

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 111 of 2015

Chhote Kumar S/o Zhaduram Aged About 57 Years R/o Village Chilhati, P.S. Sarkanda, District Bilaspur Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department (Jail) Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur Chhattisgarh
2. Superintendent Of Jail Central Jail Bilaspur, District Bilaspur Chhattisgarh

---- **Respondents**

For Petitioner	:	Smt. Hamida Siddiqui, Advocate
For Respondent/State	:	Shri R.K. Gupta, Dy.A.G.

Order On Board

08/09/2015

Heard.

1. In this writ petition under Article 226 of the Constitution of India, the issue which arises for consideration is *whether the petitioner is entitled to set-off in respect of period of imprisonment undergone by him in two criminal cases simultaneously or whether while serving sentence in one case, no set-off can be given in respect of imprisonment as the consequence of sentence awarded in another case.*
2. The position in law is squarely covered by the judgment of the Supreme Court in the case of **State of Maharashtra and another vs. Najakat Alia Mubarak Ali** (2001) 6 SCC 311, wherein the Supreme Court held:

“18. Reading Section 428 of the Code in the above perspective, the words “of the same case” are not to be understood as suggesting that the set-off is allowable only if the earlier jail life was undergone by him exclusively for the case in which the sentence is imposed. The period during which the accused was in prison subsequent to the inception of a particular case, should be credited towards the period of imprisonment awarded as sentence in that particular case. It is immaterial that the prisoner was undergoing sentence of imprisonment in another case also during the said period. The words “of the same case” were used to refer to the pre-sentence period of detention undergone by him. Nothing more

can be made out of the collocation of those words”

3. Relying upon the aforesaid judgment, this Court in the case of **Dinesh Soni Vs. State of C.G., 2012 (1) CGLJ 6** held thus:

“ 14. It is thus clear in the case of State of Maharashtra and another (supra), the Supreme Court finally concluded by saying that the period, during which, the accused was in prison subsequent to the inception of a particular case, should be counted towards the period of imprisonment awarded as sentence in that particular case. It was held that it is immaterial that the prisoner was undergoing sentence of imprisonment in another case also during the said period. What therefore follows from the aforesaid decision is that even the period of imprisonment, while undergoing sentences in other case, is to be reckoned for the purpose of allowing the set-off against the sentence of imprisonment awarded in the case in hand. In the present case, the result, therefore, would be that the entire period of imprisonment undergone by the petitioner from the date of his arrest i.e. 20.2.2010 till the date of conviction i.e. 2.7.2011 is required to be reckoned for the purpose of set-off notwithstanding conviction in the earlier case vide judgment of conviction and order of sentence dated 11.3.2011. It need be noted that in both the cases, the petitioner has been granted set-off under Section 428 of the Cr.P.C. with effect from the date of his arrest i.e. 20.2.2010.”

4. The aforesaid settled legal position is required to be applied to the facts and circumstances of the present case which are stated infra:

The petitioner was arrested on 27.6.1997 on the allegation of having committed offence under Sections 395 & 397 IPC in respect of which he was subjected to trial in S.T.No.389/1997. Later on, on another allegation of having committed offence under Section 420 IPC, in another incident, a criminal case No.145/96 was also registered wherein the petitioner was taken into custody under a production warrant of the trial Court in that case, which was effected on 4.10.1997.

In Criminal Case No.145/1996, the petitioner was convicted vide judgment of conviction and order of sentence dated 7.1.1999 by which he was sentenced to undergo R.I for 3 years. Later on, in S.T. No.389/1997, the petitioner was convicted vide judgment of conviction and order of sentence dated 4.11.1999 and sentenced to undergo for life imprisonment.

Though the petitioner did not assail correctness and validity of judgment of conviction and order of sentence awarded to him on allegation of commission of offence

under Section 420 IPC in Criminal Case No.145/1996, an appeal was preferred against conviction awarded in S.T. No.389/97. That appeal was decided by the Division Bench of this Court vide common judgment dated 22.2.2012 passed in appeal preferred by the appellant as well as other co-accused of that case. The appeal was partly allowed and though conviction was sustained, sentence was reduced to 7 years.

It is relevant to note that in the criminal appeal which was filed by the petitioner before this Court, sentence was suspended and the petitioner was granted bail with effect from 11.4.2000. As the appellant had already undergone and served the period of sentence awarded to him in Criminal Case No.145/1996, on 20.2.2000 (after getting admissible remission of sentence), the appellant was released on 17.4.2000. After the appeal was decided by the Division bench of this Court on 22.2.2012, the appellant was taken into custody to serve out remaining period of sentence on 13.8.2012.

5. Submission of learned counsel for the petitioner is that while computing remaining part of sentence which the appellant is required to undergo, the period of detention from 7.1.1999 to 23.2.2000 is being excluded for the purpose of giving set-off against sentence awarded in connection with commission of offence under Section 395 and 397 of the IPC in criminal appeal. According to learned counsel for the petitioner, the judgment of the Supreme Court in the case of **State of Maharashtra** (supra) followed in the case of **Dinesh Soni** (supra) leaves no scintilla of doubt that the period from 7.1.1999 till 20.2.2000 is to be reckoned for the purposes of giving set-off in connection with sentence for commission of offence under Section 395 read with 397 Cr.PC. and merely because during that period the petitioner was undergoing sentence awarded for commission of offence under Section 420 IPC, the benefit cannot be denied.
6. On the other hand, learned counsel for the State submits that claim of the petitioner requires proper computation, but he could not dispute the legal position as adumbrated by the Supreme Court in the case of **State of Maharashtra** (supra) and **Dinesh Soni** (supra).
7. Therefore, in that view of the matter, the computation of the period of sentence which the applicant is now required to undergo to complete 7 years R.I. as ordered in the criminal appeal, will be required to be computed by the respondents by giving set-off in respect of the period from 7.1.1999 till 22.2.2000 notwithstanding that during this period the petitioner was undergoing sentence in connection with commission of offence under Section 420 IPC as per the judgment rendered in Criminal Case No.145/1996.
8. The jail authority, Central Jail, Bilaspur is directed to compute the period after giving proper set-off to the petitioner including the period from 7.1.1999 to 22.2.2000 along with other set-off which has already been given to the petitioner vide nominal roll

(Annexure P-2). After computation the said period, the jail authority shall also examine what is the remission which the petitioner is entitled. If the period so computed is in excess of the period which the petitioner has already undergone till today, the petitioner shall be immediately set free and released on the date when such order is passed.

9. This exercise shall be completed by the Jail Superintendent, Central Jail, Bilaspur within a period of 15 days from the date of receipt of copy of this order.
10. Copy of the order so passed by the Jail Superintendent, Central Jail, Bilaspur, shall be forwarded to the Registry of this Court only for the purpose of verifying whether the order of the Court has been complied with or not.
11. The matter shall be placed before the Court under an Office Reference after one month.
12. The petition is accordingly disposed off.

Sd/-
(Manindra Mohan Shrivastava)

Judge