

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

1. **Criminal Revision No.1997 of 2015 (O & M)**  
**Date of Decision:-17.11.2015**

M/s J.B. Industries

...Petitioner

Versus

Punjab Agro Food Grains Corporation and another

...Respondents

2. **Criminal Revision No.1998 of 2015 (O & M)**

Jaspal Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

**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. N.G. Sharma, Advocate for  
Mr. R.S. Rangpuri, Advocate  
for the petitioner(s).

Mr. Sultan Singh Gill, Deputy A.G., Punjab  
for the respondent-State.

Mr. Anupam Singla, Advocate  
for respondent-Punjab Agro Food Grains Corporation.

**HARI PAL VERMA J.**

This order shall dispose of aforesaid two revision petitions.

For the sake of convenience the facts are being taken from Criminal Revision No.1997 of 2015.

At the time of issuance of notice of motion on 29.5.2015, this Court has passed the following order :-

“After arguing for sometime, learned counsel for the petitioner does not challenge conviction of petitioner on merits and confines his arguments qua the quantum of sentence only to the extent that the same may be directed to run concurrently in both the cases for which **CRR-1998-2015, (Jaspal Singh vs. State of Punjab and another)**, has been filed. The cheque was issued with regard to payment of the paddy crop of the same year as submitted by the learned counsel for the petitioner.

Notice of motion only to this extent for 23.07.2015.

To be listed along with **CRR-1998-2015.**”

In view of the above, learned counsel for the petitioner(s) confines his arguments that his case be considered so as to run his sentences concurrently. He submits that to the aforesaid effect the petitioner has moved a criminal miscellaneous No.23047 of 2015 with a prayer made thereof.

Learned counsel for the petitioner(s) further submits that he has been convicted in two different cases i.e. first; FIR No.35 dated 1.3.2008, under Sections 420/406 IPC, registered at Police Station Sadar Muktsar and secondly; in a proceedings in a complaint case under

Section 138 of the Negotiable Instruments Act, 1881 which otherwise arises from one and the same transactions between the same parties. He submits that when the nature of offences are economic, it cannot be termed as serious in nature. The petitioner is a businessman and is not involved in any other case. He is first time offender and is having no criminal background. He being the only bread earner in the family is facing the agony of trial for the last more than seven years, therefore his case is required to be dealt with in the light of the judgment of ***Jang Singh vs. State of Punjab, 2008(1) RCR (Criminal) 323.***

I have heard learned counsel for the petitioner(s).

In order to determine the question regarding concurrent running of the sentences, this Court is basically required to interpret the provision of Section 427 Cr.P.C. Section 427 of the Code regulates the mode of execution of sentence in those cases where the offender is already undergoing a sentence for another offence. It 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.”

Considering the provisions of Section 427 Cr.P.C., in **Jang Singh's** case (supra) the Hon'ble Apex Court has observed as under :-

“The general principle is that the sentence should take effect immediately on conviction and the same can not be postponed. Section 427 appears to be carving out an exception to general principle governing execution of sentences when awarded by a Court of law. Sub-section (1) of Section 427, reproduced above, provides that a person who is already undergoing a sentence of imprisonment and is sentenced on a subsequent conviction to imprisonment or imprisonment for life, then such imprisonment or imprisonment for life is to commence at the expiration of the imprisonment, to which he is previously sentenced. This principle, however, is subject to the exceptions carved out in the Section itself and it is to the effect that *“unless the Court directs that subsequent sentence shall run concurrently with such previous sentence”* (emphasis supplied). The scheme of the Section, thus, is that a person already undergoing a sentence if sentenced to differ subsequent imprisonment, then that subsequent imprisonment is to commence only on the expiry of the

previous sentence, unless both the sentences are ordered to run concurrently. Section 31 of the Code of Criminal Procedure also enacts the rules that sentences are to run consecutively unless the Court directs that these should run concurrently. This Section, however, relates to those cases where a person is convicted at one trial of several offences and different/several sentences are awarded to him. Section 427 Criminal Procedure Code on the other hand, enacts a rule where a person already undergoing the sentence is sentenced to imprisonment in a different trial. It would be of advantage to note Section 31 Criminal Procedure Code, which is as under :

*'31. Sentence in cases of conviction of several offences at one trial :-* (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of Section 71 of the Indian Penal Code, 1860, sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court :

Provided that -

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence."

7. Though Section 31, would also talk of a general principle of sentences to commence after expiration of the other but still, the Court awarding the same, has the discretion to direct that such punishments shall run concurrently. Sub-sections (2) and (3) of Section 31 may seem to be laying down some guidelines in regard to the principle that may govern the consideration for directing the sentences to run concurrently or consecutively. Otherwise, Sections 31 and 427 Criminal Procedure Code have made enabling provisions empowering the Courts to direct the manner of execution of the sentences but principles, method and manner of exercise of this judicial discretion cannot be discerned from the Sections as such. Since the powers have been left to the Court to direct the punishment to run concurrently under Section 31, there may not be much difficulty in such cases where the same Court is required to award several punishments at one trial of two or more offences. Obviously, the Court while making different sentences for more than one offences tried by it, can issue appropriate direction to make the sentences run concurrently and in the absence of such direction, the sentences of course would run

consecutively as is clear from the wording of Section. There may not be much difficulty encountered in those cases where the trial of more than one case is held by the same Court and different imprisonments are awarded. A difficulty, however, may arise when person is sentenced to undergo an imprisonment and is subsequently convicted and is imprisoned either to a term or imprisonment for life. The Court still may have power to make the subsequent sentences to run concurrently with the previous sentence but no indication in regard to principle governing the same or in regard to manner and method is available from the Section. As per sub-section (2) of Section 427 Criminal Procedure Code, the person undergoing sentence of imprisonment for life when is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for a life, the subsequent sentence shall run concurrently with such previous sentence. If such is the situation, then this would operate as law without any further direction being made by the Court in regard to its manner of execution. This aspect was considered by the Hon'ble Supreme Court in case of [State of Maharashtra v. Najakat Alia Mubarak Ali, 2001\(2\) RCR\(Criminal\) 778 : AIR 2001 Supreme Court 2255.](#) In this case, the Hon'ble Supreme Court was basically a concerned with the interpretation of Section 428 Criminal Procedure Code regarding the principle of set off in case where person is convicted of two different offences by two different Courts and when he has remained in pre-trial custody in both the cases. The Hon'ble Supreme Court co-related the provisions of Sections 428 and 427 Criminal Procedure Code by observing that Section 428 is placed below Section 427

which tempted the Hon'ble Court to peep into this Section i.e. 427 as well. Noticing the provisions of sub-section (2) of Section 427 Criminal Procedure Code, the Supreme Court observed that the subsequent sentence is to run concurrently with the previous sentence in an eventuality visualised under this sub-section. In this background, it is held in the case of *Najakat Alia Mubarak Ali (supra)* that :-

“Thus, the sentence of life imprisonment imposed on the same person in two different convictions would converge into one and thereafter it would flow through one alone. Even if the sentence in one of those two cases is not imprisonment life but only a lesser term the convergence will take place and the post-convergence flow would be through the same channel. In all other cases, it is left to the Court to decide whether the sentence in two different convictions should merge into one period or not. If no order is passed by the Court the two sentences would run one after the other. No doubt Section 427 is intended to provide amelioration to the prisoner. When such amelioration is a statutory operation in cases falling under the second Sub-section, it is a matter of choice for the court when the cases fall within the first sub- section. Nonetheless, the entire section is aimed at providing amelioration to a prisoner. Thus a penumbra of the succeeding section can be glimpsed through the former provision.”

8. The decision, thus, seems to be clear so far as sub-section (2) of the Section is concerned. From the observations as reproduced above, it would also

appear that in other cases, it is left to the Court to decide whether sentence in two different conviction should merge into one or not. Of course, if there is no order passed in this regard, the two sentences as per sub-section (1) have to run one after the other. It may also need a notice that this Section, as observed by the Hon'ble Supreme Court, is meant to provide amelioration to the prisoners. That being purpose of the Section, the aim of the Court generally should be to so act unless of course the case is such where the Court, in its discretion, does not consider the case fit to show the consideration of amelioration.

9. The case of ***Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti v. Assistant Collector of Customs (Prevention Ahmedabad and another, 1988 Supreme Court Cases (Cri.) 921***, which was relied upon by the counsel for the applicant- appellant and was noticed by the Division Bench at the time of making reference would seem to be more apt so far as sub-section (1) of the Section is concerned. In this case, the Hon'ble Supreme Court has held that where second offence is distinct and different from the first one, the subsequent sentence should normally run consecutively to the first one. The relevant observation in this regard is as under :-

"10. 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."

10. The ratio that may emerge from the above

observations is that the basic thumb rule is that concurrent sentences are to be awarded in case of single transaction. Generally, this thumb rule may not apply if the transaction relating to offences is not the same or the facts constituting two offences are different. The Hon'ble Supreme Court in this case apparently has not laid down any binding principle in this regard but has made a reference to a thumb rule, which may act as a guide. Obviously, the Hon'ble Supreme Court was conscious of the fact that discretion in this regard has been left to the Court in terms of sub-section (1) of Section 427 Criminal Procedure Code This Section relates to administration of justice and provides a procedure for sentencing. Accordingly, it is the sentencing Court, which is required to apply its mind and consider what would be an appropriate sentence in a given case or in other words, if the sentences should be concurrent or consecutive.

The basic thumb rule is that concurrent sentences are to be awarded in a case of single transaction. It is only in those circumstances when different transactions relating to offences are involved, sentences may not be allowed to run concurrently. In the case in hand, admittedly, there is only one transaction i.e. storage of paddy for the year 2007-2008 and misappropriation thereof. The prosecution has invoked two different remedies available with it i.e. registration of FIR No.35 dated 1.3.2008, under Sections 420/406 IPC, at Police Station Sadar Muktsar and to invoke proceedings in complaint under Section 138 of the Negotiable Instruments Act.

Since the petitioner has not pressed these petitions on merits

presumably on the ground that as against the awarded sentence of one year, he has already undergone more than nine months of sentence, he opted to come forward to seek intervention of this Court to run the sentences concurrently, awarded in two aforesaid different cases.

In view of the above,when the petitioner has not opted to argue the matter on merits, both the petitions are dismissed as not pressed. Having considered the provisions of Section 427 Cr.P.C. coupled with the judgment passed by the Supreme Court in **Jang Singh's** case (supra) CRM No.23047 of 2015 is allowed and sentence awarded to the petitioner in Complaint No.110 of 25.11.2008 titled as 'Punjab Food Agro Food Grains Corporation vs. M/s J.B. Industries, Muktsar, under Section 138 of the Negotiable Instruments Act, 1881 (CRR-1997-2015) is ordered to run concurrently with the sentence awarded in FIR No.35 dated 01.03.2008 under Sections 420/406 IPC, Police Station Sadar, Muktsar (CRR-1998-2015).

November 17, 2015  
*Vijay Asija*

( **HARI PAL VERMA** )  
**JUDGE**