

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

CRL. Rev.P. Nos. 282 to 284/2011

% Judgment reserved on: 4th August,2011
Judgment delivered on:28th September,2011

1. CRL.Rev.P. No. 282/2011

SUDHIR SHARMA Appellant
Through: Mr.Sandeep Sharma &
Mr.Amit Sharma, Advocates

versus

C.B.I. Respondents
Through: Mr. P.K. Sharma, Standing
Counsel for CBI with
Mr.Uday Prakash Yadav,
Advocate

2. CRL.Rev.P. No. 283/2011

SUDHIR SHARMA Appellant
Through: Mr.Sandeep Sharma &
Mr.Amit Sharma, Advocates

versus

C.B.I. Respondents
Through: Mr. P.K. Sharma, Standing
Counsel for CBI with
Mr.Uday Prakash Yadav,
Advocate

3. CRL.Rev.P. No. 284/2011

SUDHIR SHARMA Appellant
Through: Mr.Sandeep Sharma &
Mr.Amit Sharma, Advocates

versus

C.B.I. Respondents
Through: Mr. P.K. Sharma, Standing
Counsel for CBI with
Mr.Uday Prakash Yadav,
Advocate

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment? YES
2. To be referred to Reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

SURESH KAIT, J.

CRL.Rev.P. No. 282/2011

1. In the instant case, the petitioner has been held guilty vide judgment dated 25th March, 2009 and order on sentence dated 1st April, 2009 passed by learned ACMM in FIR RC No. 3(S)98 S-0003, and has been sentenced to undergo rigorous imprisonment for a period of 03 years and a fine of Rs.5,000/- under Section 380/120B IPC; RI for one year and fine of Rs.1500/- under Section 465/120B IPC; RI for 03 years and fine of Rs.5000/- under Section 467/120B IPC; RI for 03 years and fine of Rs.5000/- under Section 468/120B IPC; RI for 03 years and fine of Rs.5000/- under Section 171/120B IPC; RI for 03 years and fine of Rs.5000/- under Section 474/120B IPC and RI for 02 years and fine of Rs.2000/- under Section. 420/34 IPC. Benefit under Section 428 IPC has been extended to the Appellant.

2. Vide the impugned judgment dated 25th March, 2011, the judgment dated 25th March, 2009 and the order on sentence dated 14th September, were upheld and the appeal was dismissed.

CRL.Rev.P. No. 283/2011

1. In this case, the petitioner was held guilty vide judgment dated 19th August, 2010 and by an order on sentence dated 27th August, 2010 the petitioner was sentenced as under:

“(a) Convict Sudhir Sharma is awarded RI of six months and a fine of Rs.1,000/- for the offence punishable U/s 417 r/w Section 120-B IPC. In default of payment of fine SI of one month.

(b) Convict Sudhir Sharma is awarded RI of 03 years and a fine of Rs.3,000/- for the offence punishable U/s 471 r/w Section 120-B IPC. In default of payment of fine SI of 3 months.

(c) Convict Sudhir Sharma is awarded RI of six months and a fine of Rs.1,000/- for the offence punishable U/s 419 r/w Section 120-B IPC. In default of payment of fine, SI of one month.

(d) Convict Sudhir Sharma is awarded RI of six months and a fine of Rs.1,000/- for the offence punishable U/s 465 r/w Section 120-B IPC. In default of payment of fine, SI of one month.

(e) Convict Sudhir Sharma is awarded RI of 03 years and fine of Rs.3,000/- for the offence

punishable U/s 467 r/w Section 120-B IPC. In default of payment of fine SI of 3 months.

(f) Convict Sudhir Sharma is awarded RI of 03 years and a fine of Rs.3,000/- for the offence punishable U/s 468 r/w Section 120-B IPC. In default of payment of fine SI of 3 months.

(g) Convict Sudhir Sharma is awarded RI of six months and a fine of Rs.1,000/- for the offence punishable U/s 120-B IPC in which he entered into criminal conspiracy with convict Rajinder Pal Singh for committing cheating (417 IPC), impersonation (419 IPC) and fraudulently using forged documents as genuine (471 IPC)."
(emphasis supplied)

2. Vide judgment dated 31st March, 2011, the appeal of the appellant was dismissed and the judgment dated 19th August, 2010 and the order dated 27th August, 2010 were upheld.

CRL.Rev.P. No. 284/2011

1. In this case, the petitioner was held guilty vide judgment dated 26th June, 2010 and by an order on sentence dated 16th July, 2010, and the following sentences were given as follows:

“a. Convict Sudhir Sharma is directed to undergo simple imprisonment for the period of 02 years and fine of Rs.2000/- for the offences u/s 380 IPC r/w 120-B IPC and in default of fine SI of 1 month.

b. Convict Sudhir Sharma is directed to undergo simple imprisonment for the period of 1 years for the offences u/s 419 IPC r/w 120-B IPC.

c. Convict Sudhir Sharma is directed to undergo simple imprisonment for the period of 03 years and a fine of Rs. 2000/- for the offences u/s 420 IPC r/w 120-B IPC and in default of fine SI of 2 months.

d. Convict Sudhir Sharma is directed to undergo simple imprisonment for the period of 03 years and a fine of Rs. 2000/- for the offences u/s 467 IPC r/w 120-B IPC and in default of fine SI of 2 months.

e. Convict Sudhir Sharma is directed to undergo simple imprisonment for the period of 6 months and a fine of Rs. 1000/- in default SI of 1 month for the offence u/s 12 Passport Act.

All the sentences shall run concurrently.

Rs. 7000/- deposited as fine.”

(emphasis supplied)

2. Vide judgment dated 6th April, 2011 while upholding the order and judgment, the appeal was dismissed.

3. It is pertinent to note that, learned counsel for the petitioner has not disputed the conviction or the sentence of the petitioner. He has only prayed to run the sentences concurrently in all the 03 cases.

4. Learned counsel has relied upon a judgment of Full

Bench of Bombay High Court in **Satnam Singh Puransing Gill vs. State of Maharashtra** reported in **2009 Crl.L.J. 3781** in the case of wherein it was held as under:

"7. The extent of judicial discretion thus could emerge from either enacted law or through the guidelines and precepts which are recognised over a span of time. Both these sources would have a direct impact on the exercise of discretion by the Courts while imposing punishment. It could be at the stage of first conviction or at a subsequent conviction of the same accused. Besides, imposition of punishment in such cases, the Court also have an additional obligation to direct whether the sentences awarded would run concurrently or consecutively. This aspect of criminal jurisprudence has been statutorily recognised in Indian Criminal Law where the legislature has introduced Sections 31 and 427, respectively of the Code of Criminal Procedure, 1973, (hereinafter referred to as the 'Code').

8. Section 31(1) of the Code vests a discretion in the Court to direct that the punishment shall run concurrently when a person is convicted at one trial of 02 or more offences. The Court may sentence the accused for such offences to the several punishments prescribed therefor which such Court is competent to inflict. Such punishments would consist of imprisonment to commence the one after the expiration of the other in such order as the Court may direct subject to the limitation contained in Section 71 of the Indian Penal Code.

9. In terms of Section 31(2) of the Code wherever the Court awards consecutive sentences, it shall not be necessary for the Court to send the offender for trial before a higher Court on the

ground that the aggregate punishment for the several offences is in excess of the punishment which it is competent to inflict on conviction of a single offence. This, however, is further subject to the proviso to Section 31(2) of the Code. This discretion of the Court is, therefore, applicable only in the cases which fall in the category of at one trial of 02 or more offences. On a bare reading¹¹ of this Section, it has no application to the cases where a person is tried and convicted under 02 or more different trials for different offences. This aspect is covered by Section 427 of the Code, which reads 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.”

11. The question of law as posed opens with the words “whether power under Section 427 of the Code can be exercised by the Court” in the circumstances stated in the question. This obviously means that the Court has the power in terms of Section 427 of the Code to issue directions to order as to whether the sentences awarded upon conviction on a subsequent trial would run concurrently or consecutively. How this discretion is to be exercised would primarily be a matter depending upon the facts and circumstances of a given case. Before we venture into the various judgments relating to exercise of judicial discretion under Section 427 of the Code, it will be appropriate to examine first the legal provisions, principles of interpretation and application of statutory law to such cases.

15. The rule of literal, liberal or strict construction may be applied while interpreting a statute but in either of them it is hardly permissible to add or read into the provisions. The expression or the words which are non it when the provisions on its plain reading is clear and unambiguous. Maxwell while interpreting the narrow distinction between the liberal and strict construction stated as under :

“The tendency of, modern decisions, upon the whole, is to narrow materially the difference, between what is called a strict and a beneficial construction. All statutes are now construed with a more attentive regard to the language, and criminal statutes with a more rational regard to the aim and intention of the legislature, than formerly. It is unquestionably right that the distinction should not altogether be erased from the judicial mind, for it is

required by the spirit of our free institutions that the interpretation of all statutes should be favourable to personal liberty, and this tendency is still evinced in a certain reluctance to supply the defects of language, or to eke out the meaning of an obscure passage by strained or doubtful influences. The effect of the rule of strict construction might almost be summed up in the remark that, where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself. But it yields to the paramount rule that every statute is to be expounded according to its expressed or manifest intention and that all cases within the mischiefs aimed at are, if the language permits, to be held to fall within its remedial influence."

26. Judicial discretion is vested in the Court under Section 389 of the Code in regard to grant or refusal of bail. Similarly, discretion is also vested in the Court which is exercising powers under Section 427 of the Code. The mere fact that wide discretion³⁷ is vested in the Court in relation to either of these provisions, per se would not justify imposition of restrictions or limitations which are not specified by the Legislature. As already indicated, the discretion is to be well guided by law and principles enunciated by judgments of the Courts."

5. He has also relied on the judgment of the Hon'ble Supreme Court in **State of Punjab vs. Madan Lal** 2009 (5)

SCC 238, wherein the Court observed:

"2.The convictions were in terms of Section 138 of the Negotiable Instruments Act, 1881 (in short the 'Act'). The High Court noted that all the transactions related to the family of the respondent and the matter related to different cheques issued by the respondent to the complainant party. For this purpose separate complaints were filed.

3. The High Court accordingly directed that the sentences imposed by learned Additional Sessions Judge, Ludhiana and Sub Divisional Judicial Magistrate, Khanna were to run concurrently. According to the State the judgment of the High Court is erroneous.

7. Above being the position, the appeal is without merit, deserves dismissal which we direct."

6. In **Mohd. Akhtar Hussain @ Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs (Prevention), Ahmadabad and Another** 1988 (4) SCC 183, has held:-

"10. The basic rule of thumb over the years has been the so called single transition rule for concurrent sentences. If a given transaction constitutes 02 offences under 02 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 02 offences are quite different.

11. xx xx xx

12. The submission, in our opinion, appears to be misconceived. The material produced by the State unmistakably indicates that the 02 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 possession of 7,000 tolas of primary gold prohibited under Section 8 of the said Act. The complaint under the Customs Act is with regard to smuggling of Gold Worth Rs. 12.5 crores and export of silver worth Rs. 11.5 crores. On these facts, the Courts are not unjustified in directing that the sentences could be consecutive and not concurrent."

7. Further, in **Ahsaan vs. State of Delhi through Moti Nagar Police Station, Crl. Appeal No.1068/2009 decided on 14.05.2009** wherein the Supreme Court held as under:-

"6. In the present case, the question which has arisen is with regard to the directions given by the High Court that the sentence in this appeal would start operating once the sentence in Crl. Appeal 40/03 came to an end. The said order has been passed keeping in mind the provisions of Section 427 of the Code of Criminal Procedure.

7. Having heard learned counsel for the respective parties and having further regard to the discretion which has been vested in the

Court under Section 427 Cr.P.C. to direct the sentence to run concurrently, if found fit, we modify the order passed by the High Court in Criminal Appeal No.823 of 2001 and direct that all the sentences in both the appeals shall run concurrently."

8. I note the petitioner has been convicted in case bearing RC No.6 & 7(s)/99 on 26.06.2010 on the complaint of Sh. M K Puri, Inspector, CBI, SIC, New Delhi. He has also been convicted in case bearing RC No.4(s)/98 on 19.08.2010 on the complaint of Sh. M K Puri, Inspector, CBI, SIC, New Delhi. Lastly, in a case bearing RC No.3(S)/98 S-0003 on the complaint of Babu Rao Anand Parvat H, PSI Immigration Sahara International Air Port, Mumbai.

9. In a case of **Abdul Razak @ Raja Vs. Superintendent, Central Prison, Visakapatnam & Anr.** 1992 Cri.L.J 261 wherein a case of Allahabad High Court decided by Full Bench in Multan Singh Vs. State, 1974 Cri.L.J 1397 wherein certain guidelines were laid down as under :

"The High Court, while exercising its revisional jurisdiction suo motu or in exercise of its inherent power under S. 482, can direct the sentence to run concurrently as provided under S. 427, Cr.P.C. even though the convictions and sentences that have been passed by the Additional Sessions Judges of different Sessions Division have become final."

10. No, doubt, as was already held by the Court in the decision cited supra, while exercising its revisional jurisdiction suo moto or in exercise its inherent power under Section 482 Cr.P.C. can direct the sentences to run concurrently. But this power should be exercised sparingly and not in any arbitrary manner and the nature of the offence has also to be taken into consideration.

11. In the present case the petitioner is habituated to commit offence punishable under different laws. While exercising its inherent powers we have to be very cautious in dealing with the cases of habitual offenders and any exercise of that power should not be an encouraging factor for habitual criminals to commit more offences.

12. In RC No.6 & 7(s)/99, the petitioner was working with M/s T.S.Duggal, a Travel Agency at New Delhi, which was engaged in supply of manpower to foreign country. In the course of his business, he used to visit to the office of M/s Thomas Cook, New Delhi for the purpose of arranging foreign exchange to the persons visiting abroad. He came in contact with Mr. Anand Singh Negi, an official of M/s Thomas Cook

Ltd. They both conspired with each other and involved one Gurinder Singh (now expired, an official of PV-II, MEA, Patiala House to arrange unused official Visas/Passports, forge/alter them for the purpose for sending persons illegally to foreign countries.

13. In case of RC No.4(s)/98, while working with M/s T.S.Duggal, Travel Agency at New Delhi, co-accused Rajinder Pal Singh was to go to USA. For that purpose he used unused official passport bearing no.O-01003451 dated 17.10.1996 in the name of one Sukhdev Singh Negi. This Negi was to accompany one Mohan Menon, Ambassador Moscow USSR as his cook, however, he could not go and his official passport prepared for the said purpose remained unused and was lying with MEA, PV-II, Patiala House, New Delhi. Co-accused Rajinder Pal Singh used this passport, for the purposes of leaving to USA.

14. In a case bearing RC No.3(S)/98 S-0003, co-accused Sarabjeet Singh had come to India after being deported from England in June, 1996. He need to go back, but was not having any valid passport. During the year 1996-97, said Sarabjeet Singh came in contact with the petitioner and

other co-accused namely, Gurjinder Singh, who was working as peon in Central Registry Section of Ministry of External Affairs, Patiala House, New Delhi. This department of Government used to issue passport to the Government officials who had to visit abroad. He was having contact with the petitioner who was dealing with the business of travel agent and air tickets and providing other facilities to the persons wishing to go abroad especially to USA. Co-accused Sarabjeet Singh was in need of passport to go abroad where his family was residing. All the co-accused persons including petitioner hatched a criminal conspiracy. In the said criminal conspiracy co-accused Gurjinder Singh was to arrange an unused official passport of some Government officials which was lying with the aforesaid department and to alter/forged it and get the passport convenient for co-accused Sarabjeet Singh. The petitioner was to provide facility to accused Sarabjeet Singh for sending from India to USA. For this purpose, co-accused Sarabjeet Singh gave R.07 lakhs to the petitioner. Same was done at the time when accused Sarabjeet Singh was to board the flight from Mumbai Airport. He was apprehended at Immigration clearance Center by the

officials pasted therein and to the effect, a separate FIR No.522/97 under Section 465/467/468/471/474/419/420 PS Sahar Airport, Mumbai was registered. Thereafter the matter was handed over to CBI for investigation. After the compliance of provisions under Section 207 Cr.P.C. and after hearing the arguments on charge, charges under Section 465/467/468/471/474/380/411 read with Section 120-B Indian Penal Code, 1860 and Section 3 of Indian Passport Act, 1997 were framed.

15. Keeping in view, the facts of above three cases, in which the petitioner has been convicted, I am of the view, the petitioner is cheater by nature. By forging the document he can dupe or cheat anyone.

16. I note in all the cases, after the conspiracy being hatched with co-accused, has committed offense not once or twice, rather thrice. Such person do not deserve any leniency or discretionary to be used in his favour.

17. I had come across such types of cases, where the travel agents are the main source of getting forged passport/forged visas and other forged documents. For the sake of money, some time they play with the career and life

of innocent persons. A layman some time does not understand, whether the person is genuine or a fraud. He also does not understand, whether the documents he is getting are genuine or forged. No doubt, some persons are of the same nature as of petitioner. They pay heavy amount and get work done in this fashion only, but the courts have main concerns about the innocent persons being cheated by such persons.

18. The petitioner has been doing this type of illegal work for a substantial time. Cheating is in his nature. The chances are very bleak for his improvement. Therefore, I am of the view that the sentences awarded by the courts below are not to be run concurrently. Therefore, plea of the petitioner is rejected.

19. Accordingly, Crl.Rev.P. Nos.282, 283 & 284/2011 are dismissed.

20. No costs.

SURESH KAIT, J

September 28, 2011

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