

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

Judgment delivered on: 8th September, 2015

+ **Crl.M.C. No.4524/2014**

BIHARI LAL Petitioner
Represented by: Mr. Dinesh Malik & Mr. Gurpreet
Singh, Advocates.
Versus

STATE NCT OF DELHI Respondent
Represented by: Ms. Meenakshi Chauhan, APP
for the State with SI Sandeep
Kumar, P.S. Kalyan Puri.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The present petition is filed under Section 427 read with 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') for concurrent running of sentences awarded to the petitioner in Sessions Case No.68/1995 and 69/1995 and Sessions Case No.9/1996 and grant the benefit of Section 427 Cr.P.C. to the petitioner.

2. It is noted that in cases bearing Sessions Case No. 68/1995 and 69/1995 for the offences punishable under Sections 147/148/149/188/436/395 IPC and in Sessions Case No. 9/1996 for the offences punishable under Sections 148/395 read with Section 149 IPC, both pertaining to FIR No.426/1984 registered at Police Station Kalyanpuri, New Delhi, the learned Additional Sessions Judge, Karkardooma Courts, Delhi, sentenced the petitioner as under:-

Sessions Case No.	FIR No.	Police Station	Under Section	Quantum of Sentence
68 & 69 of 1995	426/1984	Kalyan Puri	148 IPC 436 IPC	Rigorous imprisonment for a period of two years and to pay fine of Rs.5,000/-. In default of payment of fine to further undergo rigorous imprisonment for a period of three months. Rigorous imprisonment for a period of five years and to pay fine of Rs.5,000/-. In default of payment of fine to further undergo rigorous imprisonment for a period of three months.
9/1996	426/1984	Kalyan Puri	148 IPC 396 IPC	Rigorous imprisonment for a period of two years and to pay fine of Rs.10,000/-. In default of payment of fine to further undergo rigorous imprisonment for a period of one year. Rigorous imprisonment for a period of five years and to pay fine of Rs.20,000/-. In default of payment of fine to further undergo rigorous imprisonment for a period of one and a half years.

All these sentences, in two cases noted above, were ordered to be run concurrently.

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner had preferred an appeal bearing CrI. A. No.191/1996 before this Court impugning the judgment and order on sentence dated 31.08.1996 passed in Sessions Case Nos.68/1995 and 69/1995 by which

he was convicted for committing offences punishable under Sections 148 and 436 IPC and was sentenced to undergo rigorous imprisonment for five years with total fine of Rs.10,000/-. However, the same was dismissed by this Court vide judgment dated 28.01.2011 observing that no case for modification of the sentence was made out.

4. The petitioner had also preferred an appeal bearing Crl. A. No.227/1996 before this Court impugning the judgment and order on sentence dated 04.10.1996 and 05.10.1996 respectively passed in Sessions Case No.9/1996 by which he was convicted for committing offences punishable under Sections 148 and 395 IPC read with Section 149 IPC and was sentenced to undergo rigorous imprisonment for five years with total fine of Rs.30,000/-.

5. While disposing of the aforementioned appeal vide judgment dated 21.03.2013, this Court modified the order on sentence by reducing the substantive sentence of the petitioner to rigorous imprisonment for three years with fine of Rs.5,000/- and in default to further undergo simple imprisonment for three months.

6. Learned counsel further submitted that both the above mentioned cases arose from the same FIR, i.e., 426/1984, however, the petitioner had faced trial in two Sessions Cases noted above and ultimately convicted separately. Accordingly, the petitioner has been undergoing imprisonment separately in both the cases noted above. He is in custody since 28.01.2011 and has already suffered almost four years and eight months of sentence. It is, therefore, prayed that the sentences in both the cases may be allowed to run concurrently.

7. Learned counsel submitted that in a catena of cases, it is held that no person shall be punished twice for the same offence. Since only one FIR was registered against the petitioner, therefore, benefit of concurrent running of sentences may be awarded to him.

8. In support of his submissions, learned counsel has placed reliance on the judgment of ***Shersingh Vs. State of M.P.***¹, wherein the Full Bench of the Supreme Court held as under:-

“5. The consensus of judicial opinion of different High Courts seems to be that inherent powers of the High Court can be invoked under section 482 even if the trial court or the appellate or revisional court has not exercised its discretion under Section 427 (1) of the Code. The inherent powers of the High Court is not in any way fettered by the provisions of Section 427 (1) and it can be invoked at any stage even if there is no such order passed under Section 427 (1) by the trial Court or appellate or revisional court and even though the conviction has become final, A Division Bench of the Calcutta High Court in J. K. Banerjee v. The State AIR 1955 Cal632, has held "with regard to sentences passed on different dates in respect of different convictions of the accused by Courts other than the High Court, the High Court has power under Section 561-A to order that they may run concurrently." Section 561-A of the old Code of 1898 is identical to Section 482 of the present Code. The Patna High Court in Baijnath v. AIR1961Pat138, has held that High Court can later direct sentences to run concurrently under Section 561-A but not under Section 397. Section 369 is no bar. The Andhra Pradesh High Court in Venkanna v. State of Andhra Pradesh AIR 1964

¹ 1989 CRL. L.J.632

State of Andhra Pradesh AIR1964AP449 , has held that High Court can order sentences to run concurrently in two different cases against the same accused by invoking inherent powers under section 561A read with Section 435 and 397(1) of the Code. A Full Bench of the Allahabad High Court in *Mulaim Singh v. State*, held that High Court is competent under Section 561-A to direct that the sentence of imprisonment under a subsequent conviction shall run concurrently with a previous sentence. A Division Bench of this Court in *A. S. Naidu v. State of M.P.*, has held that the power to make the two sentences run concurrently under Section 397(1) of the old Code (S. 427 of the present Code) could, be exercised at any time when the matter was brought to the notice of the Court by an application or otherwise, since no modification of the judgment itself was involved, in the exercise of such a power, though it further held that the question of exercising the power under its inherent jurisdiction in such a case does not arise, meaning thereby that power under Section 427(1) could be exercised at any time and not necessarily while deciding the case on merits as the Court does not become functus officio. Considering the aforesaid decision of this Court, a Full Bench of the Delhi High Court in *Gopal Dass v. State AIR1978Delhi138* , held that the decision of this Court in *A. S. Naidu's* case is no longer good law in view of the judgment of the Supreme Court in *Bijli Singh v. State Cr. A. No. 2/64* decided on 20-10-1964, though the judgment passed in *Bijli Singh's* case is not available but the ratio of the judgment seems to be that after delivering the judgment or order, criminal court becomes functus officio and cannot review its order, so it can be said to that extent the decision of this Court in *A. S. Naidu's* case (*supra*) in incorrect, but the Division Bench decision can be upheld by saying that the power could be invoked

by the High Court under its inherent jurisdiction. The Full Bench of the Delhi High Court has also held that the above-mentioned rulings of the other High Courts are also no longer good law in view of the decision of the Supreme Court in R. P. Kapur v. State of Punjab (supra) that inherent powers cannot be exercised in regard to the matters specifically provided under the Code i.e. when there is a specific provision under Section 427 for making subsequent sentence concurrent with the earlier sentence, this power cannot be invoked under section 482. The Full Bench, however, opined that in suitable cases the court is not precluded from treating a petition filed under Section 482 of the Code as a petition filed under Section 397 of the Code and grant necessary relief if so warranted by the exigencies and the facts of the case, thereby the Full Bench meant that though inherent powers cannot be invoked but the courts can, by invoking its revisional power, pass suitable orders for making the subsequent sentence concurrent with the earlier sentence. The Full Bench overlooked that power under Section 482 is much wider and is not subject to restrictions placed for invoking suo motu powers of revision under Section 397.”

9. Also relied upon the cases of ***State of Punjab Vs. Madan Lal***² and ***Kartar Singh Vs. State (NCT of Delhi)***³.

10. On the other hand, Ms. Meenakshi Chauhan, learned Additional Public Prosecutor appearing on behalf of the State submitted that though there is only one FIR, however, incidents are different. Since the appeals, as noted above, filed by the petitioner have also been dismissed by this Court, therefore, at this stage, this Court has no power to interfere with

² (2009) 5 SCC 238

³ 2014 (4) JCC 3059

the sentences awarded to the petitioner.

11. Learned Additional Public Prosecutor further submitted that generally where several sentences are passed, such sentences should run consecutively, that is, one after the other, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.

12. In support of her submissions, learned Additional Public Prosecutor has relied upon the case of **Gopal Dass Vs. The State**⁴, wherein the Full Bench of this Court held as under:-

“7. In order to determine the question under consideration as to what is the scope of the inherent powers of the High Court becomes relevant. The Inherent powers of the High Court inhere in it because of its being at, the apex of the judicial set-up in a State. The inherent powers of the High Court, preserved by S. 482 of the Code, are to be exercised In making orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. S. 482 envisages that nothing in , Code shall be deemed to Limit or affect the inherent powers of the High Court exercised by it with the object of achieving the above said three results. It is for this reason that S. 482 does not prescribe the contours of the inherent powers of the High Court which are wide enough to be exercised in suitable cases to afford relief to an aggrieved party. While exercising inherent powers it has to be borne in mind that this power cannot. be exercised in regard to matters specifically covered by the other provisions of the Code. (See, R. P. Kapur. v. State of Punjab, 1960CriLJ1239). This principle of law had been

⁴ 1978 Cri.L.J. 961

reiterated succinctly by the Supreme Court recently in Palaniappa Gounder v. State of Tamil Nadu, 1977CriLJ992 . Therein examining the scope of S. 482 it was observed' that a provision which saves the inherent powers of a Court cannot override any express provision in the statute which saves that power. Putting it in another form the Court observed that if there is an express provision in a statute governing a particular subject there is no scope for invoking or exercising the inherent powers of the Court because the Court ought to apply the provisions of the statute which are made advisedly to govern the particular subject-matter.

8. This question having been settled authoritatively it is not open to the petitioners to invoke the inherent powers of this Court having failed to avail of their right of appeal or revision. Inherent powers of the Court preserved in S. 482 of the Code and as held in a catena of cases are to be exercised, namely, (1) for giving effect to any order passed under the Code, or (2) to prevent abuse of the process of any Court or (3) otherwise to secure the ends of justice."

13. I have heard the learned counsel for the parties.

14. It appears that neither the prosecution nor the petitioner referred to the earlier conviction nor the Appellate Court invoked its power under Section 427(1) of the Code. The present application under Section 482 of the Code of Criminal Procedure has been made by the petitioner from jail on 20.09.2014.

15. At this juncture, it is pertinent to mention Section 427 (1) of the Code, which reads as under:-

"427. (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.”

16. Therefore, under this sub-Section when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or life imprisonment, such imprisonment shall commence at the expiry of imprisonment for which he has been previously sentenced unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.

17. Section 482 of the Code reads as under:

“ Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

18. It is a settled law that this Court has power under Section 482 Cr.P.C. to direct the sentences to run concurrently. In ***Jadu @ Jadua Bhai Vs. State of Orissa***⁵, it was held that under Section 482 Cr.P.C. the Court has the power to order sentences to be run concurrently. However, it is to be decided taking into consideration the factual matrix of each case.

19. While considering the provisions of Sections 428 and 427 Cr.P.C., the Apex Court in ***State of Maharashtra Vs. Najakat Ali Mubarak Ali***⁶

⁵⁵ 1992 CrL. L.J.2117

⁶ (2001) 6 SCC 311

observed that Section 428 Cr.P.C. precedes Section 427 which provides that when any person sentenced on a conviction is already undergoing sentence of imprisonment, such subsequent imprisonment shall commence at the expiration of the imprisonment to which he has been previously sentenced. However, the Court upon its discretion can direct that subsequent sentence shall run concurrently with such previous sentence. Section 427 Cr.P.C., thus, authorizes a Court of Law to direct the sentence awarded by it to run concurrently which is to be done keeping in view the facts of each case.

20. The Full Bench of Madhya Pradesh High Court in *Sher Singh's* case (*supra*) observed that inherent powers of the High Court under Section 482 Cr.P.C. could be exercised even if the Trial Court or the Appellate or Revisional Court has been unable to invoke its powers under Section 427(1) Cr.P.C. in directing running of previous and subsequent sentences concurrently. Inherent powers of this Court can be invoked at any stage and are not hampered by the provisions of Section 427 (1) Cr.P.C. Even in case, when no such Order is passed under Section 427(1) Cr.P.C. by the Trial Court or Appellate or Revisional Court and even though the conviction has become final, as is the position in the case in hand, the inherent power of this Court is not in any way fettered.

21. It is noted that in the case of *Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti Vs. Asst. Collector of Customs (Prevention), Ahmedabad & Anr.*⁷, the Hon'ble Supreme Court recognized the basic rule of

⁷ 1988 4 SCC 183

convictions arising out of a single transaction justifying concurrent running of the 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. The relevant portion of the same reads 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 is proper and legitimate to have concurrent sentences”

22. The same position of law was adopted by the Apex Court in the case of ***State of Punjab Vs. Madan Lal*** (*supra*) by observing as under:-

*“5. The majority view in **State of Maharashtra & Anr. Vs. Najakat Alia Mubarak Ali** was to the similar effect. It was held in para 17 as follows:*

17. In the above context it is apposite to point out that very often it happens when an accused is convicted in one case under different counts of offences and sentenced to different terms of imprisonment under each such count, all such sentences are directed to run concurrently. The idea behind it is that the imprisonment to be suffered by him for one count of offence will, in fact and in effect be imprisonment for other count as well.”

23. Coming back to the case in hand, admittedly, there is only one incident of November, 1984 riots, only one FIR is registered against the petitioner. However, he had faced separate trial in two Sessions Cases and consequently convicted separately, though the cases are related to each other and not a separate one.

24. Applying the afore-noted dictums of Apex Court to the instant case and the legal position discussed above, in fact the basic rule of convictions arising out of a single transaction justifies concurrent running of the 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, which in fact not directed in this case.

25. It is significant to note the observations made by this Court while disposing of the appeal bearing Crl. A. No.227/1996, which read as under:-

“8. The conviction of the appellant is based on fair appraisal of the evidence and needs no interference. Regarding order on sentence plea has been made to take lenient view as the appellant has suffered trial for 25 years. He has remained in custody since long. It is not disputed that the appellant was not a beneficiary. He did not rob any gold ornaments which PW-6 was wearing. No robbed articles were recovered from his possession. He was not armed with any deadly weapon. He did not inflict any injury to the victim. He did not break open the house or caused harm to the witnesses or their family members. Considering all these mitigating circumstances, order on sentence is modified and substantive sentence of the appellant is reduced to RI for three

years with fine of `5,000/- and failing to pay the fine, he shall undergo SI for three months.”

26. Having regard to the facts and circumstances of the case and the fact that the petitioner is in judicial custody since 28.01.2011, it is hereby directed that the substantive sentence imposed upon the petitioner in Sessions Case No.9/1996 for the offences punishable under Sections 148/395 read with Section 149 IPC in FIR No.426/1984 registered at Police Station Kalyanpuri, New Delhi, shall run concurrently.

27. As per the nominal roll dated 08.09.2014, the petitioner has already undergone sentence of three years, eleven months and thirteen days and has earned remission of one year and twenty eight days. So, as on date, he has completed sentence of four years, eleven months and thirteen days plus remission earned. Thus, by now, he has undergone more than the total period of sentence of five years.

28. Moreover, considering the fact that the petitioner has suffered the protracted trial for more than three decades and the facts noted above, the petitioner shall be released forthwith.

29. With the aforesaid observations, the present petition is allowed.

30. Copy of this judgment be sent to the Superintendent, Tihar Jail, for compliance.

**SURESH KAIT
(JUDGE)**

SEPTEMBER 08, 2015

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