

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-1897 of 2016
Date of decision: 21.01.2016**

Bhupinder Singh alias Bhinda

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Ms.Gurjit Kaur, Advocate for the petitioner

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ? **yes***
- 2. To be referred to the Reporters or not ? **yes***
- 3. Whether the judgment should be reported in the Digest? **yes***

Kuldeep Singh, J. (Oral)

Petitioner Bhupinder Singh alias Bhinda was convicted and sentenced by Learned Session Judge, Amritsar under Sections 302 and 449 IPC. He was sentenced to undergo imprisonment for life and fine of Rs. 5000/- in default thereof, to undergo further rigorous imprisonment for a period of two years under Section 302 IPC. He was also sentenced to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.3000/-. In default thereof, to undergo further rigorous imprisonment for one year under Section 449 IPC.

Aggrieved by the said judgment and order, the present petitioner preferred an appeal before this Court. A Division Bench of this Court heard the appeal and vide judgment dated 3.8.2012 dismissed the same.

The Lower Court order as well as judgment of Division Bench of this Court is silent on this point that whether the sentence

would run concurrently or consecutively. However, in view of Section 31 of the Code of Criminal Procedure, in such cases the sentence will run consecutively i.e. one after the other.

The present petition has been filed by the petitioner stating that under Section 427 Cr.P.C. the sentences under Sections 302 and 449 should be directed to run concurrently. For this purpose, reliance has been placed upon the judgment passed in CRM-M-18435-2015 by Coordinate Bench of this Court on 4.9.2015. The question will arise as to whether by way of separate petition under Section 482 Cr.P.C., the Court is competent to order that the sentences will run concurrently. Section 427 Cr.P.C provides as under :-

“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.”

The perusal of the said Section shows that it pertains to the cases where the person is already undergoing sentence of imprisonment. Sub-section 1 shows that in such cases when a person who is already undergoing sentence of imprisonment, is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence on the expiration of the imprisonment to which he has been previously sentenced unless the Court directs that subsequent sentence shall run concurrently with the previous sentence. Sub-Section 2 pertains to the cases of life imprisonment.

The present case is entirely on a different footing. Here the petitioner was not undergoing sentence in any previous case. He has been convicted for the first time. His prayer is that sentence passed under two different sections should be directed to run concurrently. Reference has also been made under Section 31 of the Code of Criminal Procedure, which is reproduced as under:-

“31. Sentence in cases of conviction of several offences at one trial - (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code, (45 of 1860) sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a

single offence, to send the offender for trial before a higher Court:

Provided that-

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.”

The perusal of said section shows that, it pertains to the power of the court which is sentencing the accused. Nowhere Section 427 or Section 31 of the Code of Criminal Procedure provides that when a person has been convicted and sentenced under two different Sections and the conviction has been upheld, then by way of separate petition under Section 482 Cr.P.C., a different Bench can order that the sentences will run concurrently. The discretion was with the Court which convicted the accused and thereafter the discretion was with the appellate Court. In this case the conviction has been upheld by a Division Bench of this Court. Therefore, it is otherwise against propriety that a Single Bench of this Court should amend the order passed by as Division Bench of this Court.

In these circumstances, I am of the view that the present petition is without any merit and is liable to be dismissed.

Accordingly, petition stands dismissed.

21.01.2016

gk

GOPAL KRISHAN
2016.01.27 15:07
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

**(Kuldip Singh)
Judge**