

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Cr. M. P. No. 1304 of 2016**

1. Sikandar Ali S/o Parvez Ali, aged about 34 years, R/o Husaini Colony, Chidri Road, Police Station 7, District Beedar, Karnataka.
2. Zilani Chaudhary S/o Maulana Chaudhary, aged about 34 years, R/o Husaini Colony, Chidri Road, Police Station 7, District Beedar, Karnataka.

---- Petitioners**Versus**

1. State of Chhattisgarh through the Secretary, Department of Jail, Mantralaya, Naya Raipur, Chhattisgarh.
2. Jail Superintendent, Central Jail, Raipur, Chhattisgarh.

---- Respondents

For Petitioners : Shri N. Naha Roy, Advocate

For Respondent/State : Shri Ashish Shukla, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****20/12/2016**

The present petition under Section 482 CrPC has been filed seeking for invocation of inherent jurisdiction under Section 482 CrPC for a direction to the respondents for holding the sentences imposed upon the petitioners in Criminal Case No. 688/13 for the offence under Sections 419 & 420 IPC, in Criminal Case No. 1030/13 for the offence under Section 420/34 of IPC and also in Criminal Case No. 762/2013 for the offence under Section 379/34 to run concurrently.

2. The facts of the present case in brief for proper adjudication of this case are that the two petitioners herein have a chequered history of being involved in a large number of criminal cases and have been subjected to criminal prosecution in as many as eight cases. The details of all those eight cases would be necessary for better appreciation of the present case which are as under:

Sl. No.	Case No.	Order date of trial court	Sections	Sentence	Remarks
1.	765/13	28.02.14	379 IPC	3 years	Sentence completed
2.	07/13	29.04.14	420/34 IPC	3 years	Sentence completed
3.	738/13	07.08.14	379/34 170 419 468 471 IPC	3 years 2 years 3 years 3 years 3 years	Sentence completed
4.	688/13	30.08.14	419 420 IPC	3 years 3 years	Sentence undergoing
5.	1030/13	08.09.14	420/34 IPC	1 year 8 months 15 days	Sentence yet to start
6.	762/13	28.01.15	379/34 IPC	3 years	Sentence yet to start
7.	981/13	29.09.15	379 419 420 IPC	3 years 3 years 3 years	Acquitted in appeal
8.	736/13	23.01.16	379/34 170 IPC	3 years 2 years	Sentence completed

3. Out of the aforesaid eight criminal cases, in the criminal cases which are reflected at serial Nos. 1, 2, 3, 7 & 8 the petitioners have already completed the sentence awarded to them either by the trial Court or by the appellate Court as the case may be. At present, the petitioners are undergoing the sentence imposed upon them in respect of the cases at serial No.4 wherein they have been convicted for the offence under Sections 419 & 420 of IPC and sentenced to

undergo RI for three years with fine of Rs.1,000/- with default stipulations.

4. In addition, the petitioners also stand convicted for the offences reflected at serial Nos. 5 & 6. For the offence mentioned at serial No.5, the petitioners stand sentenced for the period of one year 8 months and 15 days under Section 420/34 IPC and for the offence mentioned at serial No.6, the petitioners stand sentenced to undergo RI for 3 years for the offence under Section 379/34 IPC with default stipulations.

5. In view of the provisions of Section 427 of CrPC, since all the criminal cases were tried at different period of time, the petitioners stood convicted in each of the case separately and the judgments have been passed separately at different dates, there was no order for running of the sentences concurrently with any previous sentence and the petitioners in fact is aggrieved by this.

6. For better understanding the issue involved in the present case it would be appropriate to reproduce the provisions of Section 427 (1) of CrPC:

“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 on 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.”

At this juncture it would also be trite to refer to Section 428 of CrPC which again for ready reference is reproduced hereunder:

“428. Period of detention undergone by the accused to be set-off against the sentence of imprisonment – Where an accused person has, on conviction, been sentenced to imprisonment for a term [not being imprisonment in default of payment of fine] the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be setoff against the term of imprisonment imposed on him on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.”

7. Now, coming to the facts of the present case what has to be understood is that as per Section 428 of CrPC the period of detention if any undergone during investigation or trial of the same case and before the date of such conviction, the said period shall be set off against the total period of imprisonment awarded. However, the provision of Section 428 of CrPC shall always be subject to provisions of Section 427 of CrPC. Section 427 CrPC clearly enunciates that the subsequent conviction and imprisonment awarded shall commence only after expiration/completion of the imprisonment of the previous sentence unless the Court directs that the subsequent sentence shall run concurrently with the previous sentence.

8. In the instant case, the order for running of the sentences concurrently has not been passed though the trial Court has ordered for setting off the period while in custody.

9. Counsel for the petitioners submits that the petitioners in the instant case had moved an application under Article 226 of the Constitution of India for invocation of the writ of habeas Corpus as they have already remained in custody for a period of more than the sentence awarded to them which got dismissed. Therefore, the

petitioners have moved the present petition seeking for a relief that the sentences which have been passed in each of the three cases may be directed to run concurrently or else the petitioners shall remain in judicial custody for a very long period in spite of the fact that the sentence awarded to the petitioners was for a maximum period of three years.

10. Counsel for the petitioners relied upon a full Bench decision of the Madhya Pradesh High Court in **MPLJ 1989 116** (also in 1989 CRLJ 632) in the case of Sher Singh v. State of Madhya Pradesh.

11. The issue involved in the present case is whether within the scope of Section 482 CrPC the relief sought for by the petitioners can be granted at this stage when the conviction against the petitioners in all the criminal cases has already attained finality. Another issue which has been raised by the opposite side is whether the relief sought for by the petitioners in view of Section 427 can be granted invoking section 482 as it is the general principle of law that when there is a specific provision available for the Court, under such circumstances the power under Section 482 should not be exercised.

12. So far as Section 482 CrPC is concerned, the same admittedly is an extraordinary discretionary power conferred upon the High Court which can be exercised to make such orders as may be necessary so as to prevent the abuse of the process of any Court and can also be invoked otherwise to secure the ends of justice.

13. Learned counsel appearing for the petitioners submits that it is a case where the present petitioners were involved in number of cases reported during the same period of time. The cases were

registered separately and also tried separately. Right from the first judgment passed by the trial court on 28.02.2014 for the offence under Section 379 IPC whereby the petitioners were convicted and sentenced to undergo RI for three years, they are in jail and that three years is the maximum sentence which has been imposed in all the criminal cases in which they have been convicted or for a lessor period. Thus, the present petitioners have already remained in custody for a considerable period and more than the period of sentence awarded by the court below in three remaining cases as well i.e. in case numbers mentioned at serial numbers 4 to 6 shown in page 2 of this judgment.

14. Counsel for the petitioners submits that in case mentioned at Sl. No. 5, sentence awarded is only for the period of one year eight months and 15 days which he had already remained in jail, but in view of provisions contained in Section 427 CrPC he has not been released and would continue to remain in jail as his sentence would start only after the sentence in the previous case is completed. He, thus, prayed that this court in exercise of its extraordinary inherent powers conferred upon it under Section 482 CrPC may order for the sentence to run concurrently.

15. Counsel for the State however opposing the petition submits that track records of the petitioners are by itself self explanatory calling for no interference with the sentence awarded. It is also stated that it is not a case where the discretion of this court is to be exercised in favour of petitioners whose track record is not so good as they are habitual offenders and there are number of cases

wherein they have been convicted and sentenced for rigorous imprisonment for different period of time.

16. State counsel also submits that it is a case where the petitioners at the first instance itself during the course of trial or when they had challenged the judgment of conviction in appeal should have sought for the relief that they are seeking in this petition under Section 482 CrPC which according to the State counsel is not permissible and therefore, prayed for rejection of the petition.

17. Having considered the rival contentions put forth on either side and on perusal of record what clearly reflects from the facts of the case is that, the petitioners have been found guilty and convicted in 8 of the criminal cases in which they were tried and that the maximum sentence imposed in the cases is of 3 years and which has been passed in majority of the cases and in others it is less than 3 years of RI.

18. Indisputably, the petitioners had already remained in custody for a continuous period of more than three years. It is also not in dispute that in view of provisions of Section 427 CrPC, the petitioners have not been released inspite of having completed more than the sentence awarded as the sentence passed against the petitioners is being made operational consecutively which has resulted in the petitioners remaining in custody for all these period.

19. From the pleadings and the records which have been placed earlier it appears to be a case where the petitioners have not prayed before the court below for the sentences to run

concurrently with the sentence which they have already undergoing against the judgment of conviction passed on an earlier occasion.

20. Now if we look into the legal position in this regard, the Supreme Court in case of Mohd. Akhtar Hussain @ Ibrahim Ahmed Bhatti Vs. Asstt. Collector of Customs (Prevention), Ahmedabad and Another, reported in 1988 (4) SCC 183, in paragraphs 10 & 17 had held 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.

17. It is no doubt that the enormity of the crime committed by the accused is relevant for measuring the sentence. But the maximum sentence awarded in one case against the same accused is not irrelevant for consideration while giving the consecutive sentence in the second case although it is grave. The Court has to consider the totality of the sentences which the accused has to undergo if the sentences are to be consecutive. The totality principle has been accepted as correct principle for guidance.”

At this juncture, it would be relevant to also quote Section 482 CrPC which reads as under :

“482.Saving of inherent powers of High Court.-
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.”

21. The very fact that said provision starts with non-obstantive clause itself shows that it has wide powers conferred upon the High Court while exercising the powers under Section 482 CrPC. The powers under Section 482 CrPC is not subjected to the limitation imposed on the power of revision conferred by the Section 397 CrPC though it has been repeatedly held that inherent power has to be exercised sparingly, carefully and with caution only where such exercise is justified by the tests laid down in the section itself i.e. to prevent abuse of the process of any court or to secure the ends of justice.

22. In this regard it is also relevant to refer to the Full Bench decision of MP High Court in case of **Shersing Vs. State of Madhya Pradesh**, reported in **1989 MPLJ 116** (also reported in 1989 CRLJ 632) wherein one of the references being whether the law laid down by the MP High Court in A.S. Naidu's case still holds good and the High Court can entertain the application under Section 427 CrPC from accused persons who while undergoing sentence of imprisonment was subsequently convicted to the imprisonment without any direction under Section 427 CrPC and does not file appeal or revision against his subsequent sentence?

23. It is also pertinent at this juncture that there is no order passed by the trial court or the appellate court in the three cases in respect of sentence running concurrently in view of the provisions contained

in Section 427 CrPC. The petitioners would remain in custody as the judgments would all be made operational consecutively and as a result of which they would remain in custody continuously for a pretty long period much beyond the maximum period of three years imposed in the three cases. It is for this reason, the petitioners have moved the present petition seeking for issuance of an appropriate direction by this court invoking the powers conferred under Section 482 CrPC ordering for running of the sentences in respect of cases reflected at serial number 4, 5 and 6 in paragraph No.2 of this judgment concurrently which otherwise would be running consecutively.

24. For better understanding the legal position in respect of the powers conferred under Section 482 CrPC *vis a vis* the provisions of Section 427(1) CrPC, it would be relevant at this juncture to quote paragraphs 5 & 6 of Full Bench decision of MP High Court in case of Sher Singh (Supra) which reads 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 , 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. State , 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, 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 1974 Cri LJ 1397, 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. 1975 Cri LJ 498, 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, 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) is 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 1960 Cri LJ 1239) (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.

6. Subsequently, a Full Bench (Division Bench) of the Kerala High Court in [Mani v. State of Kerala](#) 1983 Cri LJ 1262, has held that when no direction is given by the trial court that the sentences were to run concurrently, direction can be issued by the High Court under inherent powers even if the stage of exercising discretion Under [Section 427\(1\)](#) of the Code is over, in circumstances which would serve the purposes mentioned in [Section 482](#). Unfortunately, in this decision the Full Bench decision of the Delhi High Court was not brought to its notice. But recently a Division Bench of the Andhra Pradesh High Court in [V. Venkateswarlu v. State of A.P.](#) 1987 Cri LJ 1621 held that when two convictions and sentences are passed against accused by two different courts and orders have become final on an application by accused under [Section 482](#) that those sentences may be run concurrently, the High Court is competent to issue such direction. It distinguished the Full Bench decision of the Delhi High Court in [Gopal Dass v. State](#) 1978 Cri LJ 961 (supra) holding that the Supreme Court neither in [R. P. Kapur v. State of Punjab](#) 1960 Cri LJ 1239 nor in [Palaniappa Gounder v. State of Tamil Nadu](#) 1977 Cri LJ 997 (SC) (supra) has gone to the extent in laying down that the inherent powers cannot be exercised at all in such circumstances. The Division Bench also mentioned that it may be that the subsequent convicting Court was not apprised about the existence of the previous sentence. At any rate ordering of sentence to run concurrently does not amount to altering the finding. It may be noted that [Section 31](#) of the Code provides for ordering the sentences to run concurrently in a given case. Likewise, under [Section 427](#) while awarding a sentence in a subsequent case in respect of the person who is already undergoing sentence in previous case, a discretion is given to the subsequent convicting Court to give such a direction and order the sentence to run concurrently with the previous sentence. The Division Bench also noted that the Delhi Full Bench case has laid down that even after such a sentence has become final nothing prevents the High Court from exercising suo motu revisional jurisdiction and give necessary direction as provided Under [Section](#)

[427](#) of the Code. Therefore, in view of the overwhelming decisions that power under [Section 482](#) can be invoked to make the subsequent sentence run concurrently with the earlier sentence, the decision of the Delhi High Court in [Gopal Dass v. State](#) (supra) does not appear to have laid down the correct law.”

25. In view of the aforesaid authoritative decisions of Full Bench of MP High Court as also Full Bench decision of Kerala High Court in case of **Mani and another v. State of Kerala**, reported in **1983 CRI.L.J. 1262**, this court, in the given factual matrix of the case, feels it proper to hold that to secure the ends of justice under Section 482 CrPC this court has all the powers for issuance of a direction holding the three sentences which are in operation against the petitioners herein have to be declared to run concurrently instead of consecutively.

26. The fact which cannot be brushed aside by this court is that true it is that the petitioners are convicts and have bad track record inasmuch as they have been found guilty in about 8 cases and also have been convicted, but at the same time, what is also to be seen is that the maximum sentence which has been imposed in the 8 cases is only three years and if all the sentences would run consecutively, the period which the petitioners would remain in custody would be a very long period and which in the opinion of this court, considering the factual matrix of the case would be too harsh.

27. Thus, the petition is allowed and it is ordered that so far as sentences passed by the trial court in three different cases i.e. Criminal Case No. 688/2013 decided on 30.08.2014, Criminal Case No.1030/2013 decided on 08.09.2014 as also Criminal Case

No.762/2013 decided on 28.01.2015 shall all run concurrently instead of consecutively.

28. With the aforesaid direction, the present petition is allowed.

Sd/-

(P. Sam Koshy)
JUDGE