

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.M-1595 of 2017

.....

Date of decision:9.3.2017

Vijay Kumar

...Petitioner

v.

State of Haryana and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Amangurbir Singh Dhillon, Advocate for the petitioner.

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Inderjit Singh, J.

The petitioner has filed this petition under Section 427 Cr.P.C. read with Section 31(2) Cr.P.C. read with Section 482 Cr.P.C. for ordering the sentence awarded to the appellant in all different complaint cases i.e. (complaint No.276 dated 14.2.2013 (Annexure-P.1), complaint No.1040 dated 25.5.2013 (Annexure-P.2), complaint No.58516 dated 16.4.2013 (Annexure-P.3), complainant No.58706 dated 15.5.2013 (Annexure-P.4), complaint No.58323 dated 4.3.2013 (Annexure-P.5), complaint No.1485 dated 18.12.2012 (Annexure-P.6), complaint No.1313 dated 12.10.2011 (Annexure-P.7), complaint No.57603 dated 3.4.2014 (Annexure-P.8), complaint No.1580 dated 23.8.2014 (Annexure-P.10) under Section 138 of the Negotiable Instruments Act, 1881 to run concurrently.

I have heard learned counsel for the petitioner and have gone

through the record.

From the record, I find that no appeal or revision is pending in all these cases mentioned in the head note of the petition except the present petition before this Court. A Full Bench of this Court in Jang Singh v. State of Punjab, 2008 (1) R.C.R. (Criminal) 323, has held that accused, who is convicted and sentenced in two different cases, directions to make sentences to run concurrently can be exercised by the trial Court or by the appellate Court or the revisional Court at the time of exercising appellate or revisional jurisdiction as well. It may not be open for a person to seek such direction for making the sentence to run concurrently by moving an application under Sections 482 and 427 Cr.P.C.

In this judgment, the Full Bench of this Court has held as under:-

“The consensus of the judicial opinion, as may emerge from different judgments passed by various High Courts and the Hon'ble Supreme Court, seems to be that normal rule, as per Section 427 Criminal Procedure Code, is that, a person who is undergoing a sentence of imprisonment and is sentenced on a subsequent conviction to an imprisonment or an imprisonment for life, then such imprisonment or imprisonment of life shall commence after the expiration of the imprisonment, to which he has been previously sentenced. This, however, would not be so if the Court directs that the subsequent sentence shall run concurrently with the previous sentence. Such direction to

make the sentences to run concurrently, as per various decisions noted above, can be exercised by the trial Court or by the appellate Court or a revisional Court at the time of exercising appellate or revisional jurisdiction as well. However, if the trial Court does not pass any such direction for making the sentences to -run concurrently and appeal or revision against said decision is also decided, then it may not be open for a person to seek such direction for making the sentences to run concurrently by moving an application under Sections 482/427 Criminal Procedure Code. The view taken by one set of the High Courts that such an application can be entertained while exercising inherent powers under Section 482 Criminal Procedure Code would no more appear to be a good law in view of the decision of the Hon'ble Supreme Court in M.R. Kudva case (supra). We are, thus, bound to take this view that this discretion though available with the trial Court/appellate Court or the revisional Court while holding trial or entertaining appeal or revision but would not be so available to be exercised in isolation when application in this regard is moved either under Sections 482 or 427 Criminal Procedure Code. What principle and consideration will govern the exercise of this discretion, as already noted above can not be exhaustively enumerated. Certain relevant factors, as can be culled out from different judgments referred to above, may give an indication

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where such discretion may be exercised. These factors generally would be, the nature or character of the offences committed, the prior criminal record of the offender, character his age and sex etc. ghastly nature of the crime. The offender being habitual would also be the factor, which can be relevantly taken into consideration. It may be stated at the cost of repetition that these are not the only reasons for which the Court can exercise this discretion. Discretion always is open to be exercised by any Court dependent upon the facts and circumstances of each case on any relevant or valid consideration as may be considered so by the Court while holding the trial or deciding the case at the stage of appeal or revision. It may require a notice that Section 427 Criminal Procedure Code as observed by Hon'ble Supreme Court is aimed at amelioration and this aspect may also require to be kept in view while exercising the discretion.”

Keeping in view the law laid down by the Full Bench of this Court, this petition under Section 482 Cr.P.C. read with Section 427 Cr.P.C. is not maintainable as no appeal or revision is pending. Therefore, this petition is dismissed.

March 9, 2017.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No