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

Judgment delivered on: 21st August, 2015

+ **Crl.M.C. No.2675/2015**

PRADEEP

..... Petitioner

Represented by: Ms. Aishwarya Rao, Advocate.

Versus

THE STATE NCT OF DELHI

..... Respondent

Represented by: Mr. Izhar Ahmad, Additional
Public Prosecutor for the State with
SI Sachin Tomar, PS Pandav
Nagar.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. By way of the present petition filed under Section 427 read with 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') for concurrent running of sentence in case bearing FIR No.307/2001 registered at Police Station Kalyanpuri, New Delhi, for the offences punishable under Sections 324/34 IPC and Criminal Appeal No.586/1999 arising out of the judgement dated 29.09.1999.

2. Learned counsel appearing on behalf of the petitioner submits that while deciding the aforementioned Criminal Appeal No.586/1999, this Court did not give the benefit of concurrent running of sentences to the appellant for the subsequent sentence awarded by the learned Metropolitan Magistrate vide order dated 16.11.2011 in case bearing FIR

No.307/2001 registered at Police Station Kalyanpuri, New Delhi, for the offences punishable under Sections 324/34 IPC. He submits that the appellant is in custody since August, 2011 and has already suffered almost four and half years of sentence.

3. Learned counsel further submits that in a catena of cases, it is held that if a person is convicted in more than one case, then the benefit of concurrent running of sentences can be awarded to him.

4. In support of his submissions, learned counsel has placed reliance on the judgment of ***Kotikalapudi Subba Rao Vs. State of A.P. & Ors., 2008 (5) SCC 390.***

5. On the other hand, learned Additional Public Prosecutor appearing on behalf of the State submits that generally where several sentences are passed, such sentences should run consecutively, that is, one after the other, unless the Court directs that they will run concurrently.

6. Learned APP submits that the petitioner is a habitual offender and is involved in a dozen of cases. As per the status report dated 18.08.2015, the petitioner is involved in following cases:-

S.No.	FIR No.	U/s	Police Station	Present Status of Case
1.	389/01	324/34 IPC	Kalyan Puri	Acquitted on 03.06.2013
2.	114/06	24 Arms Act	Kalyan Puri	Convicted on 27.11.06
3.	307/01	324/34 IPC	Kalyan Puri	Convicted on 16.11.2011 for RI of 2 years + find of Rs.500/-.
4.	383/02	380 IPC	Kalyan Puri	Discharged
5.	04/92	307/34 IPC	Pandav Nagar	Convicted on 29.09.1999 for RI of 7 years + find of

				Rs.1,000/-
6.	251/06	399/402 IPC & 25 Arms Act	Pandav Nagar	Acquitted on 04.04.2008
7.	447/97	324/34 IPC	Hari Nagar	Acquitted on 14.10.1997
8.	219/2000	25 Arms Act	Kalyan Puri	Acquitted on 14.01.2004
9.	363/93	397/307/34 IPC	Kalyan Puri	Acquitted on 01.04.1998
10.	124/02	307 IPC	Kalyan Puri	Acquitted on 25.04.2008
11.	08/92	25 Arms Act	Pandav Nagar	Convicted for 4 months + fine of Rs.100/-
12.	138/93	25 Arms Act	Kalyan Puri	Acquitted on 03.12.1994

7. It is pertinent to mention here Section 427 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.

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."

8. The aforementioned Section relates to administration of criminal justice and provides procedure for sentencing. The sentencing court is, therefore, required to consider and make an appropriate order as to how the sentence passed in the subsequent case is to run. Whether it should be concurrent or consecutive?

9. However, sub-Section (1) of Section 427 Cr.PC provides for the situation when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or life imprisonment. In other words, Sub-section (1) of Section 427 Cr.PC deals with an offender who while undergoing sentence for a fixed term is subsequently convicted to imprisonment for a fixed term or for life. In such a situation, the first sentence, being for a fixed term, expires on a definite date which is known when the subsequent conviction is made. Sub-section (1) says that in such a situation, the date of expiry of the first sentence which the offender is undergoing being known, ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the Court directs the subsequent sentence to run concurrently with the previous sentence. Obviously, in cases covered by Sub-section (1) where the sentence is for a fixed term, the subsequent sentence can be consecutive unless directed to run concurrently. The discretion to order the two sentences to run concurrently may be exercised by the appellate as well as the revisional Court.

10. It is admitted fact that while deciding the Appeal mentioned above, the petitioner did not ask for the relief sought in the instant petition.

11. It is noted that in the case of *Mohd. Akhtar Hussain Vs. Assistant Collector of Customs, 1988 4 SCC 183*, the Hon'ble Supreme Court recognized the basic rule of 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.

12. The Supreme Court in *Ranjit Singh Vs. Union Territory of Chandigarh & Anr., (1991) 4 SCC 304*, held that where a convict undergoing life imprisonment in a murder case, commits another murder while in jail, the life imprisonment in respect of second murder will not run concurrently.

13. Though this ruling of the Apex Court was contrary to the provision in Section 427 (2) of the Code, but perhaps what the Court really meant was that in the event of any remission or commutation in respect of the first sentence, the second sentence should commence forthwith.

14. In *M.R. Kudva Vs. State of Andhra Pradesh, AIR 2007 SC 568*, the Supreme Court observed that the appellant was awarded two separate conviction and separate sentences for two distinct and different offences. His appeal to High Court and special leave petitions were also dismissed. The provision of Section 427, Cr. P.C. was neither invoked in original cases nor in appeals. Thereafter, application was filed in High Court under Sections 482 and 427 praying that the sentences imposed in both

the cases be directed to run concurrently, which was not maintainable. It was held that inherent jurisdiction under Section 482 was not an appropriate remedy when neither the trial Court nor the High Court has exercised jurisdiction under Section 427, Cr. P.C. while passing judgments. Thus, it was held that appeals for running of sentences concurrently in two cases were, therefore, not maintainable.

15. In a recent judgement in ***State of Rajasthan Vs. Jamil Khan (2013) 10 SCC 721***, the Supreme Court held that:-

“31. Imprisonment for life is till the end of the biological life of the person, as held by a Constitution Bench of this Court in Gopal Vinayak Godse v. The State of Maharashtra and Ors.: AIR 1961 SC 600. However, this Court has been, for quite some time, conscious of the liberal approach and sometimes discriminatory too, taken by the States in exercise of their power under Sections 432 and 433 of Code of Criminal Procedure in remitting or commuting sentences. In Jagmohan Singh v. State of U.P. : (1973) 1 SCC 20, this Court had expressed concern about such approach made by the States in remitting life sentences. That led to the amendment in Code of Criminal Procedure introducing Section 433A by Act 45 of 1978. Under Section 433A of Code of Criminal Procedure, a sentence of imprisonment for life is imposed for an offence for which death is one of the punishments or where a death sentence is commuted to life under Section 433, he shall not be released unless he has served fourteen years of imprisonment. It appears that the provision has been generally understood to mean that life sentence would only be fourteen years of incarceration. Taking judicial notice of such a trend, this Court has, in cases where imposition of death sentence would be too harsh and imprisonment for life (the way it is understood as

above) too inadequate, in several cases, has adopted different methods to ensure that the minimum term of life imprisonment ranges from at least twenty years to the end of natural life. In *Shri Bhagwan v. State of Rajasthan*: (2001) 6 SCC 296, *Prakash Dhawal Khairnar (Patil) v. State of Maharashtra*: (2002) 2 SCC 35 and *Ram Anup Singh and Ors. v. State of Bihar* : (2002) 6 SCC 686, it was 20 years; in *Dilip Premnarayan Tiwari and Anr. v. State of Maharashtra*: (2010) 1 SCC 775, it was 25 years; in *Neel Kumar alias Anil Kumar v. State of Haryana*: (2012) 5 SCC 766, it was 30 years; and in *Swamy Shraddananda (2) alias Murali Manohar Mishra v. State of Karnataka*: (2008) 13 SCC 767, it was till the end of life without remission or commutation. *Ranjit Singh alias Roda v. Union Territory of Chandigarh*: (1984) 1 SCC 31 is a case where a person committed a second murder. He was sentenced for life imprisonment for the first murder. Taking note of the fact that the co-accused was not given death sentence and awarded only life imprisonment, this Court in the second offence also awarded only life imprisonment. However, it was made clear that:

2...in case any remission or commutation in respect of his earlier sentence is granted to him the present sentence should commence thereafter.

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35. Punishment has a penological purpose. Reformation, retribution, prevention, deterrence are some of the major factors in that regard. Parliament is the collective conscience of the people. If it has mandated a minimum sentence for certain offences, the Government being its delegate, cannot interfere with the same in exercise of their power for remission or commutation. Neither Section 432 nor Section 433 of Code of Criminal Procedure hence contains a non-

obstante provision. Therefore, the minimum sentence provided for any offence cannot be and shall not be remitted or commuted by the Government in exercise of their power under Section 432 or 433 of the Code of Criminal Procedure. Wherever the Indian Penal Code or such penal statutes have provided for a minimum sentence for any offence, to that extent, the power of remission or commutation has to be read as restricted; otherwise the whole purpose of punishment will be defeated and it will be a mockery on sentencing.

36. Having regard to the facts and circumstances of the present case, we make it clear that in the event of State invoking its powers under Section 432 or 433 of Code of Criminal Procedure, the sentence under Section 376 of Indian Penal Code shall not be remitted or commuted before seven years of imprisonment. In other words, in that eventuality, it shall be ensured that the Respondent will first serve the term of life imprisonment under Section 302 of Indian Penal Code. In case there is any remission after fourteen years, then imprisonment for a minimum period of seven years under Section 376 of Indian Penal Code shall follow and thereafter three years of rigorous imprisonment under Section 201 of Indian Penal Code. The sentence on fine and default as awarded by the Sessions Court are maintained as such.”

16. Coming back to the case in hand, appeal bearing Crl. Appeal No.586/1999 arising out of the judgement dated 29.09.1999 passed in case bearing FIR No.04/1992 registered at Police Station Pandav Nagar for the offences punishable under Sections 307/34 IPC was dismissed by this Court vide order dated 21.11.2011.

17. Admittedly, the petitioner has not challenged the sentence awarded to him vide order dated 16.11.2011 by the learned Metropolitan Magistrate in case bearing FIR No.307/2001 registered at Police Station

Kalyanpuri, New Delhi, for the offences punishable under Sections 324/34 IPC.

18. In the present case, there are two different incidents of different dates and that is in the jurisdiction of two different police stations. Thus, both the offences are committed in different period of time. Therefore, both the cases are not related to each other. Moreover, considering the past conduct of the petitioner, it is established that he is a habitual criminal offender and is repeatedly committing offences one after the other and had committed an offence, when his appeal was pending adjudication before this Court. The petitioner is less sensitive about the human life and for the sake of valuable items and cash, he puts anyone's life at stake. In addition to above, the petitioner is involved in 11 criminal cases.

19. Moreover, the Apex Court in ***State of Orissa Vs. Ujjal Kumar Burdhan (2012) 4 SCC 547*** has reiterated that inherent powers of this Court are to be exercised in exceptional cases. Pertinent observations of the Apex Court in *Ujjal Kumar (supra)* on this aspect are as under: -

“It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of

investigation, the High Court should be loath to interfere at the early/premature stage of investigation.”

20. In view of the facts of the present case and the legal position discussed in the case of ***V.K. Bansal Vs. State of Haryana and Ors. 2013 7 SCC 211*** decided by the Hon’ble Supreme Court on 05.07.2013, I find no grounds to allow the present petition.

21. Applying the afore-noted dictums of Apex Court to the instant case, legal position discussed above and the fact that normal rule is that where several sentences are passed, such sentences should run consecutively, that is, one after the other, unless the Court directs that they will run concurrently, which in fact not directed in this case. Therefore, I find no good ground to exercise the inherent jurisdiction under Section 482 of Cr.P.C. in the case in hand.

22. Accordingly, the present petition is dismissed with no order as to costs.

23. A copy of this order be sent to the Supdt. Jail, Tihar, who shall bring in the notice of the petitioner.

**SURESH KAIT
(JUDGE)**

AUGUST 21, 2015
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