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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(CRL) 920/2015
GHANSHYAM @ JAVED Petitioner
Through: Mr. Biswasit Kumar, Adv.
versus

STATE & ANR. Respondents
Through: Mr. Rajesh Mahajan, ASC for State
with Mr. Peeyush Bhatia, Adv. along
with SI Parveen Kumar, P.S. Civil
Lines.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **02.12.2016**

By this writ petition under Article 226 of the Constitution of India, petitioner has prayed that respondents be directed to treat the sentences of the petitioner in different cases to run concurrently. He has further prayed that respondent no.2 be directed to send the name of the petitioner to the Sentence Reviewing Board.

As regards first prayer of the petitioner regarding running all the sentences concurrently, the writ petition would not be maintainable. Such an order can be passed under Section 427 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), which provision can only be invoked either in the original case or in the appeal. No independent petition seeking relief in terms of the Section 427 of the Code would be

maintainable.

Vide order dated 15th December, 2006 Supreme Court in Crl. Appeal No. 1330/06 titled M.R. Kudva vs. State of Andhra Pradesh, has held that Section 427 of the Code could not be applied in a separate and independent proceeding by the High Court.

As regards second prayer is concerned, report of Superintend Jail has been received wherein it has been stated as under :-

“On 30.07.2005 the convict was convicted in both the aforementioned cases i.e. FIR No. 318/2000 & FIR No. 07/2001 and was sentenced to undergo life imprisonment by the Hon’ble Court of Sh. Rajpaul Singh Teji, ASJ, Tis Hazari Court, Delhi. However, the sentence of these cases resumed from 02.02.2007 as at the time of conviction i.e. 30.07.2005 till 01.02.2007 he was serving 07 years rigorous imprisonment in cases FIR No. 516/2000. It is further submitted before this Hon’ble Court that after completion of sentence in case FIR No. 516/00, u/Sec. 395/412/34 IPC, P.S. I.P. Estate on 01.02.2007; the sentence of aforementioned was started from 02.02.2007. Therefore, the under-trial period from 30.07.2005 to 01.02.2007 cannot be counted in his conviction period. Hence, the name of the convict cannot be sent to Sentence Reviewing Board.”

Writ petition is disposed of with the above observations.

A.K. PATHAK, J.

DECEMBER 02, 2016

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