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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 1784/2014 and Crl. M.A. No. 13704/2014

Decided on 20th January, 2015

JAHANGIR ALAM @ MOHD. SALEEM Petitioner

Through : Mr. Vikas Padora, Adv.

versus

STATE

..... Respondent

Through :Mr. Mukesh Gupta, ASC with SI
Rajender Dabas, P.S. ODRS

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.(ORAL)

1. By this petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ("the Code", for short) petitioner has prayed that subsequent sentence awarded to him in FIR No. 150/2011 shall be directed to run concurrently with the previous sentence awarded in FIR No. 116/2009. It may be noted here that petitioner was first convicted and sentenced in FIR No. 150/2011 and subsequently, he was convicted under Section 411 IPC in FIR No. 116/2009. However, this will not make any difference because, in my view, no independent petition is maintainable for seeking relief under Section 427 of the Code.

2. The Full Bench of Punjab and Haryana High Court in Jang Singh vs.

State of Punjab, 2007 (2) ILR (Punjab) 550, held that direction to make the sentence to run concurrently 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 and no such relief can be granted by the High Court in exercise of its inherent powers under Section 482 of the Code. In M.R. Kudva vs. State of A.P. (2007) 2 Supreme Court Cases 772, Supreme Court held that Section 427 could not be applied in a separate and independent proceedings by the High Court, more so when neither trial judge or High Court, while passing the judgments of conviction and sentence indicated that the sentences passed against the appellant in both the cases shall run concurrently or Section 427 of the Code would be attracted. It was further held that Section 482 of the Code was not an appropriate remedy in such like cases.

3. By following the above noted judgments, I have also taken the similar view vide judgment dated 3rd November, 2009 passed in W.P.(CrI.) 686/2009 titled Santosh Kumar vs. The State (NCT of Delhi). It was open for the petitioner to make such a prayer for grant of benefit under Section 427 of the Code before the trial court, at the time when subsequent sentence was handed down to him in FIR No. 116/2009. It was also open for the

petitioner to have sought such a relief in appeal, had such a prayer been declined by the trial court. Be that as it may, an independent petition seeking benefit under Section 427 of the Code is not maintainable.

4. Accordingly, writ petition is dismissed. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

JANUARY 20, 2015

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