

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc. No.M-10876 of 2014

Date of Decision: May 06, 2015

Balbir Singh son of Parkash SinghPetitioner

Versus

State of PunjabRespondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.RS Manhas, Advocate for the petitioner.

Mr.Nikhil K.Chopra, Deputy Advocate General, Punjab.

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TEJINDER SINGH DHINDSA, J.

The present petition has been filed under Section 482 of the Code of Criminal Procedure read with Section 31 of the Code of Criminal Procedure with a prayer that the sentence awarded by the Judicial Magistrate Ist Class, Gurdaspur vide order dated 16.3.2007 in the same trial for different offences and which has been upheld upto the High Court may be ordered to run concurrently.

2. In brief, it may be noticed that FIR No.285 dated 25.9.1998 was registered against the petitioner under Sections 420, 467, 468 of the Indian Penal Code at Police Station Dinanagar. Challan was filed in the Court and the petitioner was charged with the offences under Sections 420, 467, 468 of the Indian Penal Code and ultimately convicted under all the three

Sections. At the stage of awarding quantum of sentence, learned Judicial Magistrate Ist Class, Gurdaspur awarded sentence to the petitioner under Section 420 of the Indian Penal Code as two years rigorous imprisonment and fine of ₹500/-; under Section 467 of the Indian Penal Code two years rigorous imprisonment and fine of ₹500/- and under Section 468 of the Indian Penal Code two years rigorous imprisonment and fine of ₹500/-. The learned Judicial Magistrate Ist Class, Gurdaspur awarded sentence in respect of the aforesaid offences separately and did not pass any order that the sentences would run concurrently.

3. Petitioner filed an appeal before the Court of Sessions at Gurdaspur and the appeal was dismissed on 8.1.2013 by the learned Additional Sessions Judge (Fast Track Court), Gurdaspur upholding judgment of conviction and sentence. Petitioner thereafter filed Criminal Revision No.539 of 2013 titled as “Balbir Singh v. State of Punjab” and which has also been dismissed vide order dated 7.5.2013 at Annexure P3.

4. The order of conviction and sentence has attained finality. Learned counsel for the petitioner has conceded during the course of arguments that upto the conclusion of the proceedings in Criminal Revision before this Court, no prayer was made at any stage by the petitioner for ordering the sentence awarded by the Magistrate under various provisions of the Code in the same trial to run concurrently.

5. Under similar circumstances, an identical prayer came to be considered by a Co-ordinate Bench of this Court in “**Hans Raj v. State of Haryana**”, 2011(1) PLR 585 and the prayer was

negatived by observing as follows:

"It is clear from the resume of the facts of this case, provisions of law and also various judgments relied upon by both the counsel for the parties that at no point of time i.e. at the time of sentence by the Magistrate, in appeal or in revision the question of sentence to run concurrently was raked up by the appellant. It is also no doubt true that the Magistrate 1st Class cannot inflict sentence more than double the amount of his competence as per section 31(2)(b) of the Cr.P.C. And also the sentence which has been awarded cannot be more than 14 years in view of section 31(2)(a) of the Cr.P.C. but it is equally true that as per Section 362 of the Cr.P.C. The Court, after passing of the order which has been signed by it cannot alter or review the same except for correcting clerical or arithmetical error. In the present case, prayer made by way of miscellaneous application under Section 482 of the Cr.P.C. for passing of an order to make the sentence run concurrently does not fall in the exception of Section 362 of the Cr.P.C. as it would be a substantive order. The Supreme Court has very strongly observed in the case of Hari Singh Mann (supra) about the jurisdiction of the Court under Section 482 of the Cr.P.C. to review or alter the judgment or final order which has been signed by the concerned Court.

In view of the above discussion, I am of the view that the application filed under Section 482 of the Cr.P.C. before this Court in the decided Revision Petition for passing an order which was not passed earlier is not maintainable. As a matter of fact, the remedy lies elsewhere. In view thereof, the present application is dismissed, however, without any order as to costs.

Petition dismissed."

6. For the same very reasoning, the present petition is dismissed in terms of the judgment of the Co-ordinate Bench of this Court in **Hans Raj** (supra).

7. Dismissed.

May 06, 2015

SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether referred to Reporter? (Yes/No)