

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10<sup>TH</sup> DAY OF MARCH, 2021

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION NO.705/2020

C/W.

CRIMINAL PETITION NO.1062/2020

CRIMINAL PETITION No.1098/2020

CRIMINAL PETITION NO.26/2020

CRIMINAL PETITION NO.34/2020

CRIMINAL PETITION NO.3977/2019

CRIMINAL PETITION NO.62/2020

CRIMINAL PETITION NO.630/2020

CRIMINAL PETITION NO.703/2020

CRIMINAL PETITION NO.758/2020

IN CRIMINAL PETITION NO.705/2020:

BETWEEN:

SMT.C. BHARATHI  
W/O T. VENKATASWAMY REDDY  
AGED ABOUT 45 YEARS  
R/AT No.137, TCP LAYOUT  
OLD CHANDAPURA  
BOMMASANDRA POST  
ANEKAL TALUK  
BENGALURU-560 099

... PETITIONER

(BY SRI SHIVA PRASAD Y.S., ADVOCATE)

AND:

1 . SMT. SHALINI R.  
W/O BHARATHISH N  
AGED 29 YEARS

R

R/AT 583, NEAR NERALURU BUS STOP  
NERALURU VILLAGE AND POST  
ANEKAL TALUK  
BENGALURU-562 107

2 . CHIEF SUPERINTENDENT  
CENTRAL PRISON  
PARAPPANA AGRAHARA  
BENGALURU-562 100  
REPRESENTED BY STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDINGS  
BENGALURU-560 001

... RESPONDENTS

(BY SMT. B.G.NAMITHA MAHESH, HCGP FOR R2  
R1 IS SERVED AND UNREPRESENTED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482  
OF CR.P.C PRAYING TO DIRECT THE 2<sup>ND</sup> RESPONDENT TO  
RELEASE THE PETITIONER FORTHWITH FROM THE CENTRAL  
PRISON, BENGALURU IN C.C.NO.26313/2015 ON 04.02.2017 BY  
XIX ADDL.C.M.M., BENGALURU.

IN CRIMINAL PETITION NO.1062/2020:

BETWEEN:

SMT.C. BHARATHI  
W/O T. VENKATASWAMY REDDY  
AGED ABOUT 45 YEARS  
R/AT 137, TCP LAYOUT  
OLD CHANDAPURA  
YELLAMMADEVI PRASANNA NILAYA  
ATTIBELE HOBLI, ANEKAL TLAUK  
BENGALURU-560 099

... PETITIONER

(BY SRI SHIVA PRASAD Y.S., ADVOCATE)

AND:

- 1 . SMT. K.MANJULA  
W/O SRINIVASA REDDY  
AGE: 49 YEARS  
R/AT MUTHANALLURU VILLAGE  
SARJAPURA HOBLI, ANEKAL TALUK  
BENGALURU DISTRICT
  
  - 2 . CHIEF SUPERINTENDENT  
CENTRAL PRISON  
PARAPPANA AGRAHARA  
BENGALURU-562 100  
REPRESENTED BY STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDINGS  
BENGALURU-560 001
- ... RESPONDENTS

(BY SRI H.P.LEELADHAR, ADVOCATE FOR R1-(THROUGH V.C);  
SMT. B.G.NAMITHA MAHESH, HCGP FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO DIRECT THE 2<sup>ND</sup> RESPONDENT TO RELEASE THE PETITIONER FORTHWITH FROM THE CENTRAL PRISON, BENGALURU IN C.C.NO.976/2016 ON 21.07.2017 BY PRL. CIVIL JUDGE AND JMFC AT ANEKAL.

IN CRIMINAL PETITION No.1098/2020:

BETWEEN:

SMT.C. BHARATHI  
W/O T. VENKATASWAMY REDDY  
AGED ABOUT 45 YEARS  
R/AT 137, TCP LAYOUT  
OLD CHANDAPURA VILLAGE  
BOMMASANDRA POST  
ANEKAL TALUK  
BENGALURU-560 099

... PETITIONER

(BY SRI SHIVA PRASAD Y.S., ADVOCATE)

AND:

- 1 . SMT. SOWBHAGYA K.P.,  
W/O RAVEENDRA REDDY  
AGE: MAJOR  
R/AT 340/1, LAKSHMAMMA  
RATACHAPPA BUILDING  
TCP LAYOUT, CHANDAPURA POST  
OLD CHANDAPURA VILLAGE  
ANEKAL HOBLI, ANEKAL TALUK  
BENGALURU DISTRICT-560 099
  
- 2 . CHIEF SUPERINTENDENT  
CENTRAL PRISON  
PARAPPANA AGRAHARA  
BENGALURU-562 100  
REPRESENTED BY STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDINGS  
BENGALURU-560 001.

... RESPONDENTS

(BY SRI H.P.LEELADHAR, ADVOCATE FOR R1-(THROUGH V.C.);  
SMT. B.G.NAMITHA MAHESH, HCGP FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO DIRECT THE 2<sup>ND</sup> RESPONDENT TO RELEASE THE PETITIONER FORTHWITH FROM THE CENTRAL PRISON, BENGALURU IN C.C.NO.2025/2016 ON 21.07.2017 BY PRINCIPAL CIVIL JUDGE AND JMFC., ANEKAL.

IN CRIMINAL PETITION NO.26/2020:BETWEEN:

SMT.C. BHARATHI  
W/O T. VENKATASWAMY REDDY  
AGED ABOUT 45 YEARS  
R/AT 137, TCP LAYOUT  
OLD CHANDAPURA  
BOMMASANDRA POST

ANEKAL TLAUK  
BENGLAURU-560 099

... PETITIONER

(BY SRI SHIVA PRASAD Y.S., ADVOCATE)

AND:

- 1 . SMT.YASHODHAMMA  
W/O GOPALA REDDY  
AGE: 59 YEARS  
R/AT MUTTANALLURU VILLAGE & POST  
SARJAPURA HOBLI  
ANEKAL TALUK  
BENGALURU DISTRICT-562 125
- 2 . CHIEF SUPERINTENDENT  
CENTRAL PRISON  
PARAPPANA AGRAHARA  
BENGALURU-562 100  
REPRESENTED BY STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDINGS  
BENGALURU-560 001

... RESPONDENTS

(BY SRI H.P.LEELADHAR, ADVOCATE FOR R1-(THROUGH V.C.);  
SMT. B.G.NAMITHA MAHESH, HCGP FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482  
OF CR.P.C PRAYING TO DIRECT THE 2<sup>ND</sup> RESPONDENT TO  
RELEASE THE PETITIONER FORTHWITH FROM THE CENTRAL  
PRISON, BENGALURU IN C.C.NO.1205/2015 ON 21.07.2017 BY  
THE PRINCIPAL CIVIL JUDGE AND JMFC., ANEKAL.

IN CRIMINAL PETITION NO.34/2020:

BETWEEN:

SMT.C. BHARATHI  
W/O T. VENKATASWAMY REDDY  
AGED ABOUT 45 YEARS

R/AT 137, TCP LAYOUT  
OLD CHANDAPURA  
BOMMASANDRA POST  
ANEKAL TALUK  
BENGLAURU-560 099

... PETITIONER

(BY SRI SHIVA PRASAD Y.S., ADVOCATE)

AND:

1 . SRI M.B.GOPALA REDDY  
S/O BUDDA REDDY  
AGE: 69 YEARS  
R/AT MUTTANAILLURU VILLAGE  
SARJAPURA HOBLI  
ANEKAL TALUK  
BENGALURU DISTRICT-562 125

2 . CHIEF SUPERINTENDENT  
CENTRAL PRISON  
PARAPPANA AGRAHARA  
BENGALURU-562 100  
REPRESENTED BY STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDINGS  
BENGALURU-560 001

... RESPONDENTS

(BY SRI H.P.LEELADHAR, ADVOCATE FOR R1-(THROUGH V.C.);  
SMT. B.G.NAMITHA MAHESH, HCGP FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482  
OF CR.P.C PRAYING TO DIRECT THE 2<sup>ND</sup> RESPONDENT TO  
RELEASE THE PETITIONER FORTHWITH FROM THE CENTRAL  
PRISON, BENGALURU IN C.C.NO.05/2016 ON 21.07.2017 BY  
THE PRINCIPAL CIVIL JUDGE AND JMFC., ANEKAL.

IN CRIMINAL PETITION NO.3977/2019:

BETWEEN:

SMT.C. BHARATHI  
W/O T. VENKATASWAMY REDDY  
AGED ABOUT 45 YEARS  
R/AT 137, TCP LAYOUT  
OLD CHANDAPURA  
BOMMASANDRA POST  
ANEKAL TALUK  
BENGLAURU-560 099

... PETITIONER

(BY SRI SHIVA PRASAD Y.S., ADVOCATE)

AND:

1 . LOKESH REDDY N.,  
S/O NARASA REDDY  
AGED ABOUT 39 YEARS  
R/AT No.237, RCR LAYOUT  
YADAVANAHALLI VILLAGE & POST  
ANEKAL TALUK  
BENGALURU-562 107

2 . CHIEF SUPERINTENDENT  
CENTRAL PRISON  
PARAPPANA AGRAHARA  
BENGALURU-562 100  
REPRESENTED BY STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDINGS  
BENGALURU-560 001

... RESPONDENTS

(BY SMT. B.G.NAMITHA MAHESH, HCGP FOR R2;  
R1 IS SERVED AND UNREPRESENTED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482  
OF CR.P.C PRAYING TO DIRECT THE 2<sup>ND</sup> RESPONDENT TO  
RELEASE THE PETITIONER FORTHWITH FROM THE CENTRAL

PRISON, BENGALURU IN C.C.NO.26312/2015 ON 04.02.2017 BY XIX ADDL.C.M.M., BENGALURU, IN C.C.NO.26313/2015 ON 04.02.2017 BY XIX ACMM AT BENGALURU IN CC.NO.28193/2015 DATED 11.04.2017 BY XIII ACMM AT BENGALURU IN C.C.NO.744/2015 ON 21.07.2017 IN C.C.NO.976/2016 ON 21.07.2017 IN C.C.NO.1815/2016 ON 21.07.2017 IN C.C.NO.2025/2016 ON 21.07.2017 IN C.C.NO.05/2016 ON 21.07.2017 IN C.C.NO.1204/2015 ON 21.07.2017 IN C.C.NO.1205/2015 ON 21.07.2017 IN C.C.NO.146/2016 ON 21.07.2017 BY PRINCIPAL CIVIL JUDGE AND JMFC., AT ANEKAL.

IN CRIMINAL PETITION NO.62/2020:

BETWEEN:

SMT.C. BHARATHI  
W/O T. VENKATASWAMY REDDY  
AGED ABOUT 45 YEARS  
R/AT 137, TCP LAYOUT  
OLD CHANDAPURA  
BOMMASANDRA POST  
ANEKAL TALUK  
BENGALURU-560 099

... PETITIONER

(BY SRI SHIVA PRASAD Y.S., ADVOCATE)

AND:

1. SMT. SOWBHAGYA K.P.,  
W/O RAVEENDRA REDDY  
AGE: MAJOR  
R/AT 340/1, LAKSHMAMMA  
RATACHAPPA BUILDING  
TCP LAYOUT, OLD CHANDAPURA  
ANEKAL TALUK  
BENGALURU DISTRICT-562 125



2 . CHIEF SUPERINTENDENT  
CENTRAL PRISON  
PARAPPANA AGRAHARA  
BENGALURU-562 100  
REPRESENTED BY STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDINGS  
BENGALURU-560 001

... RESPONDENTS

(BY SRI H.P.LEELADHAR, ADVOCATE FOR R1-(THROUGH V.C.);  
SMT. B.G.NAMITHA MAHESH, HCGP FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482  
OF CR.P.C PRAYING TO DIRECT THE 2<sup>ND</sup> RESPONDENT TO  
RELEASE THE PETITIONER FORTHWITH FROM THE CENTRAL  
PRISON, BENGALURU IN C.C.NO.1815/2016 ON 21.07.2017 BY  
THE PRL. JMFC., AT ANEKAL.

IN CRIMINAL PETITION NO.630/2020:

BETWEEN:

SMT.C. BHARATHI  
W/O T. VENKATASWAMY REDDY  
AGED ABOUT 49 YEARS  
R/AT No.137, TCP LAYOUT  
OLD CHANDAPURA VILLAGE AND POST  
ATTIBELE HOBLI, ANEKAL TALUK  
BENGALURU-560 099

... PETITIONER

(BY SRI SHIVA PRASAD Y.S., ADVOCATE)

AND:

1 . SMT. PUTTAMMA  
W/O LATE B.M.RAMASWAMY REDDY  
AGE: 73 YEARS  
R/AT BANAHALLI VILLAGE  
ATTIBELE HOBLI, ANEKAL TALUK  
BENGALURU DISTRICT-562 102

2 . CHIEF SUPERINTENDENT  
CENTRAL PRISON  
PARAPPANA AGRAHARA  
BENGALURU-562 100  
REPRESENTED BY STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDINGS  
BENGALURU-560 001

... RESPONDENTS

(BY SMT. B.G.NAMITHA MAHESH, HCGP FOR R2  
R1 IS SERVED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482  
OF CR.P.C PRAYING TO DIRECT THE 2<sup>ND</sup> RESPONDENT TO  
RELEASE THE PETITIONER FORTHWITH FROM THE CENTRAL  
PRISON, BENGALURU IN C.C.NO.744/2015 ON 21.07.2017 BY  
PRINCIPAL CIVIL JUDGE AND JMFC., ANEKAL.

IN CRIMINAL PETITION NO.703/2020:

BETWEEN:

SMT.C. BHARATHI  
W/O T. VENKATASWAMY REDDY  
AGED ABOUT 45 YEARS  
R/AT No.137, TCP LAYOUT  
OLD CHANDAPURA  
YELLAMMADEVI PRASANNA NILAYA  
ATTIBELE HOBLI, ANEKAL TLAUK  
BENGLAURU-560 099

... PETITIONER

(BY SRI SHIVA PRASAD Y.S., ADVOCATE)

AND:

1 . SRI. CHANDRA REDDY  
S/O LATE VENKATA REDDY  
AGE: 64 YEARS  
R/AT MUTTANALLURU VILLAGE & POST

SARJAPURA HOBLI, ANEKAL TALUK  
BENGALURU DISTRICT-562 125

- 2 . CHIEF SUPERINTENDENT  
CENTRAL PRISON  
PARAPPANA AGRAHARA  
BENGALURU-562 100  
REPRESENTED BY STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDING  
BENGALURU-560 001.

... RESPONDENTS

(BY SRI H.P.LEELADHAR, ADVOCATE FOR R1-(THROUGH V.C.);  
SMT. B.G.NAMITHA MAHESH, HCGP FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482  
OF CR.P.C PRAYING TO DIRECT THE 2<sup>ND</sup> RESPONDENT TO  
RELEASE THE PETITIONER FORTHWITH FROM THE CENTRAL  
PRISON, BENGALURU IN C.C.NO.1204/2015 ON 21.07.2017 BY  
PRINCIPAL CIVIL JUDGE AND JMFC., ANEKAL.

IN CRIMINAL PETITION NO.758/2020:

BETWEEN:

SMT.C. BHARATHI  
W/O T. VENKATASWAMY REDDY  
AGED ABOUT 45 YEARS  
R/AT No.137, TCP LAYOUT  
OLD CHANDAPURA  
BOMMASANDRA POST  
ANEKAL TALUK  
BENGALURU-560 099

... PETITIONER

(BY SRI SHIVA PRASAD Y.S., ADVOCATE)

AND:

- 1 . SMT. PARVATHI R.,  
W/O GOPALA REDDY T.,  
AGE: MAJOR  
R/AT RAMADAGARA VILLAGE  
MUTHANALLURU VILLAGE AND POST, ANEKAL TALUK  
BENGALURU DISTRICT-560 099

2 . CHIEF SUPERINTENDENT  
CENTRAL PRISON  
PARAPPANA AGRAHARA  
BENGALURU-562 100  
REPRESENTED BY STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDINGS  
BENGALURU-560 001

... RESPONDENTS

(BY SMT. B.G.NAMITHA MAHESH, HCGP FOR R2;  
R-1 IS SERV'D)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO DIRECT THE 2<sup>ND</sup> RESPONDENT TO RELEASE THE PETITIONER FORTHWITH FROM THE CENTRAL PRISON, BENGALURU IN C.C.NO.28193/2015 ON 11.04.2017 BY XIII ACMM AT BENGALURU.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 22.02.2021 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

**ORDER**

These petitions are filed by the common accused invoking Section 482 of Cr.P.C, praying this Court to direct the second respondent to release the petitioner/accused, forthwith, from the Central Prison, Bengaluru, in respect of the following cases in which the petitioner herein convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('the NI Act' for short) and undergoing substantive sentence and default sentence. The details are:

Sl.No.	Case No.	Hon'ble Court	U/Sec	Date of sentence	Sentence	Fine	I/D Sentence
1	CC.No. 26312/15 (CrI.P.No.3 977/2019)	19 <sup>th</sup> ACMM, Bengaluru	138 N.I. Act	03-04-17	-	16,30,000	6 Months
2	CC.No. 26313/15 (CrI.P.No.7 05/2020)	19 <sup>th</sup> ACMM, Bengaluru	138 N.I. Act	03-04-17	-	16,90,000	6 Months
3	CC.No. 28193/15 (CrI.P.No.7 58/2020)	13 <sup>th</sup> ACMM, Bengaluru	138 N.I. Act	11-04-17	-	8,00,000	6 Months
4	CC.No. 744/15 (CrI.P.No.6 30/2020)	Pril. CJ & JMFC, Anekal	138 N.I. Act	21-07-17	6 Months	11,00,000	6 Months
5	CC.No. 1204/15 (CrI.P.No.7 03/2020)	Pril. CJ & JMFC, Anekal	138 N.I. Act	21-07-17	6 Months	36,00,000	6 Months
6	CC.No. 1205/15 (CrI.P.No.2 6/2020)	Pril. CJ & JMFC, Anekal	138 N.I. Act	21-07-17	6 Months	28,00,000	6 Months
7	CC.No. 05/16 (CrI.P.No.3 4/2020)	Pril. CJ & JMFC, Anekal	138 N.I. Act	21-07-17	6 Months	30,00,000	6 Months
8	CC.No. 976/16 (CrI.P.No.1 062/2020)	Pril. CJ & JMFC, Anekal	138 N.I. Act	21-07-17	6 Months	14,40,000	6 Months
9	CC.No. 1815/16 (CrI.P.No.6 2/2020)	Pril. CJ & JMFC, Anekal	138 N.I. Act	21-07-17	6 Months	60,00,000	6 Months
10	CC.No. 2025/16 (CrI.P.No.1 098/2020)	Pril. CJ & JMFC, Anekal	138 N.I. Act	21-07-17	6 Months	70,00,000	6 Months

2. The petitioner, who is the common accused in the above cases. In the petitions, it is contended that consequent upon the Judgment of conviction and sentence in all 10 cases both substantive sentence and default sentence she has been serving sentence in prison from 08.02.2017. Though, the petitioner had made a representation on 22.11.2018 and 05.12.2018, the Government of Karnataka and Chief Superintendent Central Prison, Bengaluru, that she has already served the imprisonment term, despite of which the authorities did not consider the request made by the accused/petitioner, unless this Court interfere and make the sentence to run concurrently instead of consecutively as contemplated under Section 427 of Cr.P.C.

3. The learned counsel appearing for the petitioner in his arguments vehemently contend that the petitioner has been serving the sentence from 08.02.2017 and already served the sentence more than 27 months till filing of the petitions. As per the dictums of various judgments in all cases, approximately, in 11 cases, the petitioner bound to serve 60 months of sentence in aggregately. Though the Trial Court has awarded sentences in

different cases but in all cases the offences are similar in nature, except complainants are different parties but accused person is same and more so several cheques are being issued in a single transaction. Thus, the Trial Court ought to have convicted the petitioner in all cases, by imposing sentences are to be run concurrently instead of consecutively. The learned counsel referring to Section 427 of Cr.P.C, vehemently contend that it ought to have been ordered concurrently. The learned counsel in his arguments also vehemently contend that the Trial Court have committed an error in ordering the sentence consecutively.

4. The learned counsel for the petitioner in support of his contentions, he relied upon the judgment of the Apex Court in the case of **State of Punjab v. Madan Lal** reported in **AIR 2009 SC (Supp) 2836**, wherein, the Apex Court held that, Section 428 - sentences – concurrent running – several cheques issued by accused in single transaction dishonoured – Accused convicted and sentenced separately for each offence - Direction that sentences would run concurrently would be Proper.

5. The learned counsel for the petitioner also relied upon the judgment of the Apex Court in the case of **V.K. Bansal**

**v. State of Haryana and another** reported in **(2013) 7 Supreme Court Cases 211**, wherein, the Apex Court held that, while awarding sentence concurrent and the same not to be exercised in a mechanical or pedantic manner – Cases involving dishonour of cheques issued by borrower towards repayment of a loan – Each one of loan transactions was a separate and distinct transaction between complainant and borrowing Company – Different cheques subsequently dishonoured on presentation could be said to be arising out of a single loan transaction – Concurrent running of sentence directed limited to substantive sentence only.

6. The learned counsel for the petitioner also relied upon the judgment of the Apex Court in the case of **Shyam Pal v. Dayawati Besoya and another** reported in **(2016) 10 Supreme Court Cases 761**, wherein, the Apex Court while discussing Section 138 of the NI Act and Section 427 of Cr.P.C. held that, power to direct concurrent running of sentences is discretionary. Accused convicted for offence under Section 138 of the NI Act, in respect of two cases arising out of successive transactions in a series between same parties and tried together



– Was sentenced to simple imprisonment for 10 months and fine of Rs.6,50,000/- as compensation in both cases – Considering duration of custody of accused as evidenced by custody certificate of Deputy Superintendent of Prison to that effect – Substantive sentences of 10 months' simple imprisonment awarded to accused in both cases directed to run concurrently.

7. The learned counsel for the petitioner also relied upon the judgment of the Apex Court in the case of **Ammavasai and another v. Inspector of Police, Valliyanur and others** reported in **AIR 2000 Supreme Court 3544**, wherein, the Apex Court discussed Section 427 of Cr.P.C. and also the offence under Section 395 of IPC, held that, benefit of all the sentences to run concurrently on the ground that occurrence in all cases took place between 3 to 5 months – Offence found against each of them in all cases was under Section 395 of IPC. – Appellants sentenced to undergo R.I. for 7 years in each case – Appellants claiming benefit under Section 427 in order to avoid undergoing of imprisonment for total period of 28 or 35 year in jail – Benefit if allowed appellants would be out after serving sentence of 7 years awarded in one case – To meet ends of justice held,

appellants to undergo total period of 14 years of imprisonment in respect of all convictions passed against them.

8. The learned counsel for the petitioner also relied upon the judgment of the High Court of Judicature for Rajasthan at Jodhpur in the case of **Rajender s/o Satya Narain v. State of Rajasthan** in **S.B.CRIMINAL MISC (PET) No.2883/2014**, referring to this Judgment, the learned counsel would contend that similarly placed case, the Rajasthan High Court extended the benefit in respect of different cases of cheque bounce cases and held that 32 cases which have been referred would run concurrently in respect of the substantive sentences. However, the petitioner will have to serve default sentences as the provisions of Section 427 of 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 affected 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.

9. The learned counsel for the petitioner also relied upon the unreported judgment of this Court in the case of **Vadiraja v. State by CPI, Brahmavar, Udupi District in Criminal Petition No.6974/2015, D.D. Dated 23.11.2015,** wherein, this Court discussed Section 428 of Cr.P.C. and allowed the petition in respect of the offences punishable under Sections 392 and 413 of IPC. The sentences shall run concurrently.

10. Per contra, learned counsel for respondent No.1/complainant in most number of cases herein vehemently contend that the petitioner herein is the accused before the Trial Court in all the cases, is one and the same. The learned counsel for the petitioner contends that no trial was taken place in other cases and also not disputes the fact that the accused has pleaded guilty. It is also not in dispute that in one case evidence has been recorded. The learned counsel would submit that in the cases on hand in some cases only directed to pay the fine amount and in default of payment of fine she has to suffer the default sentence. In some of the other cases, she was awarded with substantive sentences and directed to pay the fine amount and in default she has to undergo default sentence.

11. The learned counsel would submit that when the complainants are different and the same cannot be termed as it is a single transaction as held by the Apex Court. The complainants are different and transactions are different and cause of actions are also different. When such being the case, there cannot be an order for concurrent sentences and it should be consecutive only. It is also contended that the default sentence is a continuous offence and the same cannot be a concurrent sentence. The learned counsel would submit that Section 427 of Cr.P.C, is not applicable and the petitioner herein cheated more than Rs.3.5 Crores.

12. The learned Counsel for respondent No.1/complainant in support of his contentions, he also relied upon the judgment of the Apex Court in **Shyam Pal's** case (supra), the very same judgment referred by the petitioner's counsel also and brought to the notice of this Court paragraph Nos.9, 10, 12 and 13, wherein, the Apex Court discussed the Judgment in **V.K. Bansal's** case (supra), and the Apex Court has observed 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 same. The learned counsel also brought to the notice of this Court that the imperative essentiality of a single transaction as the decisive factor to enable the court to direct the subsequent sentence to run concurrently.

13. The learned counsel referring to this Judgment would vehemently contend that in the cases on hand, it is not a single transaction, it is different and distinct and the said principle cannot be extended to the transaction, which are distinctly different and separate and independent of each other. The learned counsel would contend that the very contention of the petitioner before this Court is that it was a single transaction cannot be accepted. The learned counsel would contend that it is not only in respect of the chit transaction and the cheques are issued in respect of the loan transactions taken place between the petitioner and the complainants.

14. Learned High Court Government Pleader appearing for respondent No.2 in her arguments vehemently contend that the Apex Court in **V.K. Bansal's** case (supra), held that, Court should exercise its discretion judicially and not mechanically in each case, having regard to nature of offence and particular fact situation – No straitjacket approach can be laid down – However, only substantive sentences can be directed to run concurrently and sentences awarded in default of payment of fine/compensation cannot be directed to run concurrently. The

Apex Court also discussed with regard to the single transaction rule is concerned, where there was a single transaction constituting offences, even if different complaints were filed in relation thereto, sentences can be directed to run concurrently. But, where the cheques are issued in respect of the different transaction if it would constitute a separate and independent transaction and sentence awarded to appellant-accused under Section 138 of the NI Act cannot be directed to run concurrently. The learned counsel brought to the notice of this Court to paragraph No.18, wherein, the Apex Court has discussed in detail, which has been extracted below:

**"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."*

15. In reply to the arguments of learned counsel for respondent No.1 and learned High Court Government Pleader appearing for respondent No.2, the learned counsel appearing for the petitioner would vehemently contend that all these transactions are in respect of the single transaction in respect of subscribing of chits and non payment of chit fund, cheques are issued and she has been in custody for almost four years.



Hence, the petitioner is entitled for the benefit under Section 427 of Cr.P.C. The learned counsel also disputes the very contentions of the respondents' counsel that the transaction is not a single transaction.

16. Having heard the arguments of the respective counsel and also considering the principles laid down in the judgments referred supra, it is clear that if it is single transaction, then, the petitioner is entitled for the order to run the sentence concurrently, if it is not a single transaction, different and independent transaction, then, the petitioner is not entitled for the benefit. The Apex Court in **V.K. Bansal's** case (supra), made it clear that if the transactions are different there cannot be any concurrent sentence and further observed in the Judgment that only substantive sentences can be directed to run concurrently and sentences awarded in default of payment of fine, compensation cannot be directed to run concurrently. Now this Court has to examine whether all the transactions are pertaining to a single transaction as contended by the learned counsel for the petitioner and also considered the contention of the respondents that the transaction is different transaction.

The Apex Court also in the recent Judgment in **Shyam Pal's** case (supra), discussed in paragraph No.13, the said benefit cannot be extended to transactions which are distinctly different, separate and independent of each other and amongst others. In the case on hand, it has to be noted that the complainants are different. No doubt, the offences invoked against the petitioner herein under Section 138 of the NI Act. It is also not in dispute that the judgments are passed on different dates, but in 7 cases, the judgments are passed by the very same judge and the judgments are delivered on 21.07.2017. Having perused the details of the cases also the fine amount imposed also different in three cases only default sentence has been awarded in other cases sentence of six months as well as directed to pay the fine amount in default six months sentence also imposed. Hence, it is clear that in the cases on hand, there is a substantive sentence and also a default sentence against the petitioner herein.

17. In view of the principles laid down in the judgments referred supra, it is clear that only the substantive sentences can be made as concurrent if it is the transaction is single

transaction. If it is the transaction is different transaction, the said concession cannot be given to the petitioner. Hence, I would like to make it clear that the default sentences cannot be made as concurrent and the same should run consecutively in respect of the substantive sentence is concerned, this Court has to look into each case material before the Court whether the transactions are arising out of same transaction or different transaction.

18. In respect of CrI.P.No.705/2020, the complainant made an allegation that the petitioner herein requested the complainant to become the subscriber of the chit and on request of the accused, the complainant has subscribed two chits. One chit for Rs.5,00,000/- and another for Rs.10,00,000/- on monthly installment of Rs.12,500/- each. The other persons are also subscribers to the said chit. The accused has not made the payment and ultimately executed a settlement deed on 21.02.2015 and in terms of the settlement deed, cheque was issued and the same was dishonoured.

19. In respect of CrI.P.No.1062/2020, wherein, the complainant in the complaint made an allegation that the

complainant agreed to accommodate hand loan to the accused and lent hand loan of Rs.7 Lakhs to the accused i.e., in the month of second week of May 2015. The cheque was issued and the same was dishonoured.

20. In respect of CrI.P.No.1098/2020, the accused has approached the complainant to pay a loan of Rs.35 Lakhs to discharge the hand loan borrowed from the third parties and accordingly in the 4<sup>th</sup> week of May 2014, made the payment and borrowed the hand loan of Rs.35 Lakhs and the same was not repaid. Hence, cheques were issued and the same were dishonoured.

21. In respect of CrI.P.No.26/2020, the transaction between the parties as per the complaint, the complainant borrowed a hand loan of Rs.14 Lakhs and the amount has not been paid. Hence, the cheques were issued and the same were dishonoured.

22. In respect of CrI.P.No.34/2020, wherein, the complainant borrowed a hand loan of Rs.15 Lakhs and in default

of payment of money, cheques were issued and the same were dishonoured.

23. In respect of CrI.P.No.3977/2019, the complainant has subscribed two chits. One chit for a sum of Rs.5,00,000/- and another for a sum of Rs.10,00,000/- on monthly installment of Rs.12,500/- each and not made the payment. Hence, the cheques were issued and the same were dishonoured.

24. In respect of CrI.P.No.62/2020, the complainant borrowed a hand loan of Rs.30 Lakhs and not made the payment. Hence, a cheque was issued and the same was dishonoured.

25. In CrI.P.No.630/2020, the complainant borrowed a hand loan of Rs.5.5 Lakhs. Payment was not made and a cheque was issued and the same was dishonoured.

26. In CrI.P.No.703/2020, the complainant borrowed a hand loan of Rs.18 Lakhs and payment was not made. The cheques were issued and the same were also dishonoured.

27. In CrI.P.No.758/2020, the complainant has subscribed two chits. One chit for a sum of Rs.5,00,000/- and another for a sum of Rs.10,00,000/- on monthly installment of Rs.12,500/- each. Due to non-payment of chit amount, cheque was issued and the same was also dishonoured.

28. Having perused the factual aspects of each case, it is emerged that it is not a single transaction. In seven cases, there were loan transactions between the parties and the transactions are of the years 2014 and 2015 and in other cases the complainants are the subscribers of two chits and those two chit transactions are also the different transactions. When such being the case, when the transactions are different, the question of passing an order invoking Section 427(1) of Cr.P.C, the sentence shall run concurrently with the previous sentences does not arise.

29. In the judgment of the Apex Court in **V.K. Bansal's** case (supra), wherein, it was held that though it is manifest from Section 427(1) of Cr.P.C, 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.

30. I have already pointed out that the record discloses that these are the cases arising out of different transactions and also different complainants and even though the accused is one and the same. If the transactions are the single transaction, then only, the Court can invoke Section 427(1) of Cr.P.C. to extend the benefit. The transactions are different and cause of actions are different and complainants are different. Under the circumstances, there cannot be an order even for substantive sentences to run concurrently. In the cases on hand, it has to be noted that apart from substantive sentences, default sentences are also awarded. It is settled law that in case of default sentences, there cannot be an order of concurrent sentences.

31. In seven cases, substantive sentences are awarded along with default sentence. In case of non-payment of fine/compensation, the Judgments are also on different dates. It is settled law that there was 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. 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 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.

32. In the cases on hand, the accused is common, the complainants are different, transactions are different and cause of actions are also different, it is not in respect of single transaction, it is in respect of two chit transactions and also seven different loan transactions. Hence, it is not a fit case to extend the benefit under Section 427(1) of Cr.P.C. as contended by the learned counsel for the petitioners. It is also important to note that the fine of Rs.3,11,10,000/- was imposed apart from imprisonment and default sentence for non-payment in respect of all the 10 cases. Hence, the petitioner also cannot contend that she may be extended the benefit under Section 427 of



Cr.P.C. as taking into note of the facts and circumstances of the case for having owed liability to such an extent.

33. In view of the discussions made above, I pass the following:

ORDER

The petitions are dismissed.

**Sd/-  
JUDGE**

cp\*