

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-No.18435 of 2015(O&M)

Date of Decision: September 04, 2015

Manish Kumar

-----Petitioner (s)

V/s

State of Punjab & others

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Sanjeev Sharma, Advocate for the petitioner.

Mr. Sultan Singh Gill, DAG, Punjab.

HARI PAL VERMA, J.

Petitioner, namely, Manish Kumar son of Mukand resident of Nai Abadi Abohar, District Ferozepur, who is labourer and presently confined in Centrail Jai, Ferozepur, has filed the present petition under Section 482 Cr.P.C. read with the Section 427 of the Code of Criminal procedure for the issuance of directions to the respondents that the sentences awarded to the petitioner by the learned trial Court under Sections 302 and 201 IPC, in FIR No.71 dated 18.05.1998 under Sections 302/149/120-B read with Section 148 IPC, registered at Police Station, Khuyian Sarwar, District Ferozepur, be ordered to run concurrently.

The aforesaid FIR was registered against the petitioner along with other four accused. The trial Court, vide judgment dated 17.10.2002, convicted and sentenced petitioner, namely, Manish Kumar, as under:-

<i>U/S</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default</i>
302 IPC	To undergo life imprisonment	Rs.3000/-	Two years
201 IPC	To undergo rigorous imprisonment for three years	Rs.1000/-	Six months

The petitioner has been convicted and sentenced as mentioned in the preceding paragraph, however, the sentences have not been ordered to run concurrently. Aggrieved by the conviction and sentence, the petitioner had filed *Criminal Appeal No.D-811-DB of 2002* before this Court. However, the appeal filed by the petitioner was dismissed by this Court, vide judgment dated 08.01.2013.

Even the *SLP (Criminal) No. 23518 of 2013* filed against the judgment dated 08.01.2013 passed by this Court was also dismissed by Hon'ble the Supreme Court on 18.11.2013

The short prayer as been made in the present petition is that the sentence awarded to the petitioner for an offence under Section 302 to undergo life imprisonment and for an offence under Section 201 to undergo rigorous imprisonment for three years be ordered to run concurrently, as provided under Section 427 Cr.P.C. As per Section 427 Cr.P.C. the sentences awarded by the trial Court in separate offences have to be made to run concurrently, but while not making the sentences to run concurrently, a great prejudice has been caused to the petitioner, which led injustice to him.

Learned counsel for the petitioner submits that in view of Section 482 Cr.P.C., the High Court has jurisdiction to order subsequent sentence to run concurrently not only in the same FIR, but in other cases as well. The petitioner has shown good conduct throughout and almost 11 years

have been passed, but not even a single offence has been committed by the petitioner.

Provision of Section 427 Cr.P.C. 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.

Similarly, provision of Section 428 Cr.P.C. reads as under:-

“428 Period of detention undergone by the accused to be set off against the sentence of imprisonment.- *Where an accused person has, on conviction, been sentenced to imprisonment for a term [not being imprisonment in default of payment of fine,] the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to*

undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him:

[Provided that in cases referred to in Section 433A such period of detention shall be set off against the period of fourteen years referred to in that Section] ”

Learned counsel for the petitioner contends that in view of Section 427 Cr.P.C., 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. He further submits that no doubt, the Court was required to pass specific order as regard running of the sentence concurrently, but this fact probably has skipped to the mind of the Court and could not be agitated effectively including in the subsequent proceedings. He also submits that though the petitioner has been convicted and sentenced for offence under Sections 302 and 201 of IPC, but the incident is one and, therefore, it was incumbent upon the Court to order to run the sentences concurrently.

Learned counsel for the petitioner while placing reliance of the judgment of Hon'ble the Apex Court in **O.M. Cherian @ Thankachan Vs. State of Kerla and others, 2014(4) R.C.R. (Criminal) 922**, submits that if two life sentences are imposed on the convict, necessarily, the Court has to direct those sentences to run concurrently. He further submits that in view of Section 31 Cr.P.C. and Section 427 Cr.P.C., when the prosecution is based on single incident/transaction where it constitutes two or more offences, sentences are to run

concurrently. Imposing separate sentences, when the acts constituting different offences form part of the single incident/transaction is not justified.

Para Nos, 16, 17, 18, 20 and 21 of the said judgment read as under:-

“16. When the prosecution is based on single transaction where it constitutes two or more offences, sentences are to run concurrently. Imposing separate sentences, when the acts constituting different offences form part of the single transaction is not justified. So far as the benefit available to the accused to have the sentences to run concurrently of several offences based on single transaction, in *V.K. Bansal vs. State of Haryana & Anr.* 2013 (3) R.C.R. (Criminal) 983: 2013(3) R.C.R. (Civil) 1052 : 2013(4) *Recent Apex Judgments (R.A.J)* 680: (2013) 7 SCC 211, in which one of us (Justice T.S. Thakur) was a member, this Court held as under:-

“... we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor.”

17. This Court in the case of *Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti vs. Asstt. Collector of Customs (Prevention) Ahmedabad and Anr.*, (1988) 4 SCC 183, recognized the basic rule of conviction arising out of a single transaction justifying the concurrent running of the sentences. The following passage in this regard is relevant to be noted :-

“The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two 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 two offences are quite different.”

In **Manoj alias Panu vs. State of Haryana, 2014 (1) R.C. R (Criminal) 525: 2014(1) Recent Apex Judgments (R.A.J.) 197 :2014 2 SCC 153**, the Bench followed Mohd. Akhtar Hussain’s case.

18. While referring the matter to a larger Bench, the Bench observed that in Mohd. Akhtar Hussain’s case, Section 31 Cr.P.C. was not noticed by this Court. It is to be pointed out that in Mohd. Akhtar Hussain’s case and Manoj’s case, the appellants who were convicted for different counts of offences arose out of a single transaction, favouring the exercise of discretion to the benefit of the accused that the sentences shall run concurrently. Those decisions are not cases arising out of conviction at one trial of two or more offences and therefore, reference to Section 31 Cr.P.C. in those cases was not necessitated.

20. Under Section 31 Cr.P.C. it is left to the full discretion of the Court to order the sentences to run concurrently in case of conviction for two or more offences. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. By and large, trial courts and appellate courts have invoked and exercised their discretion to issue directions for concurrent running of sentences, favouring the benefit to be given to the accused. Whether a direction for concurrent running of sentences ought to be issued in a given case would depend upon the nature of the offence or offences committed and the facts and circumstances of the case. The discretion has to be exercised along the judicial lines and not mechanically.

21. Accordingly, we answer the Reference by holding that Section 31 Cr.P.C. leaves full discretion with the Court to order sentences for two or more offences at one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances. We do

not find any reason to hold that normal rule is to order the sentence to be consecutive and exception is to make the sentences concurrent. Of course, if the Court does not order the sentence to be concurrent, one sentence may run after the other, in such order as the Court may direct. We also do not find any conflict in earlier judgment in Mohd. Akhtar Hussain and Section 31 Cr.P.C.”

I have heard learned counsel for the petitioner and finds substance in his submissions.

In the case in hand, though the petitioner has been sentenced for two different offences, but the fact remains that the transaction is one. It emerges from one incident. The petitioner has been charged, tried and convicted for two different Sections i.e. 302 and 201 of IPC but in the same trial. He has faced single trial and the respective Court in his wisdom has convicted and sentenced him for two different punishment. But interestingly, this aspect, has either skipped from the consideration of the Court or may not have been effectively projected before the Court. Where the Court imposes sentence of imprisonment for life and also sentences of imprisonment for fixed term, the sentence of imprisonment of fixed term has to necessarily run concurrently with life imprisonment. Similarly, if two life sentences imposed on the convict, necessarily, the Court has to direct those sentences run concurrently.

Section 31 Cr.P.C relates to quantum of punishment where the Court has jurisdiction to pass quantum of punishment where the accused has been convicted for two or more offences at one trial.

Section 31 Cr.P.C relates to quantum of punishment which may be legally passed when there is **(a)** one trial and **(b)** the accused is convicted of “two or more offences”.

In the case in hand, the petitioner has been convicted and sentenced for two offences, but the trial is one and, therefore, in view of the Section 31 Cr.P.C., the sentences awarded to the petitioner were required to run concurrently. Consequently, in view of O.M. Cherian @ Thankachan (supra), this Court has no hesitation to order to run the sentence awarded to the petitioner concurrently.

Accordingly, the present petition is allowed.

September 04, 2015
Anjal

(HARI PAL VERMA)
JUDGE