

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

% Date of decision: 14th November, 2014

+ CRL. A. No. 531/2013 WITH CRL. M.A. 9812/2014

KARTAR SINGH Appellant

Through: Mr.P.K. Dubey, Advocate

versus

STATE (NCT OF DELHI) Respondent

Through: Mr. Yogesh Verma, APP for the
State

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

VED PRAKASH VAISH, J. (ORAL)

1. This is an appeal brought under Section 374(2) of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.PC') impugning the judgment dated 24.01.2012 and order on sentence dated 03.03.2012 passed by learned Additional Sessions Judge/Special Judge (NDPS), Outer District, Rohini Courts, Delhi whereby the appellant was convicted for the offence under Section 368 IPC and sentenced to undergo Rigorous Imprisonment (RI) for five years beside a fine of Rs.5,000/- and in default of payment of fine to further undergo Simple Imprisonment (SI) for a period of six months.

2. During the course of arguments Mr. P.K. Dubey, Advocate appearing for the appellant submits that he does not press the judgment of conviction dated 24.01.2012 and order on sentence dated 03.03.2012 passed by learned trial court.

3. Learned counsel for the appellant urges that the appellant was convicted in the present FIR bearing No.575/2008 registered at P.S. Sultan Puri, Delhi. Vide impugned judgment dated 24.01.2012 and order on sentence dated 03.03.2012 passed by learned Additional Sessions Judge/Special Judge (NDPS), Outer District, Rohini Courts, Delhi the appellant was convicted under Section 368 IPC and was sentenced to undergo RI for five years apart from fine of Rs.5,000/- (Rupees Five thousand) and in default of payment of fine to undergo additional SI for a period of six months.

4. Learned counsel for the appellant further submits that the appellant was also convicted in another case FIR No.150/2009 registered at P.S. Sultan Puri (Crime Branch), Delhi vide order dated 31.01.2013 passed by learned Additional Sessions Judge-03, Outer District, Rohini Courts, Delhi and was sentenced to undergo RI for 10 years with a fine of Rs.15,000/- (Rupees Fifteen thousand) for commission of offence punishable under Section 120B IPC. He was to further undergo SI for one year in case of default in payment of fine. The appellant was further convicted under Section 366A IPC read with Section 120B IPC to undergo RI for a period of 10 years and a fine of Rs.15,000/- (Rupees Fifteen thousand). In default of payment of fine, the appellant was to further undergo SI for one year. The appellant was also convicted under Section 372 IPC read with Section 120B IPC to undergo RI for a period of 10 years and fine of Rs.15,000/-. In default of payment of this fine, the appellant was to further undergo SI for one year. All these sentences were ordered to run concurrently.

5. Learned counsel for the appellant also contends that the applicant has been undergoing imprisonment separately in both the aforementioned cases. The convict is in judicial custody since 20.05.2010. He, therefore, prays that the sentences in both the cases may be allowed to run concurrently.

6. At this juncture, it is necessary to reproduce Section 427 Cr.P.C:

“427 Cr.P.C: 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. According to the provisions of Section 427 Cr.P.C. when a person is already undergoing a sentence of imprisonment in one case and is further sentenced in the second case, the second sentence shall commence

at the expiry of imprisonment for which he has been previously sentenced unless the courts directs the subsequent sentence to run concurrently.

8. It is a settled law that this Court has power under Section 482 Cr.PC to direct the sentences to run concurrently. In '**Jadu @ Jadua Bhai vs. State of Orissa**' 1992 *Crl.L.J.* 2117 it was held that under Section 482 Cr.PC the Court has the power to order sentences to be run concurrently. However, it is to be decided taking into consideration the factual matrix of each case. While considering the provisions of Section 428 and 427 Cr.PC the Apex Court in '**State of Maharashtra vs. Najakat Ali Mubarak Ali**' (2001) 6 *SCC* 311 observed that Section 428 Cr.PC precedes Section 427 which provides that when any person sentenced on a conviction is already undergoing sentence of imprisonment, such subsequent imprisonment shall commence at the expiration of the imprisonment to which he has been previously sentenced. However, the court upon its discretion can direct that subsequent sentence shall run concurrently with such previous sentence. Section 427 of the Code thus authorizes a court of law to direct the sentence awarded by it to run concurrently which is to be done keeping in view the facts of each case. His detention pending investigation, inquiry and trial in that case or some other cases being relevant consideration while directing the sentences to run consecutively or concurrently.

9. The Full Bench of Madhya Pradesh High Court in '**Shersingh vs. State of M.P.**' 1989 *Cri.L.J.* 632 observed that inherent power of the High Court under Section 482 of Cr.PC could be exercised even if the trial Court or the Appellate or Revisional Court has been unable to invoke its powers under Section 427(1) of Cr.PC in directing running of previous

and subsequent sentences concurrently. High Court's inherent powers can be invoked at any stage and are not hampered by the provisions of Section 427(1) Cr.PC. This is also the case even when no such Order is passed under Section 427(1) Cr.PC by the trial Court or Appellate or Revisional Court and even though the conviction has become final.

10. In the instant case, the appellant was convicted in case FIR No.575/2008 under Sections 368 IPC registered at PS Sultanpuri and sentenced vide Order dated 03.03.2012 and was also convicted in FIR No.150/2009 under Sections 366A/372/120B IPC registered at PS Sultanpuri (Crime Branch) and sentenced vide Order dated 31.01.2013.

11. Having regard to the facts and circumstances of the case and the fact that the appellant is in judicial custody since 20.05.2010, it is hereby directed that the substantive sentence imposed upon the appellant in case FIR No.575/2008 registered at P.S. Sultanpuri and FIR No.150/2009 registered at P.S. Sultan puri (Crime Branch) shall run concurrently.

12. With the aforesaid observations, the appeal as well as application stands disposed of. A copy of this order be sent to concerned Jail Superintendent for necessary action and compliance.

Crl. M.A. No.7550/2014

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

NOVEMBER 14, 2014
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