

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Cr. MMO No. 592 of 2025****Reserved on: 2.07.2025****Date of Decision: 14<sup>th</sup> July, 2025**

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**Shiva Packages & anr.****...Petitioners****Versus****State of Himachal Pradesh & anr.****...Respondents**

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***Coram******Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?<sup>1</sup> No.*****For the Petitioners : Mr. K.S. Gill, Advocate.****For the Respondents : Mr. Lokender Kutlehria, Additional  
Advocate General, for the  
respondent-State.**

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**Rakesh Kainthla, Judge**

The petitioner has filed the present petition for ordering the concurrent running of the sentences imposed in Criminal Complaint No.181/3 of 2016, dated 23.11.2020, and Criminal Complaint No.62/3 of 2015, dated 23.11.2020, awarded by the learned Judicial Magistrate First Class, Nahan, District Sirmaur, H.P. (learned Trial Court)

2. It has been asserted that respondent No.2/complainant filed a complaint against the petitioner before the learned Trial Court, which was registered as complaint No.181/3 of 2016. The petitioner-accused was convicted and a compensation of ₹1,16,050/- was ordered to be paid. It was further ordered that in the event of default of payment of the compensation amount, the petitioner shall undergo simple imprisonment for two months. Another complaint was filed by respondent No.2-complainant, which was registered as complaint No.62/3 of 2015. The learned Trial Court sentenced the petitioner-accused to pay a compensation of ₹81,000/- and in default of the payment of compensation to undergo simple imprisonment for two months. The petitioner preferred appeals, but these were dismissed. The petitioner is a handicapped person. He has served the sentence awarded to him in one complaint and is behind the bars in another. He was unable to pay the money due to his physical disability. This Court has inherent jurisdiction to direct the concurrent running of the sentence. Hence, it was prayed that the present petition be allowed and the sentences awarded by learned Judicial

Magistrate First Class, Nahan, District Sirmaur, H.P. be ordered to run concurrently.

3. I have heard Mr. K.S. Gill, learned counsel for the petitioner/accused and Mr. Lokender Kutlehria, learned Additional Advocate General, for the respondent/State.

4. Mr. K.S. Gill, learned counsel for the petitioner, submitted that the petitioner was sentenced in two different cases, which arose out of the same transaction. The petitioner has served a sentence in one complaint, therefore, he prayed that a direction be issued that both sentences should run concurrently.

5. Mr. Lokender Kutlehria, learned Additional Advocate General, for the respondent/State, submitted that the petitioner was sentenced in two different complaints. The substantive sentence of imprisonment was not imposed. The petitioner was directed to pay the compensation, and in default of payment of compensation, to undergo imprisonment. The sentence in default of payment of compensation cannot be ordered to run concurrently. He prayed that the present petition be dismissed.

6. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

7. It was laid down by the Division Bench of this Court in *Sushil Kumar @ Shashi versus State of Himachal Pradesh, 2014 (1) Shimla Law Cases 214* that when a person was convicted for the commission of two offences in separate trials in respect of different transactions, the Court cannot pass a direction that sentences should run concurrently. It was observed:

“12. Their Lordships of the Supreme Court in *Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti v. Assistant Collector of Customs (Prevention), Ahmedabad and another, [(1988) 4 SCC 183]*, while taking note of Section 427 of the Code of Criminal Procedure observed that the crime committed by the accused is relevant for measuring the sentence, but the maximum sentence awarded in one case against the same accused should also be kept in mind while awarding the consecutive sentence in the second case although it is grave. The Court has to consider the totality of the sentences which the accused has to undergo if the sentences are to be consecutive. The totality principle has been accepted as a correct principle for guidance. In para 10, the Supreme Court observed as under:

"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."

13. In *M.R. Kudva v. State of A.P.*, [(2007) 2 SCC 772], the Supreme Court while taking note of Section 427 of the Code of Criminal Procedure held that when the provision of this Section is not involved in the original cases or appeals such an application/petition thereafter is not maintainable and the High Court has no jurisdiction to entertain such a request. The said provision cannot be applied in a separate and independent proceeding. The reliance can also be placed on another judgment of the Supreme Court in *State of Punjab v. Madan Lal*, [(2009) 5 SCC 238] wherein the majority view in *State of Maharashtra v. Najakat*, [(2001) 6 SCC 311] has been relied upon.

14. In the instant case, petitioner Sushil Kumar was convicted for two offences in separate trials for attempted murder of a person and murder of another person at two different times. Both these transactions were different in time and separate, and were also not interconnected with each other. Therefore, we are of the opinion that this Court cannot interfere with the sentences passed in two separate cases, tried and decided separately under its inherent jurisdiction; therefore, the petition is dismissed."

8. This judgment is binding upon this Court.

9. It was held in *Jimee versus State of Himachal Pradesh*, [2013 Latest HLJ (H.P.) 1413 = 2014(1) Him. L.R. 51 = 2013(11) R.C.R.(Criminal) 70], that the jurisdiction under Section 427 of Cr.P.C. cannot be exercised in respect of two different transactions having taken place at two different places. It was observed:

“8. The case in hand is a case of two different transactions/occurrences having taken place at two different places and on different occasions and even under different circumstances; the first incident is of 16/17.10.2006, when a motor motorcycle bearing registration No. HP-21A-1406 of PW-8 Ravinder Kumar (complainant) was stolen by the accused from Chakki road, Baddi, which he had parked on 16.10.2006 there outside his room, whereas, the second incident pertains to the murder of one Tara Devi of village Talaw, Tehsil Sarkaghat, District Mandi during the night intervening 8/9.12.2008 in order to commit theft of jewellery and other valuable articles from the house of the deceased. Therefore, the first incident pertains to theft, whereas the second is that of murder and robbery/dacoity. The present, therefore, is a case of two different transactions, however, not having identical or similar characteristics and rather quite distinct and different. While the first transaction pertains to the theft of a motorcycle, the second qua the murder of one Tara Devi, committed intentionally to take away jewellery and other valuable articles from her house. The victims/complainants in these transactions are different persons. The place and time are also separate and distinct. The cases registered in respect of both transactions have also been decided by different courts and vide different judgments. Therefore, in the considered opinion of this Court, the present is not a fit case warranting an order to run the sentences concurrently.

9. Interestingly enough, at the time of the subsequent sentence under Section 379 of the Indian Penal Code, the learned defence counsel has only made a reference to the previous conviction and sentence awarded against the petitioner-convict for the commission of an offence under Section 392 and 304-II of Indian Penal Code and seems to have not sought an order to run the sentence so imposed concurrently with the one imposed against the petitioner-convict by learned Presiding Officer, Fast

Track Court, Mandi previously. On the other hand, the benefit of set-off under Section 428 of the Code of Criminal Procedure is also declined by the learned trial Magistrate on the ground that his confinement in jail was in respect of his previous conviction while sentencing the accused under Section 379 of the Indian Penal Code. The intention of the Court, which has convicted and sentenced the petitioner-convict subsequently, therefore, is that the sentence so awarded shall run consecutively, i.e. on the expiration of the previous sentence of five years rigorous imprisonment awarded against him by the learned Presiding Officer, Fast Track Court, Mandi. Even the sentence so passed against him has been affirmed by the learned appellate Court vide judgment Annexure P-2. As a matter of fact, this point was not urged before the appellate Court. Had it been urged before it, the appellate Court, being competent, could have considered the same and passed the appropriate order. Therefore, the present being case of two different transactions relating to the commission of offences is not the same and similar and rather the facts constituting two offences are different, imposition of consecutive sentences would serve the ends of justice. The sentences to run concurrently should only be ordered in the case of a single transaction, irrespective of relating to more than one offence and more than one enactment, but would be misplaced sympathy in a case of this nature.

10. Learned counsel appearing on behalf of the petitioner has placed reliance on the judgment of Apex Court in *State of Punjab v. Madan Lal*, (2009) 5 SCC 238 in order to persuade this Court to take a view that the present is a case warranting the sentences awarded in two cases to run concurrently, however, unsuccessfully for the reason that the law laid down in this judgment is not attracted in the given facts and circumstances of this case and, as such, is distinguishable on facts, because that was a case where the complainant was same and all the three transactions relate to the same family of the respondent

pertaining to the issuance of different cheques by the respondent to the complainant parties, leading in registration of different complaints under Section 138 of Negotiable Instruments Act. The facts of this case, however, are different and distinct from the ones which were in the case before the Hon'ble Apex Court.

11. Similarly, the judgment of the Apex Court in *Ramesh Chilwal alias Bambayya v. State of Uttrakhand*, (2012) 11 SCC 629 is also not applicable in this case for the reason that though being a case of single transaction, resulted in registration of two separate cases; one under Section 302 of Indian Penal Code read with Sections 2/3[3(1)], Gangsters Act and the other under Section 27 of the Arms Act. Since in the case registered under Section 302 IPC, the sentence of life imprisonment was awarded against the convict, therefore, the Apex Court keeping in view the provisions contained under Section 31 of the Code of Criminal Procedure while maintaining the order to run the sentences concurrently in both cases has observed that in view of the sentence of life imprisonment awarded by the trial Court under Section 302 of Indian Penal Code, therefore, all sentences imposed under IPC, the Gangsters Act and the Arms Act are to run concurrently. The present, however, is not a case of awarding of sentence of life imprisonment, warranting the sentence passed against the petitioner to run concurrently."

10. The Hon'ble Supreme Court held in *Neera Yadav v. CBI*, (2017) 8 SCC 757: (2017) 3 SCC (Cri) 515: 2017 SCC OnLine SC 858, that when a person has been convicted of the commission of the different offences committed at different times, the sentence cannot be ordered to run concurrently. It was observed:

"70. The sentencing court has the discretion to direct concurrency. The investiture of such discretion



presupposes that it will be exercised on sound principles and not on whims. In the Criminal Procedure Code, there are no guidelines or specific provisions to suggest under what circumstances the various sentences of imprisonment shall be directed to run concurrently or consecutively. There is no straitjacket formula for the court to follow in the matter of issue or refusal of a direction within the contemplation of Section 427(1) CrPC. Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed. In para 69 in *K. Prabhakaran v. P. Jayarajan* [*K. Prabhakaran v. P. Jayarajan*, (2005) 1 SCC 754: 2005 SCC (Cri) 451, contains a discussion on the topic. To quote: (SCC p. 785)

“69. In the case of the respondent, the Magistrate ordered that the sentence on various counts shall run consecutively. That does not mean that the respondent had been convicted of any offence, for which the sentence of imprisonment is two years or more. The direction for the sentence to run concurrently or consecutively is a direction as to the mode in which the sentence is to be executed. That does not affect the nature of the sentence. *It is also important to note that in the Code of Criminal Procedure, there are no guidelines or specific provisions to suggest under what circumstances the various sentences of imprisonment shall be directed to run concurrently or consecutively. There are no judicial decisions, to my knowledge, by superior courts laying down the guidelines as to what should be the criteria for directing the convict to undergo imprisonment on various counts concurrently or consecutively.* In certain cases, if the person convicted is a habitual offender and he has been found guilty of offences on various counts, and it is suspected that he would be a menace if he is let loose on society, then the

court would direct that such a person shall undergo imprisonment consecutively. ...”

(emphasis supplied)

71. It is well settled that where there are different transactions, different crime numbers, and cases have been decided by different judgments, concurrent sentences cannot be awarded under Section 427 CrPC. In *Mohd. Akhtar Hussain v. Collector of Customs* [*Mohd. Akhtar Hussain v. Collector of Customs*, (1988) 4 SCC 183; 1988 SCC (Cri) 921], it was held as under: (SCC p. 187, paras 10 & 12)

“10. 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.

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12. The submission, in our opinion, appears to be misconceived. The material produced by the State unmistakably indicates that the two offences for which the appellant was prosecuted are quite distinct and different. The case under the Customs Act may, to some extent, overlap the case under the Gold (Control) Act, but it is evidently on different transactions. The complaint under the Gold (Control) Act relates to the possession of 7000 tolas of primary gold prohibited under Section 8 of the said Act. The complaint under the Customs Act is with regard to the smuggling of gold worth Rs 12.5 crores and the export of silver worth Rs 11.5 crores. On these facts, the courts are not unjustified in

directing that the sentences should be consecutive and not concurrent.”

72. The above general rule that there cannot be concurrency of sentences if conviction relates to two different transactions can be changed by an order of the court. There is no straitjacket formula for the court to follow in the matter of issue or refusal of a direction within the contemplation of Section 427(1) CrPC. Depending on the special and peculiar facts and circumstances of the case, it is for the court to make the sentence of imprisonment in the subsequent trial run concurrently with the sentence in the previous one. In *Benson v. State of Kerala* [*Benson v. State of Kerala*, (2016) 10 SCC 307: (2017) 1 SCC (Cri) 108], this Court directed the substantive sentences imposed on the appellant to run concurrently. In *V.K. Bansal v. State of Haryana* [*V.K. Bansal v. State of Haryana*, (2013) 7 SCC 211: (2013) 3 SCC (Civ) 498: (2013) 3 SCC (Cri) 282], some sentences were to run concurrently and some consecutively. In paras 14 and 16 in *V.K. Bansal case* [*V.K. Bansal v. State of Haryana*, (2013) 7 SCC 211: (2013) 3 SCC (Civ) 498 : (2013) 3 SCC (Cri) 282], it was held as under : (SCC p. 217)

“14. We may at this stage refer to the decision of this Court in *Mohd. Akhtar Hussain v. Collector of Customs* [*Mohd. Akhtar Hussain v. Collector of Customs*, (1988) 4 SCC 183: 1988 SCC (Cri) 921] 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: (SCC p. 187, para 10)

‘10. 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.’

16. In conclusion, we may say that the legal position favours the exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter how 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.”

73. This instant case is one covered under Section 427 CrPC. As noted earlier appellant Neera Yadav has been convicted in two different cases, one of abusing the official position in getting the plots allotted to herself and her daughters and other irregularities in making changes in the site plan and another one of abusing her position as CEO, Noida conspired with Rajiv Kumar in allotting plot to him. Having regard to the facts and circumstances of the case and considering the nature of the allegations, in our view, it is not justifiable to direct concurrency of the sentence. Any unprincipled exercise of judicial discretion and casual direction made regarding concurrency would go against the express provisions of the Prevention of Corruption Act, 1988 and the Criminal Procedure Code.”

11. In a cheque dishonour case, the Hon’ble Supreme Court held in *Rajpal v. Om Prakash*, (2019) 17 SCC 809: (2020) 3 SCC (Cri) 429: (2020) 3 SCC (Civ) 599: 2018 SCC OnLine SC 3264, that where different criminal cases were filed regarding the

dishonour of cheques, the sentence cannot be ordered to run concurrently. It was observed:

“2. For the dishonour of two cheques dated 10-4-2010 and 5-9-2010, for Rs 2,50,000 and Rs 1,25,000 respectively, two criminal cases being Case No. 601 of 2010 and Criminal Case No. 132-A of 2010, were initiated against the appellant. In Criminal Case No. 601 of 2010 (pertaining to the cheque of Rs 2,50,000), the appellant was sentenced to undergo imprisonment of one year and six months, by the judgment dated 8-9-2015, affirmed by the appellate court. In Criminal Appeal No. 132-A of 2010 relating to the subsequent cheque dated 5-9-2010 of Rs 1,25,000, the appellant has been sentenced to undergo imprisonment of one year, which was reduced to nine months by the High Court [*Rajpal v. Om Parkash*, 2017 SCC OnLine P&H 5364].

3. Placing reliance upon the judgment of this Court in *Shyam Pal v. Dayawati Besoya* [*Shyam Pal v. Dayawati Besoya*, (2016) 10 SCC 761: (2017) 1 SCC (Civ) 202: (2017) 1 SCC (Cri) 264], the learned counsel appearing for the appellant submitted that the sentences imposed on the appellant are to run concurrently. In *Shyam Pal case* [*Shyam Pal v. Dayawati Besoya*, (2016) 10 SCC 761: (2017) 1 SCC (Civ) 202: (2017) 1 SCC (Cri) 264], this Court has held that the concession of concurrent running of sentence can be extended only to the cases arising out of a single transaction. Para 13 of the *Shyam Pal case* [*Shyam Pal v. Dayawati Besoya*, (2016) 10 SCC 761: (2017) 1 SCC (Civ) 202: (2017) 1 SCC (Cri) 264] read as under: (SCC p. 765)

“13. Though this provision has fallen for scrutiny of this Court umpteen times, we can profitably refer to one of the recent pronouncements in *V.K. Bansal v. State of Haryana* [*V.K. Bansal v. State of Haryana*, (2013) 7 SCC 211 : (2013) 3 SCC (Civ) 498 : (2013) 3 SCC (Cri) 282] where it was held that

though it is manifest from Section 427(1), that the court has the power and discretion to issue a direction that a subsequent sentence shall run concurrently with the previous sentences, the very nature of the power so conferred, predicates that the discretion, would have to be exercised along judicial lines or not in a mechanical or pedantic manner. It was underlined that there is no cut-and-dried formula for the court to follow, in the exercise of such power and that the justifiability or otherwise of the same would depend on the nature of the offence or offences committed and the attendant facts and circumstances. It was, however, postulated that the legal position favours the exercise of the discretion to the benefit of the prisoners in cases where the prosecution is based on a single transaction, no matter even if different complaints in relation thereto might have been filed. The caveat as well was that such a concession cannot be extended to transactions which are distinctly different, separate and independent of each other and amongst others where the parties are not the same.”

4. As pointed out earlier in the present case, the appellant's conviction arose out of two different cheques dated 10-4-2010 and 5-9-2010, and it cannot be said that the conviction arose out of a single transaction warranting an exercise of discretion to direct the sentences to run concurrently.”

12. It was held in *Mohd. Zahid v. State*, (2022) 12 SCC 426: 2021 SCC OnLine SC 1183, that ordinarily, the subsequent sentence would commence at the expiration of the first term unless the Court directs the subsequent sentence to run

concurrently. The general rule is that where there are different transactions, different crime numbers, and cases have been decided by different judgments, concurrent sentences cannot be awarded under Section 427. It was observed:

“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 that have been decided by different judgments, concurrent sentences 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 the situation. However, there must be a specific direction or order by the court that the subsequent sentence run concurrently with the previous sentence.”

13. The Hon'ble Supreme Court held in *K. Padamaja Rani versus State of Telangana, SLP (Criminal) No. 6742 of 2023 decided on 28.07.2023* that the Court can order the concurrent running of the sentence if the offences have arisen out of a single transaction. When there were several transactions over some time, such direction cannot be given.

14. Moreover, in the present case, a substantive sentence of imprisonment was not awarded, and the imprisonment was awarded in default of payment of a fine. Section 428 of Cr.PC provides that the benefit of set-off cannot be provided for the imprisonment in default of payment of a fine. It was laid down by the Rajasthan High Court in *Bagdaram v. State of Rajasthan, 1987 SCC OnLine Raj 78: (1988) 1 RLW 32: 1989 Cri LJ 414: (1987) 2 WLN 817* that it is impermissible for the Court to set off the substantive sentence of imprisonment with the sentence awarded in default of the payment of fine. It was observed at page 33:

“4. The learned counsel for the appellant Bagdaram referred to the decision of this Court in *Budha Ram v. State of Rajasthan* (1). That decision was in connection with the suspension of sentence under section 389 of the Code of Criminal Procedure. The language of the proviso to section 421(1) and 428 Cr. P.C. is very clear.



Section 428 of the Code excludes the imprisonment in default of payment of fine from being subjected to a set-off of the period of detention undergone by a convict during the investigation, inquiry or trial in the case. Proviso to section 421(1) Cr. P.C. forbids the issue of a warrant for the levy of the amount of fine by attachment or for realising the amount as arrears only for the offenders who have already undergone the whole of the imprisonment imposed in default of payment of fine. Since the appellant has admittedly not deposited the amount of fine of Rs. 500/-, he is liable to undergo rigorous imprisonment for three months imposed upon him in default of the payment of fine and this period of imprisonment awarded to him in default of payment of fine cannot be subjected to a set off by the period the appellant had been under detention during the investigation, inquiry or trial of the case.”

15. Therefore, it is impermissible to direct that the sentences in default of payment of compensation shall run concurrently.

16. In view of the above, the present petition fails and the same is dismissed.

17. The observation made herein before shall remain confined to the disposal of the instant petition and will have no bearing, whatsoever, on the merits of the case.

**(Rakesh Kainthla)**  
**Judge**

14<sup>th</sup> July, 2025  
(mamta)