

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Date of decision:04.12.2015

Jang Singh and another

.....Petitioners

v.

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE JASWANT SINGH

Present:- Mr.Ashok Giri,Advocate for the petitioners

Mr.Kirat Singh Sidhu,Deputy Advocate General
for State of Punjab

Jaswant Singh,J.(Oral)

Two petitioners-convicts have invoked jurisdiction of this Court under Section 482 Cr.PC for directing that all the sentences imposed upon them be run concurrently.

It is not disputed that two petitioners alongwith their other four co-accused were convicted and sentenced vide judgment and order dated 29.11.2002 passed by Additional Sessions Judge, Patiala for offences and periods as under:-

<i>Name</i>	<i>Offence for which convicted</i>	<i>Period of sentence</i>
Jang Singh Jaswant Singh	Section 399/149 IPC	RI for 3 years
Jaswant Singh	Section 5 of the Explosives Substance Act,1908	RI for 3 years
Jang Singh	Section 25 of the Arms Act	RI for one year

It is also not in dispute that appeal filed by all the six convicts bearing CRA-87-SB of 2003, including two petitioners herein, was also dismissed by a learned Single Judge of this Court vide judgment 24.1.2013, thus maintaining conviction and sentence. It is evident that in both the orders it was/is not specified that the sentences would run concurrently or consecutively.

Upon noticing this fact, petitioners-convicts moved an application before the learned trial court for making a correction in the judgment passed by it and ordering the sentences to run concurrently which was dismissed vide order dated 24.8.2015 passed by learned Additional Sessions Judge, Patiala on the ground that the trial court had no jurisdiction since this order had merged into the order passed by the High Court. Subsequently, an application under Section 482 Cr.PC was moved in the decided appeal which was got dismissed as withdrawn to seek proper remedy in accordance with law vide order dated 8.10.2015. Hence the present separate petition under Section 482 Cr.PC has been moved seeking the ordering of the sentences to run concurrently.

Learned counsel for the petitioners submits that learned trial court at the time of sentence vide order dated 29.11.2002 had suspended the sentence to enable the petitioners to file appeal before this Court with the clear understanding that the sentence imposed vide judgment dated 29.11.2002 is not exceeding three years. He, thus, submits that it is an inadvertent mistake and therefore, the extraordinary jurisdiction under Section 482 Cr.PC is required to be

invoked in such a situation.

On the other hand, learned State counsel states that once a judgment by a co-ordinate Bench of this Court has become final then at least this Court is barred from making any addition to the same and therefore, the proper course for the petitioners would be to approach Hon'ble the Supreme Court.

After hearing the learned counsel for the parties, this Court feels that the circumstances of this case would show that this is a fit case where jurisdiction under Section 482 Cr.PC is liable to be invoked.

It is not in dispute that the conviction for different offences is in the same FIR and in the same trial. It is further apparent from the sentencing order dated 29.11.2002 that the learned trial court itself is aware that the sentence awarded is not exceeding three years and therefore, suspended the sentence till 15.1.2003 to enable the petitioners-convicts to file an appeal before this Court. Had the situation been that the sentences were to run consecutively then the period of sentence would have been four years for Jang Singh and six years for Jaswant Singh and, therefore, no case for suspension of sentence (punishment being more than three years) would have been made out. Therefore, it is evident that the clear intention of the trial court was that the sentences were to run concurrently and not consecutively. It is a case of inadvertent omission for which petitioners-convicts should not be put to unnecessary harassment.

Accordingly, present petition is allowed and it is ordered

that the sentence imposed upon the petitioners by the trial court vide order dated 29.11.2002 and as upheld by this Court in CRA-87-SB of 2003 vide order dated 24.1.2013 shall run concurrently.

04.12.2015.
joshi

(Jaswant Singh)
Judge