

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

CRM No.M-28626 of 2016 (O&M)

Date of Decision: August 22, 2016

Gurcharan Singh @ Charan

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kuldeep V. Singh Ahluwalia, Advocate
for the petitioner.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 427 Cr.P.C. read with Section 482 Cr.P.C. against State of Punjab for issuance of direction to respondent regarding concurrence of sentences awarded to the petitioner by the different Courts under Section 15 of the NDPS Act in view of the law laid down in “Jang Singh vs. State of Punjab and others”.

I have heard learned counsel for the petitioner and have gone through the record.

The perusal of the record shows that no appeal or revision is pending before this Court against any judgment. The appeal has already been decided by this Court. In the judgment passed by the Hon'ble Full Bench of this Court in *Jang Singh vs. State of Punjab, 2008(1) RCR (Criminal) 323*, it is held as under:-

different judgments passed by various High Courts and the Hon'ble Supreme Court, seems to be that normal rule, as per Section 427 Criminal Procedure Code, is that, a person who is undergoing a sentence of imprisonment and is sentenced on a subsequent conviction to an imprisonment or an imprisonment for life, then such imprisonment or imprisonment of life shall commence after the expiration of the imprisonment, to which he has been previously sentenced. This, however, would not be so if the Court directs that the subsequent sentence shall run concurrently with the previous sentence. Such direction to make the sentences to run concurrently, as per various decisions noted above, can be exercised by the trial Court or by the appellate Court or a revisional Court at the time of exercising appellate or revisional jurisdiction as well. However, if the trial Court does not pass any such direction for making the sentences to run concurrently and appeal or revision against said decision is also decided, then it may not be open for a person to seek such direction for making the sentences to run concurrently by moving an application under Sections 482/427 Criminal Procedure Code. The view taken by one set of the High Courts that such an application can be entertained while exercising inherent powers under Section 482 Criminal Procedure Code would no more appear to be a good law in view of the decision of the Hon'ble Supreme Court in M.R. Kudva case (supra). We are, thus, bound to take this view that this discretion though available with the trial Court, appellate Court or the revisional Court while holding trial or entertaining appeal or revision but would not be so available to be exercised in isolation when application in this regard is moved either under Sections 482 or 427 Criminal Procedure Code. What principle and consideration will govern the exercise of this discretion, as already noted above can not be exhaustively enumerated. Certain relevant factors, as can be culled out from different judgments referred to above, may give an indication where such discretion may be exercised. These factors generally would be the nature or character of the offences committed, the prior criminal record of the offender, character his age and sex etc. ghastly nature of the crime. The offender being habitual would also be the factor, which can be relevantly taken into consideration. It may be stated at the cost of repetition that these are not the only reasons for which the Court can exercise this discretion. Discretion always is open to be exercised by any Court dependent upon the facts and circumstances of each case on any relevant or valid consideration as may be considered so by the Court while holding the trial or deciding the case at the stage of appeal or revision. It may require a notice that Section 427 Criminal Procedure Code as observed by Hon'ble Supreme Court is aimed at amelioration and this aspect may also require to be kept in view while exercising the discretion.”

In view of the law laid down by the Hon'ble Full Bench, this petition under Section 427 Cr.P.C. read with Section 482 Cr.P.C. is not maintainable as appeal has already been decided by this Court and no appeal or revision is pending before this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

August 22, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes