

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.06.2017

Coram:

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Crl.O.P.No.4072 of 2017

Janath Singh

.. Petitioner

vs.

State rep. by  
the Inspector of Police  
Neyveli Township Police Station,  
Cuddalore District.

.. Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to direct the sentences in CC No.46/2016 dated 03.08.2016 on the file of the learned District Munsif-cum- Judicial Magistrate, Neyveli to run concurrently.

For Petitioner : Mr.B.Nambiselvan  
For Respondent : Mr.C.Emalias, APP

ORDER

The petitioner has come forward with the present petition to direct the sentences imposed on him by the learned District Munsif-cum-Judicial Magistrate, Neyveli in CC No.46 of 2016 dated 03.08.2016 to run concurrently.

2.According to the petitioner, by judgment dated 03.08.2016 in CC No.46/2016, he was convicted for the offences under Sections 457 and 380 IPC and he was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- for the offence under Section 457 IPC and to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- for the offence under Section 380 IPC, in default of payment of fine, to undergo two months simple imprisonment for each default. The trial court further ordered the sentences imposed on the petitioner to run consequently. Hence, this petition.

3.Learned counsel for the petitioner submitted that as against the judgment made in CC No.46 of 2016, the petitioner has not preferred any appeal. Learned counsel further submitted that from the date of remand i.e., on 15.03.2016, the petitioner is in incarceration. Further, being the sole bread winner of his family, his aged and ailing parents are suffering without the

income of the petitioner. Thus, learned counsel seeks a direction to order the sentences imposed on the petitioner to run concurrently. In support of the relief so sought for herein, learned counsel also relied on the principles laid down by three Judges larger Bench of the Hon'ble Supreme Court in the authority reported in 2009 (2) CTC 459 (State of Punjab v. Madan Lal).

4. Learned Additional Public Prosecutor appearing for the respondent submitted that considering the gravity of the offences committed by the petitioner, the trial court ordered the sentences imposed on him to run consequently. However, learned Additional Public Prosecutor has no objection with regard to the principles laid down by the Apex Court in the decision cited on the side of the petitioner.

5. Heard both sides and perused the records.

6. It is not in dispute that the petitioner was convicted for the offences under Sections 380 and 457 IPC and was sentenced to undergo rigorous imprisonment for three years for the offence under Section 380 IPC and was sentenced to undergo two years rigorous imprisonment for the offence under Section 457 IPC. The trial court further ordered the period of imprisonment to run consequently. Hence, the petitioner is before this Court.

7. At this juncture, it is relevant to look into the authority cited on the side of the petitioner. The impugned order before the Hon'ble Supreme Court was the order of the High court, wherein, the High court directed the sentences imposed by the lower court against the accused in two different cases to run concurrently. The Hon'ble Supreme Court, while considering the correctness of the order so passed by the High Court, referred to the earlier decisions of the Apex Court reported in (i) AIR 1988 SC 2143 (Mohd. Akthar @ Ibrahim Ahmed Bhatti v. Assistant Collector of Customs (Prevention), Ahmadabad and others) and (ii) 2001 (6) SCC 311 (State of Maharashtra v. Najakat @ Mubarak Ali).

(i) The Hon'ble Supreme Court in AIR 1988 SC 2143 was of the view that "the basic rule of thumb over the years has been the so called transactions 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 offence is not the same or the facts constituting the two offences are quite different".

(ii) The Apex Court in para 17 of the decision reported in 2001 (6) SCC 311 (cited supra) held as follows :

"17. In the above context, it is apposite to point out that very often it happens, when an accused is convicted in one case under different counts of offences and sentenced to different terms of imprisonment under each such count, all such sentences are directed to run concurrently. The idea behind it is that the imprisonment to be suffered by him for one count of offence will, in fact and in effect be imprisonment for other counts as well."

In the light of the above observations, the Hon'ble Supreme Court in the authority reported in 2009 (2) CTC 459 (cited supra), dismissed the appeal filed by the State of Punjab, as without any merit.

8. Following the principles laid down by the Hon'ble Supreme Court, as referred to above, this Court is inclined to direct the sentences awarded by the trial court against the petitioner for two offences, to run concurrently. Accordingly, the sentences imposed on the petitioner by the learned District Munsif-cum-Judicial Magistrate, Neyveli in CC No.46 of 2016 dated 03.08.2016, to run concurrently. In the event of the petitioner being in incarceration, he is directed to be released, if the period of sentence expired or the detention of the petitioner is no longer required.

9. The Criminal Original Petition is ordered as indicated above.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The District Munsif-cum Judicial Magistrate, Neyveli.
2. The Inspector of Police, Neyveli Township Police Station, Cuddalore District.
3. The Public Prosecutor, High Court, Madras - 104.

+ 1 cc to M/s. B. Nambiselvan, Advocate SR.42452

Cr1.O.P.No.4072 of 2017

CP(CO)  
EU 27.7.17