

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-10116-2015

Date of decision: 6.4.2015

Mani Ram

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.KDS Hooda, Advocate for the petitioner

SNEH PRASHAR, J.

1. This petition under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been preferred by the petitioner, praying for issuance of directions in exercise of powers under Section 427 Cr.P.C. that the subsequent sentence passed by the learned Additional Sessions Judge, Hisar vide judgment and order dated 21/25.2.2002 (Annexure P-2), shall run concurrently with the previous sentence passed by the learned Additional Sessions Judge, vide judgment dated 4.2.2000 (Annexure-P-1).

2. The brief facts of the case are that in criminal complaint titled as “Hanuman vs. Mani Ram and others” lodged under Section 307/34 of the Indian Penal Code, learned Additional Sessions Judge, Hisar vide judgment /order dated 4.2.2000, convicted and sentenced the

petitioner to undergo seven years and to pay fine of Rs.5000/-. Feeling aggrieved, the petitioner filed CRA-S-267-SB-2000, which was dismissed by this Court vide judgment dated 24.8.2010 with the modification in the sentence by reducing to already undergone i.e. 5 years 8 months and 19 days on the date of passing of judgment, without altercation in the sentence of fine.

In another case FIR No.455 dated 18.8.1999, registered under Sections 302/307/326/148/149/323/ 324 of the Indian Penal Code, at Police Station Sadar Hisar, learned Additional Sessions Judge, Hisar vide judgment and order dated 21/25.2.2002 convicted and sentenced the petitioner to undergo rigorous imprisonment for life. Feeling aggrieved, the petitioner filed CRA-S- 234-DB-2002, which was also dismissed by this Court vide judgment dated 4.1.2011.

3. The submissions made by learned counsel for the petitioner have been heard.

4. Learned counsel for the petitioner contended that Section 427 Cr.P.C. provides for ample powers to the Courts to direct subsequent sentence to run concurrently with the previous sentence. He submits that the case of the petitioner is covered by the provisions of Section 427 Cr.P.C. and therefore, this Court in exercise of its extra ordinary jurisdiction under Section 482 Cr.P.C., in the interest of justice, should issue direction as has been prayed for in the present petition. He further submitted that the petitioner is a poor person and there is no male member in the family to look after his minor children.

5. In Jang Singh vs. State of Punjab 2008(1) RCR

(Criminal), 323, the Three Judges Bench of this Court in para No. 18

has held as under:-

“18. The consensus of the judicial opinion, as may emerge from different judgments passed by various High Courts and the Hon'ble Supreme Court, seems to be that normal rule, as per Section 427 Cr.P.C., is that a person who is undergoing a sentence of imprisonment and is sentenced on a subsequent conviction to an imprisonment or an imprisonment for life, then such imprisonment or imprisonment of life shall commence after the expiration of the imprisonment, to which he has been previously sentenced. This, however, would not be so if the Court directs that the subsequent sentence shall run concurrently with the previous sentence. Such direction to make the sentences to run concurrently, as per various decisions noted above, can be exercised by the trial Court or by the appellate Court or a revisional Court at the time of exercising appellate or revisional jurisdiction as well. However, if the trial Court does not pass any such direction for making the sentences to run concurrently and appeal or revision against said decision is also decided, then it may not be open for a person to seek such direction for making the sentences to run concurrently by moving an application under Section 482/427 Cr.P.C. The view taken by one set of the High Courts that such an application can be entertained while exercising inherent powers under Section 482 Cr.P.C. would no more appear to be a good law in view of the decision of the Hon'ble Supreme Court in M.R.Kudva' case (Supra). We are, thus, bound to take this view that this discretion though available with the trial Court, appellate Court or the revisional Court while holding trial or entertaining appeal or revision but would not be so available to be exercised in isolation when application in this regard

is moved either under Section 482 or 427 Cr.P.C. What principle and consideration will govern the exercise of this discretion, as already noted above, can not be exhaustively enumerated. Certain relevant factors, as can be culled out from different judgments referred to above, may give an indication where such discretion may be exercised. These factors generally would be the nature or character of the offences committed, the prior criminal record of the offender, character, his age and sex etc. ghastly nature of the crime. The offender being habitual would also be the factor, which can be relevantly taken into consideration. It may be stated at the cost of repetition that these are not the only reasons for which the Court can exercise this discretion. Discretion always is open to be exercised by any Court dependent upon the facts and circumstances of each case on any relevant or valid consideration as may be considered so by the Court while holding the trial or deciding the case at the stage of appeal or revision. It may require a notice that Section 427 Cr.P.C., as observed by Hon'ble Supreme Court, is aimed at amelioration and this aspect may also require to be kept in view while exercising the discretion.”

Same is view taken by this Court in **Amar Singh Versus State of Punjab and others , 2009 (3) R.C.R. (Criminal), 199.**

6. In the present case, the petitioner has sought direction to run the sentences concurrently. In both the cases mentioned above, the petitioner had been awarded different sentences under different sections, by the different courts at different times and about different occurrences. As held above, a direction to make the sentences to run concurrently can be exercised by the trial Court or by the appellate court or a revisional court at the time of exercising appellate or revisional jurisdiction. It was

also further held that it may not be open for a person to seek such direction for making the sentences to run concurrently by making a separate petition under Section 482 and 427 of the Code. It is an admitted position in the instant case that neither the learned Trial Court nor this Court or Hon'ble Supreme Court had directed concurrent running of the subsequent sentence awarded to the petitioner. Therefore, discretion, which was available with the learned Trial Court, learned Appellate Court or Revisional Court, having not been exercised by the said Courts, powers under Section 482 Cr.P.C. cannot be invoked in the present petition for granting benefit under Section 427 Cr.P.C.

7. In view of the law laid down by this Court in Jang Singh's case (supra), the present petition being not maintainable, is dismissed.

6.4.2015
gsv

(SNEH PRASHAR)
JUDGE

Note: Whether to be referred to the Reporter? Yes/No