CrPC to run the sentences concurrently or not, it is expedient to quote the provisions of Section 427 of CrPC, as under:-

“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.”

7. The Co-ordinate Bench of this Court in **Cr.R.No.4684/2023 (Radheshyam v. Smt Veena Soni & Anr.)** decided on 24.04.2024 has observed as under:-

“10. As such, Section 427 Cr.P.C. incorporates the principles of sentencing of an offender who is already undergoing a sentence of imprisonment. The Section relates to administration of criminal justice and provides procedure for sentencing. The sentencing court is, therefore, required to consider and make an appropriate order as to how the sentence passed in the subsequent case is to run. Whether it should be concurrent or consecutive?

11. It is also worth considering that whether the High Court can pass order for concurrent punishment in its revisional jurisdiction. On this aspect, the Hon’ble Division Bench of this Court in the case of **A.S. Naidu Vs. State of Madhya Pradesh** reported in **1975 Criminal Law General 498** has mandated that this Court can exercise its discretion under Sub-section (1) of Section 397 of the Code and direct the sentence awarded in a subsequent trial to run concurrently with the sentence awarded in a previous trial, even after

the appeals or revisions preferred by the convict against his conviction in the said trials.

12. However, full Bench of this Court in the case of **Sher Singh Vs. state of Madhya Pradesh** reported as **1989 Criminal Law General 632** has ordained as under:-

"7. The reference is, therefore, answered by saying (i) that the decision of this Court in *A.S. Naidu v. State of M.P.* 1975 CriLJ 498 (supra) is no longer good law to the extent it says that power under Section 427(1) of the Code can be exercised by the trial or appellate court at any stage at any time even after decision on merits in the case but not Under Section 482 and the court does not become functus officio. (ii) The High Court has power in appropriate cases to entertain an application under Section 482 of the Code by invoking its inherent powers at any time subsequent to the decision in a given case even if the trial court or the appellate or revisional court has failed to exercise its discretion under Section 427(1) of the Code. The case be now placed before the single Bench for decision on merits."

13. In view of the aforesaid pronouncement of this Court it is evident that High Court can exercise the power under Section 427(1) of Cr.P.C in appeal as well as in revision and even then if it is required the High Court can order for concurrent imprisonment under its inherent jurisdiction enshrined under Section 482 of Cr.P.C. In this way, even using the revisional jurisdiction this Court is well within its discretion to use its inherent jurisdiction under Section 482 of Cr.P.C as the law laid down in **Sher Singh** (Supra).

14. So far as the offences related to the same and one transaction are concerned, on this aspect paras 13 & 17 of the judgment passed by Hon'ble Apex Court in the case of **V.K. Bansal vs. State of Haryana & Ors.** reported in **(2013)7 SCC 211** is relevant to quote here as under:

"13. We may at this stage refer to the decision of this Court in *Mohd. Akhtar Hussain v. Assistant Collector of Customs* (1988) 4 SCC 183 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 under Section 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.....

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....."

15. The aforesaid legal position mandates that exercise of discretion to the benefit of the accused in cases where the prosecution is based on a single transaction can be applied in appropriate cases. It would be irrespective of the fact that different complaints had been filed involving dishonour of cheques issued by the borrower towards repayment of single loan to the creditor.

16. Now the question arises as to how the discretion of concurrent sentence can be applied. Nevertheless the investiture of using such discretion envisages that such discretion must be exercised on sound judicial principles pondering on the nature of offence and facts and circumstance of the case. In this regard, Hon'ble Apex Court in the case of **Anil Kumar vs. State of Punjab** reported as (2017) 5 SCC 53 has endorsed the law laid down in **V.K.Bansal** (Supra) as under:-

6. In *V.K. Bansal v. State of Haryana and Anr.* (2013) 7 SCC 211, it was held by this Court as under:

“10. ...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 the 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.”

17. Considering the aforesaid law, the facts of this case are examined. In the case at hand, the offence is related to financial default and no physical violence is involved, therefore, in the conspectus of the aforesaid facts and enunciation of law, it emerged as a well settled proposition that the power enshrined under Section 427 (1) of CrPC can be exercised by the Trial Court as well as by the Appellate Court at any time and even after decision of merits in the case. Offence under Section 138 of N.I. Act, 1881 has maximum punishment of 2 years therefore, no one should be punished for four offences consecutively. Hence, since his appellate Court can use its discretion with regard to direct the subsequent sentence for running concurrently with such previous sentence and therefore, the request of petitioner regarding issuing direction for the concurrent sentence with previous sentence is liable to be accepted.

18. Learned counsel for the petitioner also requested that the sentence for default in depositing fine or compensation should also be directed to run concurrently. In this regard it is worth to mention that virtually the provisions of Section 427 of Cr.P.C pertains only to substantive sentence rather and sentence for default. On this aspect the Hon'ble Apex Court in Vicky @ Vikas vs. State (Govt. of NCT of Delhi) reported as AIR 2020 C 916 endorsing the earlier view reiterated in para 14 as under:

"14. Following the decision in V.K. Bansal, in Benson v. State of Kerala (2016) 10 SCC 307, the Supreme Court directed that the sentences imposed in each of the cases shall run concurrently with the sentence imposed in Crime No.8 which was then currently operative. However, the Court held that the benefit of “concurrent running of sentences” is granted only with respect of substantive sentences; but the sentences of fine and default sentences shall not be affected by the direction. The Supreme Court observed that the provisions of Section 427 Cr.P.C. do not

permit a direction for the concurrent running of the default sentence for non-payment of fine."

19. In upshot of the aforesaid legal position, the contentions of petitioner for issuing direction of "concurrent running of sentence" with regard to default sentence for non payment of compensation or fine deserves to be rejected.

20. As a result thereof, it is directed that the sentence awarded in all the four criminal appeals shall run concurrently and therefore, the applicant has to suffer one year simple imprisonment in all four cases concurrently and he has to deposit the compensation amount as per the judgment passed by the Courts below, for each of the cases separately. It is clarified that the sentence imposed in default in each case would not be concurrent (i.e.) if applicant fails to deposit the compensation amount as awarded by the trial Court as well as by Appellate Court he will suffer default sentence in all four cases consecutively."

8. This Court has to consider whether the view taken by the Supreme Court in case of **V.K.Bansal** (supra) is applicable in the case in hand or the subsequent view taken by the Supreme Court in case of **K. Padamaja Rani** (supra) relying upon the case of **V.K.Bansal** (supra) holding that the law laid down by the Supreme Court in case of **V.K.Bansal** (supra) would be applicable only when "the conviction arises out of single transaction", meaning thereby the ratio laid down by the Supreme Court in case of **V.K.Bansal** (supra) has been subsequently clarified by the Supreme Court in case of **K. Padamaja Rani** (supra) observing that when conviction arising out of same transaction, then case of **V.K.Bansal** (supra) would be applicable otherwise not.

9. Under such a circumstance and as per the submission made by learned counsel for the petitioner that the case of **K. Padamaja Rani** (supra) in fact does not deal with the situation and nothing has been said by the Supreme Court considering the merits of the case and, therefore, the analogy which has been laid down by the Supreme Court in case of **K. Padamaja Rani** (supra) cannot be said to be a proper law describing the ratio laid down by the Supreme Court in case of **V.K.Bansal** (supra).

Although, there is no occasion for this Court to delve deep or comment over the same but I have to see whether in the facts and circumstances of the case, the ratio laid down by the Supreme Court in case of **V.K.Bansal** (supra) is applicable in the present case or not. At the same time, this Court will also consider the submission made by counsel for the petitioner that under Section 427 of Cr.P.C., there is no mention about ‘single transaction’ and, therefore, the word ‘single transaction’ has no significance while applying the provision of Section 427 of Cr.P.C. In case of **V.K.Bansal** (supra), the Supreme Court in paragraph 16 of the judgment has considered as to under what circumstances provisions of Section 427 of Cr.P.C. would be applicable and also dealt with the conviction arising out of ‘single transaction’. The observation made by the Supreme Court in paragraph 16 reads as under:-

“16. 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”.

The Supreme Court further has categorized the cases which were before the Supreme Court in which conviction passed and observed as under:-

“17. 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 the complainant Haryana State Financial Corporation advanced a loan/banking facility to M/s Arawali Tubes Ltd. acting through the appellant as its Director viz.

Criminal Complaint Cases No. 269-II/1997; No. 549-II/1997; No. 393-II/1997; No. 371-II/1997; No. 372-II/1997; No. 373-II/1997; No. 877-II/1996; No. 880-II/1996; No. 878-II/1996; No. 876-II/1996; No. 879-II/1996 and No. 485-II/1996.

(2) Cases in which the 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. Criminal Complaint Cases No. 156-II/1997 and No. 396-II/1998.

(3) Criminal Complaint No. 331-II/1997 in which the complainant State Bank of Patiala purchased/discounted the cheque offered by Sabhyata Plastics acting through the appellant as its Director.”

The Supreme Court in the said case has further observed as to why in a different category of cases, Section 427 of Cr.P.C. would not be applicable and sentence would not run concurrently. The observation made by the Supreme Court with regard to applicability of Section 427 Cr.P.C. in different nature of cases reads as under:-

“18. 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 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 CrPC 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.”

Finally, the Supreme Court in paragraph 19 has distinguished total cases giving them different categories clubbing them together which have arisen from same transaction and then direct each and every category of cases arising out of same transaction, sentence though awarded in different cases but in the same transaction, ergo, they would run concurrently. Merely because, Section 427 Cr.P.C. does not speak about ‘single transaction’ but at the same time, it is required to be seen that provision of Section 138 of N.I. Act, 1881 introduced and came into effect only in the year 1882 whereas Section 427 Cr.P.C. is a substantive provision introduced in the Cr.P.C. in 1974 considering the offence committed under the Indian Penal Code and, therefore, the word ‘single transaction’ though is not mentioned in the provision but that has been explained by the Supreme Court later-on in number of cases especially in a case of **V.K.Bansal** (supra).

10. Although, subsequently the Supreme Court i.e. **K. Padamaja Rani** (supra) though it was not a very detailed judgment considering the factual aspect of the matter but otherwise the Supreme Court has clarified that the analogy laid down earlier in case of **V.K.Bansal** (supra) of running the sentence in different cases against one person, the same would run concurrently if arising out of the same transaction. The said analogy in view of the case of **V.K.Bansal** (supra), as has been considered hereinabove, I do not find it appropriate to comment over the observation made by the Supreme Court in case of **K. Padamaja Rani** (supra).

11. Furthermore, the Supreme Court in case of **Benson Vs. State of Kerala** (2016)10 SCC 307 has further considered the case of **V.K.Bansal** (supra) and observed as under:-

“6. In terms of sub-section (1) of Section 427, 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. Going by this normal principle, the sentence chart indicated in the communication dated 27-5-2016 is quite correct. However this normal rule is subject to a qualification and it is within the powers of the Court to direct that the subsequent sentence shall run concurrently with the previous sentence.

.....

“9. The maximum sentence in respect of the present crimes is two years’ rigorous imprisonment. As per the record, these crimes were committed on the same day. Having considered the matters, we deem it appropriate to direct that the sentences imposed in each of the cases i.e. (i) CC No. 158 of 2004, (ii) CC No. 1039 of 2003, (iii) CC No. 390 of 2004, and (iv) CC No. 1168 of 2006, namely, those at Sl. Nos. 9 to 12 respectively as indicated in the sentence chart in the communication dated 27-5-2016 shall run concurrently with the sentence imposed in Crime No. 8 which is currently operative. We grant this benefit in respect of substantive sentences to the appellant but maintain the sentences of fine and the default sentences. If the fine as imposed is not deposited, the default sentence or sentences will run consecutively and not concurrently.”

12. Over and above, the Supreme Court also in case of **Shyam Pal Vs. Dayawati Besoya and another** reported in (2016)10 SCC 761 has further considered this aspect and observed as under:-

“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 whereunder the respondent had advanced a loan of Rs 5 lakhs 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 dishonoured. 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.”

13. Moreso, the Supreme Court in case of **P.N. Mohanam Nair Vs. State of Kerala (2017) 14 SCC 719** considering the implication of the provisions of Section 427 Cr.P.C. has observed as under:-

“8. We do not consider it necessary to further elucidate or enter into an exposition of the law, in view of the precedents noticed above. Suffice it to observe that in the facts of the case, the exercise of discretion under Section 427(1) of the Code of Criminal Procedure, mandates that the substantive sentences imposed upon the appellant in the three separate prosecutions, are directed to run concurrently, except the default sentence, if the fine by way of compensation as imposed has not been paid by him. The appellant would naturally be entitled to all consequential reliefs for release from custody as available in law based on the present discussion.”

14. In **Trilok Chand Sharma Vs. State of Rajasthan (Criminal Miscellaneous (Petition) No. 6923/2024)** which was also relied upon by the learned counsel for the petitioner, the High Court of Rajasthan relying upon the case of **V.K.Bansal** (supra) has observed as under:-

‘8. As per Section 427 Code of Criminal Procedure (Now, Section 467 of BNSS, in normal course a person already undergoing a sentence of imprisonment, if sentenced on a subsequent conviction to imprisonment, such imprisonment commence at the expiration of the imprisonment to which he has been previously sentenced, but the court in its discretion based on settled principles may direct that the subsequent sentence shall run concurrently with previous sentence. While exercising such discretion, the trial court, appellate court or revisional court, as the case may be, keep in mind several factors. In the instant case, the learned trial Courts did not exercise its discretion with respect to concurrency of sentences and thus, there is absolutely non-consideration of the issue about invoking this discretion which is causing serious miscarriage of justice.

15. As per Shri Khare, the Rajasthan High Court while dealing with the provisions of Section 427 Cr.P.C. has very clearly observed that it is a discretionary power which can be exercised judiciously depending

upon the nature of the offence or the offences committed and the fact situation. The paragraph 10 of the judgment of Rajasthan High Court is reproduced herein below:-

‘10. In Arjun Ram vs State of Rajasthan : 2016 (1) Cr.L.R. (Raj.) 346, Hon'ble Division Bench of this Court has held that "to meet the ends of justice, power under Section 482 of Cr.PC can be exercised if Court arrives at the conclusion that the Trial Court, Appellate Court or the Revisional Court as the case may be, failed in completing the circuit of justice while invoking/not invoking the discretion vested with it as per Section 427 Cr.P.C. If the sentences are ordered to run consecutively, the petitioner has to remain incarcerated for a long time period in respect of his conviction and sentence in the aforementioned cases, which in no manner can be said to be justifiable.’

In the said case, the Rajasthan High Court taking note of the case reported in **2021 SCC OnLine SC 1183 (Mohd. Zahid Vs. State through NCB)**, in paragraph-9 has observed as under:-

“9. In Mohd. Zahid v State through NCB reported in 2021 SCC OnLine SC 1183, Hon’ble Supreme Court interpreted the provisions of Section 427 of CrPC after duly considering the precedents in the following terms:

“33. 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.”

16. Indeed, various judgments have been relied upon on behalf of the petitioner and perusal thereof, although this Court is not convinced to a degree that would favour the petitioner, but, on coming across a judgment of the Supreme Court, there appears a ray of hope for the petitioner. The said judgment has been rendered by the Supreme Court in case of **Iqram Vs. State of Uttar Pradesh and Others (2023) 3 SCC 184**, wherein the Supreme Court has also relied upon a case of Mohd. Jahid and has observed as under:-

‘10. 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.

11. In Mohd. Zahid v. State [Mohd. Zahid v. State, (2022) 12 SCC 426], this Court interpreted the provisions of Section 427CrPC after duly considering the precedents in the following terms : (SCC p.440, para 17)

“17. Thus from the aforesaid decisions of this Court, the principles of law that emerge are as under:

17.1. 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.

17.2. 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.

17.3. 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 427CrPC.

17.4. Under Section 427(1)CrPC 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.”

12. 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.

13. 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.

14. In view of the above discussion, we allow the appeal and set aside the impugned judgment of the High Court dated 24-3-2022 [Iqram v. State of U.P., 2022 SCC OnLine All 875]. We order and direct that the sentences which have been imposed on the appellant in the nine Sessions trials noticed in the earlier part of this judgment shall run concurrently.’

17. In Radheshyam (supra) relying upon the judgment of Supreme Court in case of **V.K.Bansal** (supra) has observed that in these cases of Section 138 of Negotiable Instrument Act, the sentences will run concurrently but the default sentence will run consecutively, although, the court has considered the fact that the cases arising out of same transaction and such observation can be seen from paragraph 15, which is as under:-

‘15. The aforesaid legal position mandates that exercise of discretion to the benefit of the accused in cases where the prosecution is based on a single transaction can be applied in appropriate cases. It would be irrespective of the fact that different complaints had been filed involving dishonour of cheques issued by the borrower towards repayment of single loan to the creditor.’

18. In **Rajkumar Daulatani** (supra) wherein the Rajasthan High Court, applying the principle of Section 427 Cr.P.C. considered the conviction and sentence awarded in 44 cases of Section 138 of Negotiable Instrument Act and observed as under:-

‘2. It is contended by learned counsel for the petitioner that the petitioner, who was a businessman and was carrying out the business of crockery, suffered huge losses and came to be convicted in 44 cases under Section 138 of the NI Act. He has been sentenced to undergo different period of sentences and the period of total substantive sentences comes to 83.5 years. It is further contended that Section 427 of the Code of Criminal Procedure Act, 1973 gives a discretion to this court to issue direction to run all the substantive sentences concurrently.

5. The Co-ordinate Bench of this court in **Rajendra Kabra**, (supra) has held as under:—

“24. Having considered the facts and circumstances of the present case, offence involved, sentences awarded, period of detention of the petitioner as on date and the law laid down by the Hon'ble Supreme Court in *State of Punjab v. Madan Lai, V.K. Bansal v. State of Haryana, Shyam Pal v. Dayawati Besoya, And Arnmavasai v. Inspector of Police*, (supra), I am of the considered view that it would not be inconsistent with the administration of criminal justice if the petitioner is allowed the benefit of discretion contained in Section 427 of the Code to meet the ends of justice. However, as per the law laid down by the Hon'ble Supreme Court in *V.K. Bansal v. State of Haryana and Shyam Pal v. Dayawati Besoya*, (supra), the direction for concurrent running of sentences would be limited only to the substantive sentences alone.

25. In such circumstances, the present misc. petition is allowed and it is ordered that the substantive sentences awarded to the petitioner in the above referred 32 cases would run concurrently, however, the petitioner will have to serve default sentences as the provisions of Section 427 of the Cr.P.C. do not permit a direction for concurrent running of substantive sentences with the sentences awarded in default of payment of fine/compensation. The sentences,

which the petitioner has been directed to undergo in default of payment of fine/compensation shall not be effected by this direction and if the petitioner has not paid the fine/compensation as directed by the Trial Courts; the said sentences would run consecutively. Needless to say, if the petitioner pays the fine/compensation now, he is not required to undergo default sentences (sentences awarded by the Trial Courts in default of payment of fine/compensation).

* * *

7. Accordingly, the instant criminal misc. petition is allowed. It is directed that the substantive sentences awarded to the petitioner in the aforesaid 44 cases u/S.138 of NI Act, shall run concurrently; however, it goes without saying that the petitioner will have to undergo default sentences. Consequently, in 5 case he fails in paying fine/compensation as directed therein.”

19. Relying upon the aforesaid enunciation of law passed by the Supreme Court and also by the High Courts considering different circumstances of the case though the Supreme Court in case of **V.K.Bansal** (supra) has used the word ‘single transaction’ and subsequently in case of **K. Padamaja Rani** (supra), it is also clarified that in case of **V.K.Bansal** (supra), the discretion under Section 427 Cr.P.C. can be applied when the sentence is awarded in different cases but arisen out of single transaction. However, in the judgment of the Supreme Court considered hereinabove that too after laying down a law in case of **V.K.Bansal** (supra), the Supreme Court has further clarified that provisions of Section 427 Cr.P.C. are completely a discretionary exercise of power and can be applied and exercised to meet the ends of justice considering the facts and circumstances of the case.

20. In case of **Iqram** (supra), the Supreme Court has clarified that under Section 427(1) Cr.P.C., the Court has the power and discretion to issue a direction that all the subsequent sentences shall run concurrently with the previous sentences. However, the discretion has to be exercised judiciously depending upon the nature of offence or the offence 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. It is a general rule that Section 427 Cr.P.C. can be applied when conviction and sentence awarded arising out of same transaction but looking to the facts and circumstances of the case in hand and the view taken by the Supreme Court and also by the High Courts that the discretion has to be exercised in the fact situation to avoid any serious miscarriage of justice, meaning thereby there is no strict bar applying the principle of Section 427 in a case arising out of the same transaction. However, in the present case, there are 22 cases and maximum sentence awarded in a case of Section 138 of Negotiable Instrument Act in some of the cases are two years and the default sentence is one month and 15 days. As such, total period of sentence would come to 30 years & 06 months and it is something beyond the realm of imagination that a person convicted under Section 138 of Negotiable Instrument Act has to suffer a sentence of 30 years, coupled with that there is already a concurrent view that the default sentence cannot run concurrently, therefore, in my opinion, without interfering in the default sentence, in the present case, this Court has no hesitation to exercise its discretion applying Section 427 of Cr.P.C. to meet the ends of justice that the sentence awarded to the petitioner in the offences contained in chart as mentioned in the petition shall run concurrently.

21. With the aforesaid, the petition stands **allowed and disposed of**.

(SANJAY DWIVEDI)
JUDGE