

**226 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M No.1119 of 2017 (O&M)
Date of decision : October 10, 2017**

Ajmer Singh

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. B.S. Khehar, Advocate for the petitioner.

Mr. R.K. Makkad, DAG, Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Vide judgment of conviction dated 16.09.2003 and order of sentence dated 19.09.2003, the petitioner was convicted in case pertaining to FIR No.319, dated 11.07.1997, under Sections 382, 412 and 216 IPC, registered at Police Station Barwala, District Hisar and was sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of ₹1,000/-, in default thereof to further undergo rigorous imprisonment for 1 years by the learned Addl. Sessions Judge (FTC), Hisar. He was also convicted in case pertaining to FIR No.443, dated 01.08.1997, under Sections 394, 398 read with Section 34 IPC and 25 & 27 of the Arms Act, 1959, registered at Police Station Hisar and was sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of ₹4,000/- by the learned Addl. Sessions Judge, Hisar, vide judgment of conviction and order of sentence dated 30.11.1999.

The appeals filed before this Court were dismissed vide judgment dated 02.07.2014 and 27.11.2015 respectively.

The present petition has been filed under Section 482 read with Section 427 Cr.P.C. for issuing direction that both the sentences awarded to the petitioner should run concurrently.

Suffice to say, in the reply, the State has opposed such prayer.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Admittedly, both the sentences awarded by the trial court in two different case FIRs have been upheld by this Court. Now, the question would arise as to whether after the judgments have become final, this Court can exercised the power under Section 427 Cr.P.C.?

Section 427 Cr. P.C. provides as under:

“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.”

A bare reading of the said provisions shows that as a rule, different sentences awarded by the courts below are to run consecutively. However, in case of sentence of imprisonment for life when a convict is again sentenced to imprisonment for a term or imprisonment for life, subsequent sentence shall run concurrently with such previous sentence. It is not so in the present case. During the pendency of the trial or during the pendency of the appeal, the Court can pass an order, modifying the sentence or can order it to run concurrently with the sentence already awarded to the convict. However, when the sentences have become final, the provisions of Section 427 Cr.P.C. are not attracted.

Learned counsel for the petitioner has relied upon the judgment of Apex court, delivered in case of “***Ammavasai and another vs Inspector of Police, Valliyanur, and others***”, 2001(4) Crimes 71.

A perusal of said judgment shows that in that case, the accused was sentenced in 4-5 cases and total imprisonment was of 35 years and the Apex Court in the said case, has taken the view that the total sentence of 14 years will be sufficient to meet the ends of justice. The said order has been apparently passed while exercising the powers under Article 142 of the Constitution of India. The principle laid down under Section 427 Cr.P.C. was not specifically discussed nor adjudicated upon by the Apex Court.

Learned counsel for the petitioner has also relied upon the Full Bench judgment of this Court delivered in case of ***“Jang Singh vs State of Punjab”, 2008(1) R.C.R. (Criminal) 323.***

A perusal of the said judgment shows that in that case two different appeals were pending before the Court for adjudication, in which the application was filed in one of the appeals for concurrent running of the sentences and the Full Bench exercised the powers under Section 427 Cr.P.C., which it could do. The facts of the said case do not cover the cases, where the sentences passed by the courts below have already become final 2-3 years back. The authority of Single Bench of this Court delivered in ***“Sat Narain @ Santu and Narender vs State of Haryana”, 2016(3) R.C.R. (Criminal) 823,*** is also regarding the case, when two appeals were pending before this Court.

In view of the matter, I am of the view that after the judgments of courts below have been affirmed by this Court and have also become final, subsequently exercising the powers under Section 482 read with Section 427 Cr.P.C., the sentences awarded in two cases regarding different incidents taking place at different time, cannot be directed/ordered to run concurrently.

As such, the present petition is dismissed.

(KULDIP SINGH)
JUDGE

October 10, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes