

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.596 OF 2017

ORDER:

The request of the petitioner herein made under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') is to pass orders for running the sentences of imprisonment inflicted on 05.10.2016 in Criminal Appeal Nos.123 and 124 of 2014 by the learned Special Sessions Judge for trial of SCs/STs (POA) Act Cases, Nalgonda, and the sentences of imprisonment inflicted on 21.10.2016 in Criminal Appeal Nos.512, 513 and 514 of 2016 by the learned XIII Additional Sessions Judge, Narasaraopet, holding full additional charge of X Additional Sessions Judge, Gurazala, concurrently by giving set of to the remand period and pass such other order or orders as the Court may deem fit and proper.

2. Heard Sri P. Nagaraj, learned counsel for the petitioner and the learned Additional Public Prosecutors for the States of Telangana and the Andhra Pradesh.

3. Criminal Appeal Nos.123 and 124 of 2016 were directed against the conviction and sentences inflicted by the learned Special Judicial Magistrate of First Class, Prohibition and Excise, Nalgonda, on 27.07.2016 in C.C. Nos.110 and 1170 of 2016. The learned Magistrate convicted the petitioner herein for the offence punishable under Section 379 IPC and sentenced him to undergo Rigorous

Imprisonment for a period of two years and to pay a fine of Rs.50/- in default to pay fine amount, to undergo simple imprisonment for a period of 15 days for the said offence in the aforesaid Calendar Case Nos.110 and 1170 of 2016.

4. The aforesaid judgments passed by the learned Magistrate have not been filed by the petitioner. However, the judgments in Criminal Appeal Nos.123 and 124 of 2016 are filed. The learned Special Sessions Judge for trial of SCs/STs (POA) Act Cases, Nalgonda, while disposing of the Criminal Appeals on 05.10.2016, confirmed the conviction recorded by the learned Magistrate and the imposition of fine amount, but modified the sentence of imprisonment of Rigorous Imprisonment of two years reducing it to one year and held that the petitioner is entitled to set off the remand period under Section 428 of the Code, and also recorded in the judgment passed in Criminal Appeal No.124 of 2016 that the sentence of imprisonment inflicted in Criminal Appeal No.123 of 2016 shall run concurrently with the sentence of imprisonment inflicted in Criminal Appeal No.124 of 2016. Thus, both the sentences have to run concurrently so far as the aforesaid appeals are concerned, or the Calendar Case Nos.110 and 1170 of 2016 as the case may be.

5. Now, coming to the other appeals, Criminal Appeal Nos.512, 513 and 514 of 2016 were disposed of by separate judgments rendered on 21.10.2016 by the learned XIII Additional

Sessions Judge, Narasaraopet, holding full additional charge of X Additional Sessions Judge, Gurazala. They arise out of conviction recorded and sentences of imprisonment imposed including fine by the learned I Additional Judicial Magistrate of First Class, Gurazala in C.C. Nos.52, 49 and 50 of 2016, respectively, for the offence punishable under Section 411 IPC.

i) As regards C.C. No.52 of 2016, the learned Magistrate, Gurazala, while acquitting accused Nos.1 to 3 under Section 248 (1) of the Code, for the offence punishable under Section 379 IPC and accused Nos.2 and 3 for the offence under Section 411 IPC, convicted accused No.1 - petitioner herein, under Section 248 (2) of the Code, for the offence punishable under Section 411 IPC.

ii) As regards C.C. No.49 of 2016, the learned Magistrate while acquitting accused No.2 therein for the offence punishable under Section 411 IPC, convicted the petitioner - accused No.1 for the said charge.

iii) As regards C.C. No.50 of 2016, the learned Magistrate while acquitting accused Nos.2 and 3 for the offence punishable under Section 411 IPC, convicted accused No.1 under Section 248 (2) of the Code, for the said offence. The learned Magistrate, Gurazala, inflicted the sentence of imprisonment in all the aforesaid cases to undergo simple imprisonment for one year against accused No.1.

6. The submission of the learned counsel is to direct all the sentences of imprisonment inflicted in the aforesaid five Calendar Cases to run concurrently.

7. As already mentioned in the above, the learned counsel has not placed the copies of judgments, dated 11.08.2016 rendered by the learned the learned I Additional Judicial Magistrate of First Class, Gurazala, in Calendar Case Nos.52, 49 and 50 of 2016, respectively, to find out whether the learned Magistrate has recorded that all the sentences of imprisonment shall run concurrently. The judgments rendered by the learned XIII Additional Sessions Judge, Narasaraopet, holding full additional charge of X Additional Sessions Judge, Gurazala in Criminal Appeal Nos.512, 513 and 514 of 2016 do not spell out anything on that aspect of the case. In fact, such a request ought to be made before the learned XIII Additional Sessions Judge, Narasaraopet, holding full additional charge of X Additional Sessions Judge, Gurazala, when the appeals were disposed of, requesting to order the sentence of simple imprisonment of one year imposed in each of the aforesaid Calendar Cases shall run concurrently in case the learned Magistrate has not recorded the same, but such a request appears to have not been made before the appellate Court.

8. In the present case, it is imperative to refer to Section 427 of the Code. It reads thus:

“ 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 learned counsel for the petitioner has placed reliance on a decision rendered by a learned Single Judge of this Court in **M/s. A.M. Agencies v. United Phosphorus Limited and another¹**, wherein it was held in paragraph No.‘42’ thus:

“42. As can be seen from the factual matrix extracted above, all these cases arise out of a single transaction namely, the katha account between the complainant-company and the accused-company. This being a running katha account, various entries have been made and in discharge of the debt covered by those entries it is said that the different cheques have been issued. It is obvious,

¹. 2001 (1) ALT (Crl.) 1 (A.P.)

therefore, that all these cases emanate from a single transaction. Under such circumstances, the rule of thumb enunciated by the Apex court in the above judgment shall be applied. As many as seven complaints have been filed by the complaint-company against the accused-company. The accused has been convicted in all the cases and has been sentenced to suffer rigorous imprisonment for one year in each case. However, the Appellate Court reduced the sentence of imprisonment to nine months from one year. If all the sentences in seven cases were to run consecutively, the accused must serve five years and three months. I think it is quite unreasonable. Further in view of the authoritative pronouncement of the Apex Court and as the facts in this case disclose that it is a single transaction of katha account, the provisions under Section 427 of the code shall have to be invoked and for the said reason, I see no illegality or any irregularity committed by the Appellate Court in directing the sentences to run concurrently. For the foregoing reasons, the contention of Sri Raja Reddy, learned counsel for the complaint-company merits no consideration.”

9. The learned Additional Public Prosecutor for the State of Telangana has submitted copies of the judgments in C.C. Nos.49, 40 and 52 of 2016 passed by the learned I Additional Judicial Magistrate of First Class, Gurazala. These judgments would clearly show that sentences of imprisonment imposed on the petitioner were ordered to run concurrently. Thus, it is clear that in the first set of cases i.e., Criminal Appeal Nos.123 of 2016 and 124 of 2016, the sentences of imprisonment against the petitioner were ordered to run concurrently;

so also in the second set of cases, the sentences inflicted by the trial Court and confirmed by the lower appellate court in Criminal Appeal Nos.512, 513 and 514 of 2016 by the judgments dated 21.10.2016 were ordered to run concurrently.

10. The provisions of Section 427 of the Code have been extracted in the above. When looked at the culpability of the petitioner and the fact-situation involved in committing theft of motor-cycles, when viewed in that context, moral turpitude is involved. In such a situation, it is difficult to accede to the request of the petitioner to order sentences of imprisonment imposed in the first and second sets of cases to run concurrently.

11. Therefore, the Criminal Petition is dismissed, at the admission stage itself.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

A. SHANKAR NARAYANA, J

March 15, 2017.

Mgr/pv