

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-9309 of 2017

.....

Date of decision:20.3.2017

Raj Kumar

...Petitioner

v.

State of Haryana and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ravinder Bangar, 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 482 Cr.P.C. for making sentence of the petitioner concurrently.

It has been mentioned in the petition that the petitioner was convicted by the learned trial Court on 8.12.1995 in case FIR No.424 dated 1.1.1993 registered for the offence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') and sentenced to undergo rigorous imprisonment of fourteen years and to pay a fine of ₹1 Lakh and in default of payment of fine to further undergo rigorous imprisonment for three years. He filed criminal appeal, which has been decided by this Court and the sentence of the petitioner was reduced

to 12 years vide judgment dated 29.4.1997. The petitioner was also convicted in another case in FIR No.75 dated 17.2.2004 for the offences under Sections 8 and 9 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 and the same order has been challenged in appeal, in which his sentence was reduced to rigorous imprisonment for three months and to pay a fine of ₹5,000/- under Section 9 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988. In default of payment of fine he was ordered to further undergo simple imprisonment for 15 days. The petitioner has prayed that the above sentences be ordered 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 both the cases i.e. in FIR No.424 dated 1.1.1993 registered for the offence under Section 18 of the NDPS Act) and in FIR No.75 dated 17.2.2004 registered for the offences under Sections 8 and 9 of Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 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 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

[5]

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 20, 2017.

(Inderjit Singh)
Judge

hsp

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