

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:03.08.2016

PRONOUNCED ON:11.08.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

CrI.O.P. No.9466 of 2016

Kumar @ Button Kumar

..Petitioner

vs.

State represented by
Inspector of Police
Kavaripattinam Police Station
Krishnagiri District

..Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. to direct the Chief Judicial Magistrate Court, Krishnagiri in S.C. No.247 of 2007 and S.C. No.249 of 2007 order dated 30.01.2009 to allow the petitioner to serve his term concurrently.

For Petitioner :Ms. M. Kaviyarasi

For Respondent :Mr. C. Emalias
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed for a direction to the Chief Judicial Magistrate Court, Krishnagiri, to allow the petitioner to serve the terms awarded by judgments dated 30.01.2009 in S.C. Nos.247 and 249 of 2007, concurrently.

2 Heard Mr. Akhil Akbar Ali, learned counsel for the petitioner and Mr.C.Emalias, learned Additional Public Prosecutor appearing for the respondent-State.

3 A case in Kavaripattinam P.S. Crime No.111 of 2007 was registered by the respondent police in respect of a robbery that had taken place on 28/29.01.2007 between 21.00 hours and 01.00 hours in the house of one Senthil Kumar and after completing the investigation, Kavaripattinam Police filed a final report in P.R.C. No.29/2007 before the Judicial Magistrate, Krishnagiri,

who, committed the case to the Court of Sessions, wherein, one Govindan @ Kozhi Govindan (A1), Kumar @ Button Kumar (A2-the petitioner herein) and Ramu @ Anand (A3) faced trial in S.C. No.249 of 2007 before the Chief Judicial Magistrate-cum-Assistant Sessions Judge, Krishnagiri, for offences under Sections 458 and 395 read with Section 397 IPC.

4 For the incident that took place on 29.01.2007 at 02.00 hours in the house of one Jayaraman, Kavaripattinam police registered a case in Kavirapattinam Crime No.112/2007 and after completing the investigation, filed a final report in P.R.C. No.30/2007 before the Judicial Magistrate, Krishnagiri, who committed the case to the Court of Sessions, wherein, one Govindan @ Kozhi Govindan (A1), Kumar @ Button Kumar (A2-the petitioner herein) and Ramu @ Anand (A3), faced trial in S.C. No.247 of 2007 before the Chief Judicial Magistrate-cum-Assistant Sessions Judge, Krishnagiri, for offences under Sections 458 and 395 read with 397 IPC.

5 Trials in S.C. Nos.247 and 249 of 2007 in which Kumar @ Button Kumar, the petitioner herein, was arrayed as A2, were conducted by the Chief Judicial Magistrate-cum-Assistant Sessions Judge, Krishnagiri and on 30.01.2009, judgment in both the cases were pronounced by the Trial Judge.

6 In S.C. No.249 of 2007, the petitioner was convicted and sentenced under Section 458 Cr.P.C. for 7 years rigorous imprisonment with fine of Rs.500/- in default to undergo 3 months rigorous imprisonment and for offence under Section 395 read with 397 IPC, 7 years rigorous imprisonment with fine of Rs.500/-, in default to undergo 3 months rigorous imprisonment. The sentences for the said offences were directed to run concurrently.

7 In S.C. No.247 of 2007, the petitioner was convicted and sentenced under Section 458 Cr.P.C. for 7 years rigorous imprisonment with fine of Rs.500/- in default to undergo 3 months rigorous imprisonment and for offence under Section 395 read with 397 IPC, 7 years rigorous imprisonment with fine of Rs.500/-, in default to undergo 3 months rigorous imprisonment. The sentences for the said offences were directed to run concurrently.

8 Though the petitioner was convicted and sentenced in S.C. Nos.249 and 247 of 2007 on the same day, i.e., 30.01.2009, the Trial Court did not state that the sentences imposed in S.C. No.247 of 2007 and 249 of 2007 should run concurrently and had left it at that.

9 At this juncture, it is felicitous to extract Section 427 Cr.P.C.:

"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."

10 By virtue of Section 427 Cr.P.C., if the Trial Court had not specifically stated that subsequent sentence should run concurrently with the previous sentence, it means that the prisoner should have to undergo the sentences consecutively.

11 Under such circumstances, the petitioner is before this Court praying that this Court may issue a direction under Section 482 Cr.P.C. to have the sentences in S.C. Nos.247 and 249 of 2011 run concurrently, so that he can be released from prison.

12 In support of this contention, the learned counsel for the petitioner submitted that the petitioner has been in prison since his conviction, i.e., from 30.01.2009 and that he has completed more than 7 years and 4 months as on today in prison and that his conduct has been good throughout. The learned counsel also submitted that the petitioner did not challenge the conviction and sentence either in appeal or in revision and accepted the conviction and sentence and is undergoing imprisonment as ordered by the Trial Court; whereas, the co-accused, viz., Govindan @ Kozhi Govindan (A1) and Ramu @ Anand (A3) filed CrI.A.Nos.31 and 19 of 2012 before the District and Sessions Judge, Krishnagiri, which were dismissed on 06.03.2013 and thereafter, they preferred CrI.R.C. Nos.1204 and 1205 of 2013 before this Court and by order dated 07.11.2013, this Court confirmed the conviction, but, modified the sentence as follows:

"7. In the result, both the Criminal Revisions are disposed of and the judgment of conviction of the Courts below in S.C. No.247 and 249 of 2007 as confirmed in C.A. Nos.19 and 31 of 2012 stand modified from the offence under Section 397 IPC to 395 IPC and the sentence of imprisonment imposed on them stands restricted to the period of imprisonment already undergone by them. The sentence of fine, if any, shall stand confirmed. The accused 1 and 3/petitioners shall be released forthwith unless their detention is required in connection with any other case. Consequently, connected Miscellaneous Petitions are closed."

13 According to the learned counsel for the petitioner, pursuant to the order passed by this Court on 07.11.2013, Govindan @ Kozhi Govindan (A1) and Ramu @ Anand (A3) have been released from prison, but, for the sin of the petitioner in not filing appeals and revisions against convictions and sentences, he has to suffer imprisonment upto 2020.

14 This Court called for a report from the prison authorities which shows that the petitioner has completed the sentence and imprisonment in S.C. No.247 of 2007 on 23.10.2015 and now, he is undergoing the sentence of imprisonment in S.C. No.249 of 2007 which will end in 2019, after giving him set off. That apart, the prison authorities have stated that the petitioner has not come to any adverse notice in the prison and that his conduct in the prison has been fairly good.

15 In support of his contention that under Section 482, Cr.P.C., the High Court has inherent power to alter running of sentences, the learned counsel for the petitioner relied upon a judgment of a Division Bench of this Court in K. Arasan and Rajkumar vs. The State of Tamil Nadu, represented by Inspector of Police, M-5 Vadavalli Police Station, Coimbatore, [MANU/TN/1953/2012], wherein, it has been held as follows:

"15. It is to be stated that invoking the jurisdiction under Section 482, Cr.P.C. in order to grant the relief under Section 427, Cr.P.C. would not amount to altering, varying or modifying the findings of the Trial Court or Appellate Court. On the other hand, it is always open to this Court to exercise power under Section 482, Cr.P.C. to secure the ends of justice. It is needless to say that this Court has to exercise its judicial discretion for invoking the power under Section 482, Cr.P.C. for granting the relief under Section 427, Cr.P.C., on the basis of the

facts and circumstances and gravity of the charge levelled against the accused in each case.

16 In the result, we are answering the reference to the effect that the inherent power of the High Court under Section 482, Cr.P.C. can very well be extended to issue a direction ordering the sentence imposed in a latter case on conviction to run concurrently with the sentence imposed in a former case as provided under Section 427, Cr.P.C."

16 Mr. C. Emalias, learned Additional Public Prosecutor submitted that the petitioner will not be entitled to the relief, because, the Trial Court was aware of the fact that he is being convicted and sentenced in both the cases and had consciously not directed the sentences to run concurrently, as required under Section 427, Cr.P.C and ergo, this Court should not interfere under Section 482, Cr.P.C., in a case of this nature.

17 This Court gave its anxious consideration to the submissions made on either side.

18 It is true that in cases of this nature, this Court should not interfere under Section 482 Cr.P.C. to alter the running of the sentences as prayed for by the petitioner. However, in this case, the co-accused who had filed appeals and revisions have been released from prison, as stated above, whereas, the petitioner who had resigned himself to his fate, continues to undergo the sentence without demur even after his friends were released. The Division Bench of this Court, in K. Arasan and Rajkumar case (supra), has stated that the power of this Court under Section 482 Cr.P.C. is not totally denuded and in appropriate cases, a direction under Section 482, ibid, can be given to order the sentences to run concurrently. In the considered opinion of this Court, this is an appropriate case where such an order needs to be given.

In the result, this Criminal Original Petition is allowed and the sentences in S.C. Nos.247 and 249 of 2007 shall run concurrently. However, the petitioner shall pay the fine amount or inter alia, undergo the default sentence imposed by the Trial Court in S.C. Nos.247 and 249 of 2007 and there cannot be any relief in respect of that.

cad

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

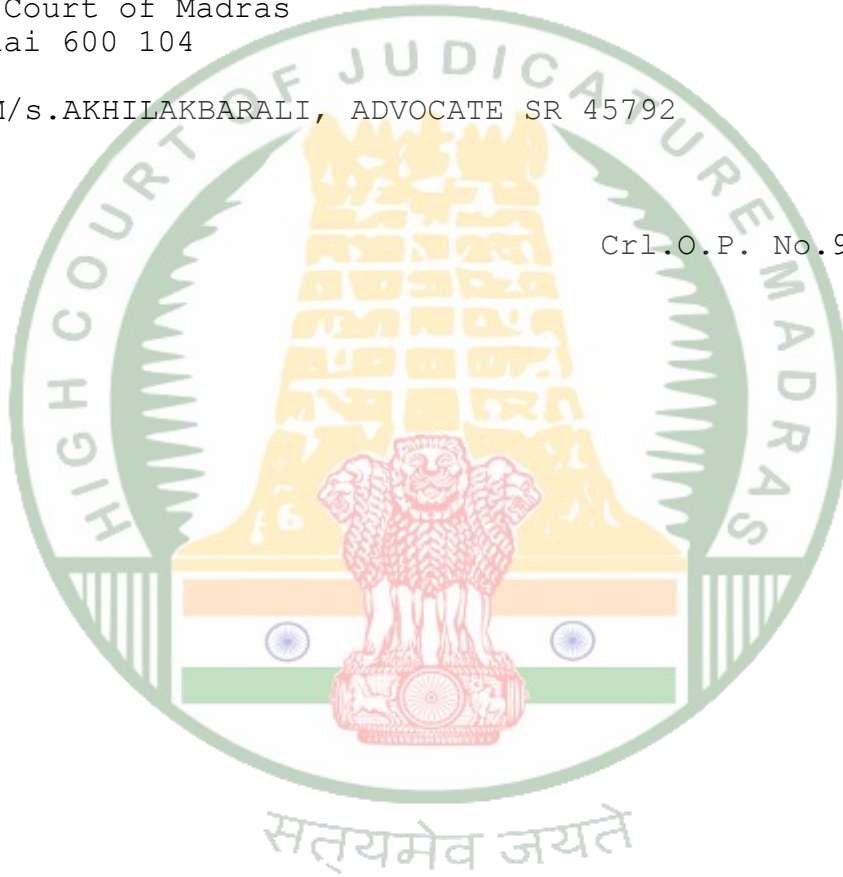
To

- 1 The Inspector of Police
Kavaripattinam Police Station
Krishnagiri District
- 2 The Chief Judicial Magistrate Court
Krishnagiri
- 3 The Public Prosecutor
High Court of Madras
Chennai 600 104

+1 cc to M/s.AKHILAKBARALI, ADVOCATE SR 45792

KR/2/9/16

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