

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRL.R.C.No.1356 OF 2005

CRL.R.C.No.1357 OF 2005

AND

CRL.R.C.No.1358 OF 2005

COMMON ORDER:

Crl.R.C.No.1356 of 2005 is filed under Sections 397 and 401 Cr.P.C questioning the propriety, legality and regularity of the judgment dated 08.07.2005 in Crl.A.No.34 of 2005 passed by the Principal Sessions Judge, Kadapa confirming the judgment dated 31.12.2004 in C.C.No.149 of 2001 passed by the II Additional Judicial Magistrate of First Class, Kadapa to the extent of amount of compensation of Rs.50,000/- payable to the complainant under Section 357(3) Cr.P.C in two monthly equal installments, in default to suffer simple imprisonment for a period of four months while modifying the sentence of rigorous imprisonment of one year to simple imprisonment for three months.

2. Crl.R.C.No.1357 of 2005 is filed under Sections 397 and 401 Cr.P.C questioning the propriety, legality and regularity of the judgment dated 08.07.2005 in Crl.A.No.101 of 2004 passed by the Principal Sessions Judge, Kadapa confirming the judgment dated 31.12.2004 passed by the I Additional Judicial Magistrate of First Class, Kadapa, while modifying the sentence of simple imprisonment for six months to simple imprisonment for three months, and also to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for a period of three months.

3. Crl.R.C.No.1358 of 2005 is filed under Sections 397 and 401 Cr.P.C questioning the propriety, legality and regularity of the judgment dated 08.07.2005 in Crl.A.No.102 of 2004 passed by the Principal Sessions Judge, Kadapa confirming the judgment dated 26.07.2004 passed by the I Additional Judicial Magistrate of First Class, Kadapa, while modifying the sentence of simple imprisonment for six months to

simple imprisonment for three months and also to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for a period of three months.

4. The accused is one and the same in all these three criminal revision cases, but only the complainants, cheques and cheque amounts are different.

5. The main contention in the grounds of revisions is that the material on record does not constitute an offence punishable under Section 138 of the Negotiable Instruments Act and therefore, the prosecution cannot be sustained for the offence punishable under Section 138 of N.I. Act by drawing presumption under Section 139 of N.I. Act. Hence, the Magistrate and the Sessions Judge committed an error in finding the accused guilty in all the calendar cases and appeals and prayed to set aside the judgments passed therein.

6. During hearing, learned counsel for the petitioner contended that when the petitioner/accused is found guilty for the offence punishable under Section 138 of N.I. Act, the petitioner is entitled to claim benefit under Section 427(1) Cr.P.C. and the Courts ought to have directed the substantive sentences to run concurrently, but the trial Court and the Sessions Judge did not exercise their power under Section 427(1) Cr.P.C, though it is a statutory right of the petitioner/accused to claim such benefit.

7. The petitioner did not raise this plea before the trial Court or before the Sessions Judge and even in the revisions, but for the first time, the petitioner raised such contention without raising any ground in the grounds of revisions.

8. Undisputedly, all the three cases were separately tried and separately disposed of by the Courts below. The cheques were issued on

different dates for different amounts. Moreover, the Sessions Judge upheld the conviction while reducing sentence in all the three appeals.

9. Under Section 427 Cr.P.C a right is conferred on the accused to claim benefit under Clause (1) to run the substantive sentence concurrently if a person has already convicted and sentenced for an offence and later found guilty for another offence, the sentence shall commence after completion of sentence in the earlier matter where he was convicted subject to certain exceptions. But, when both the offences are of same kind and akin to one another, the Court shall exercise its power under Section 428 Cr.P.C. Section 428 Cr.P.C. deals with a different issue for set off. But here no such set off was claimed, but claimed right under Section 427(2) Cr.P.C. In **K.C.Dass and N.K.Chatterjee v State**¹ the Delhi High Court while dealing with right of accused under Section 428 Cr.P.C. held that the Court is bound to apply Section 428 Cr.P.C. in all cases whether the accused is convicted in one case or many, whether simultaneously or at different times. The Division Bench of the Delhi High Court while dealing with Section 428 Cr.P.C. held that principle of Section 428 Cr.P.C. has to be applied in all cases, the reason is that in the second case the accused person remains an untried& unsentenced prisoner till his trial is concluded and at the end of the trial, he is convicted and sentenced to a term of imprisonment. Before trial is finished, he remains an unconvicted person accused of a crime. If the sentence in the two cases are not ordered to run concurrent, the reminder of the term of imprisonment, after adjustment of the pre-trial period already undergone in the second case, shall commence at the expiry of the term of imprisonment in the first case after setting of the pre-trial detention period. In both cases he will be entitled to set off.

¹ 1979 CRL.LJ 362

10. But the facts of the judgments referred to above are totally different for various offences under IPC. However, the same principle applies to the convictions under N.I. Act. It is manifest from the ruling of Section 427 Cr.P.C. which deals with passing of sentence of an offender already sentenced to imprisonment for another sentence which lays down that when a person already undergoing 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. Sub-Section 1 makes it discretionary with the Court passed such sentence of imprisonment or concurrent with the previous sentence. The discretion is not to be exercised arbitrarily. If the request for benefit under Section 427(1) Cr.P.C. is declined on other consideration, it is open to correct in original jurisdiction. No hard and fast rule can be laid. However, when the offences akin or indirectly connected with one another, normally the Court shall pass an order to run two sentences in two cases concurrently, when there is no connection or link between two offences, the Court may decline to exercise discretion.

11. In the present case, the offences allegedly committed by the petitioner are akin to one another and of same time there is a connection between those offences. One of the complainant transferred cheque for Rs.25,000/- for consideration making an endorsement in favour of the complainant in C.C.No.149 of 2001, Sangana Adinarayana Reddy, who became holder in due course and in other complaints Srinivasulu Reddy is holder of the instrument. Therefore, there is interconnection between three transactions. In such a case, this Court considered the scope of Section 427 Cr.P.C in **Dr Atchyutha Reddy v State of Andhra Pradesh**

and another² , but a vague reference is made in the judgment for the applicability of Section 427 Cr.P.C. at para 24 and concluded that Section 482 Cr.P.C cannot be invoked in view of the proviso under Section 427 Cr.P.C., this decision is not directly applicable to the present facts of the case. But in another judgment of the single Judge of Madras High Court in **K.Chinnasamy v R.Palaniswamy** (Manu/TN/3154/2010) elaborately considered the scope of Section 427(1) Cr.P.C when the accused was convicted for the offence punishable under Section 138 of N.I. Act. From 10 onwards, the Court discussed the entitlement of the petitioner to claim benefit under Section 427 Cr.P.C. When a person already undergoing 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.

12. After extracting Section 427(1) Cr.P.C. placed reliance on Judgment of the Gujarat High Court in **Cruz Fernandes v The State**³, Bombay High Court in **Sadasiv Chhokha Sable v State of Maharashtra**⁴ and Delhi High Court in **Gopal Dass v The State**⁵ and concluded finally that there is no impediment or bar in the way of an appellate Court to pass a direction contemplated under the provisions of Section 427 Cr.P.C. When an accused while undergoing sentence of imprisonment or

² 2010(1) ALD(CRL) 59 AP

³ 1970 CRL.L.J 96

⁴ 1993 CRL.L.J 1469

⁵ AIR 1978 DELHI 138

imprisonment for life awarded in an earlier case he was sentenced by trial Court for subsequent conviction, the trial Court may, on being apprised of the information that the accused is already undergoing a sentence in a previous conviction invoking the said provision of Section 427(1) Cr.P.C. in consequence of the information furnished in its discretion, direct that the sentence awarded to the accused on is subsequent conviction shall run concurrently with the sentence he was already undergoing in an earlier case. If the trial Court by invoking the provisions of Section 427(1) Cr.P.C. can give the requisite direction contemplated by the said section it is not understood how a bar can be imposed on the power of the appellate Court to examine the reasons which lead the trial Court to decline the prayer of the accused and on finding the reasons given being not in consonance with the exercise of judicial discretion to grant the necessary relief even on dismissing the appeal, maintaining the conviction and the sentence. Such a relief is also open to an accused by invoking the revisional powers of the High Court or Sessions Court. A perusal of the provisions of Section 397 Cr.P.C shows that the subject-matter of a revision is wider than the subject-matter of an appeal. In revision there are no visible limits on the powers of the Court to correct illegal or improper orders. Even in a case where the accused has not sought relief in terms of Section 427(1) of the Code from the trial Court it would be open to him to seek such a relief by invoking the revisional powers of the Court on showing justifiable reasons for his omission. There can be no dispute that the discretion vested in a trial Court under Section 427 (1) has to be exercised on sound judicial basis and an order which proceeds on other considerations in declining the request of the accused to make his sentence awarded on subsequent conviction to run concurrent with the

sentence he was undergoing at the time of his subsequent conviction, would be improper or open to challenge.

13. In view of the law declared by the Madras and other High Courts and strictly adhering to Section 427(1) Cr.P.C. while exercising power under Section 401 Cr.P.C., I deem it appropriate to direct the substantive sentences imposed by the trial Courts shall run concurrently with the sentence imposed in C.C.No.149 of 2001 passed by the II Additional Judicial First Class Magistrate, Kadapa.

14. With the above direction, the criminal revision cases are disposed of.

Miscellaneous petitions, if any, pending in the criminal revision cases, shall stand closed.

Date: 04.08.2017
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M. SATYANARAYANA MURTHY J

