

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.M-37137 of 2014(O&M)

Date of Decision : 07.07.2015

Kapur Singh

....Petitioner

Versus

State of Punjab

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

Present : Mr. Ravi Kamal Gupta, Advocate for the petitioner

Mr. R.S.Randhawa, Addl. AG, Punjab

MAHESH GROVER, J.

The petitioner prays that his sentences the details of which are given below be ordered to run concurrently:-

1. FIR no. 303 dated 20.12.2009 registered under Sections 398, 307, 485 IPC - RI for a period of 7 years by Addl.Sessions Judge, Ambala
2. FIR No. 293 dated 18.12.2009 registered under Sections 382, 442,34 IPC – RI for a period of 3 years by JMI, Ludhiana

I have heard learned counsel for the parties.

Section 427 of Cr.P.C is extracted herebelow:-

“Section 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.”

A perusal of the aforesaid provision of law would indicate that the prayer of the petitioner cannot be accepted. The Full Bench of this Court in **Jang Singh vs. State of Punjab 2008(1) RCR (CrI) 323** has authoritatively pronounced on the issue and the relevant observations are as under:-

“18. The consensus of the judicial opinion, as may emerge from different judgments passed by various High courts and the Hon'ble Surpeme Court, seems to be that normal rule, as per Section 427 Criminal Procedure Code, 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 sentences to 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 Sections 482/427 Criminal Procedure Code. The view taken by one set of the High Courts that such an application can be entertained while exercising inherent powers under Section 482 Criminal Procedure Code 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 Sections 482 or 427 Criminal Procedure Code what principle and consideration will govern the exercise of this discretion, as already noted above cannot 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 a 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 Criminal Procedure Code 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.”

In view of above, instant petition is held to be without any merit and the same is hereby dismissed.

July 07, 2015
rekha

(Mahesh Grover)
Judge