

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.05.2017

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.OP No.3736 of 2017

R.Ravikumar

...Petitioner

Vs

1.The Secretary to Government
Home Department,
Secretariat, Fort.St.George,
Chennai - 600 009.

2. The Superintendent of Prisons,
Central Prison, Trichy.

3. Purushothaman,

4. Subramanian

... Respondents

(Impleaded the 3rd and 4th respondents
as per the order of this Court dt.28.03.2017
in Crl.M.P.No.4636/2017 in Crl.OP.3736/2017)

Prayer:- Criminal Original Petition filed under Section 482
Cr.P.C., to direct the sentence awarded in both cases Viz.,
C.C.No.116 of 2013 and C.C.No.144 of 2013 by the Learned Fast
Track Judge (Magisterial Level), Mayiladuthurai, Nagapattinam to
run concurrently and direct the 2nd Respondent to release the
petitioner and set him at liberty.

For Petitioner
For respondent
Nos.1 & 2

: Mr.S.Giritharan
: Mr.K.Balamurugan
Government Advocate

ORDER

This petition has been filed to direct the sentence awarded
in both cases Viz., C.C.No.116 of 2013 and C.C.No.144 of 2013 by
the Learned Fast Track Judge (Magisterial Level),
Mayiladuthurai, Nagapattinam to run concurrently and direct the
2nd Respondent to release the petitioner and set him at liberty.

2. The petitioner had preferred Criminal Appeals before the Sessions Court, Nagapattinam in C.A.Nos.43 and 42 of 2015 against the conviction awarded in C.C.Nos.116 of 2013 and 144 of 2013 under section 138 of the Negotiable Instrument Act, on the file of the Fast Track Court Judge, Mayiladuthurai. Both appeals were dismissed and hence, the conviction and sentence passed by the Trial Court in C.C.Nos.116 of 2013 and C.C.No.144 of 2013 stood unaltered.

3. According to the learned counsel for the petitioner, though both cases were tried by the same learned judicial officer and the judgments in both the cases were pronounced on the very same day, the judgments ought to have been ordered to the effect that the sentences should run concurrently. The Hon'ble Supreme Court, in the judgment reported in (2009) 5 Supreme Court Cases 238 (State of Punjab Vs. Madan Lal), by relying upon paragraph Nos.17 and 18 of the judgment reported in (2001) 6 SCC 311 (State of Maharashtra V.Najakat), observed 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.

18. Reading Section 428 of the Code in the above perspective, the words 'of the same case' are not to be understood as suggesting that the set-off is allowable only if the earlier jail life was undergone by him exclusively for the case in which the sentence is imposed. The period during which the accused was in prison subsequent to the inception of a particular case, should be credited towards the period of imprisonment awarded as sentence in that particular case. It is immaterial that the prisoner was undergoing sentence of imprisonment in another case also during the said period. The words 'of the same case' were used to refer to the pre-sentence period of detention undergone by him. Nothing more can be made out of the collocation of those words."

5. In the light of the above judgments, the petitioner would be entitled for the relief sought for. Accordingly, there shall be a direction that the sentence awarded in the cases in C.C.No.116 of 2013 and C.C.No.144 of 2013 on the file of the Fast Track Judge (Magisterial Level, Myladudurai, Nagapattinam) shall run concurrently and consequently, the second respondent is directed to release the petitioner and set him at liberty forth with. The petition stands allowed.

Sd/-
Assistant Registrar/V.O

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government
Home Department,
Secretariat, Fort.St.George,
Chennai - 600 009.
2. The Superintendent of Prisons,
Central Prison, Trichy.
3. The Learned Fast Track Judge (Magisterial Level),
Mayiladuthurai, Nagapattinam.
4. The Public Prosecutor,
High Court, Madras.

+1cc to M/S.S.Giritharan, Advocate Sr.37117

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