

\$~S.B.-6

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 1144/2016

VISWAJEET DASS @ NIRMAL

..... Petitioner

Through: Mr. Ajit Sharma with Mr. Mayank
Aggarwal, Advs.

versus

STATE

..... Respondent

Through: Mr. Amit Gupta, APP for State.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P.GARG

ORDER

% **27.10.2017**

The applicant seeks relief under Section 427(2) of the Code of Criminal Procedure, 1973 (Cr.P.C.). He was convicted for offences under Section 396/34 Indian Penal Code, 1860 (IPC) on 09.02.2004. That conviction and sentence was affirmed by this Court by a judgment of the Division Bench dated 17.02.2012 (*Viswajeet Dass @ Nirmal Dass v. State*). During the pendency of appeal, the appellant was also convicted for commission of an offence under Section 302 IPC on 15.09.2009 by the learned District & Sessions Judge (which was upheld by this Court by judgment and order dated 05.05.2010 in CrI.A. No.405/2010).

The applicant's grievance is that the subsequent sentence of the learned Single Judge did not specifically record that both life sentences were to run concurrently. He therefore urges that having regard to the mandate of Section 427(2) Cr.P.C., the benefit of one sentence i.e. the two life sentences to run concurrently shall be granted.

Section 427(1) and (2) of Cr.P.C. are read as follows:

“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.”

It is evident from the imperative terms of Section 427(2) Cr.P.C. that one undergoing a sentence of imprisonment for life upon subsequent conviction to imprisonment for a term “or imprisonment for life”, has to undergo only one life sentence i.e. that both sentences are to run concurrently. Having regard to this position in law, the application has to be allowed. It is hereby declared that both sentences – in respect of offences under FIR No.133/2000 (under Sections 396/450/34 IPC) and FIR No.347/2000 (under Section 302 IPC) would run concurrently.

Application is allowed in the above terms.

S. RAVINDRA BHAT, J

OCTOBER 27, 2017/kks

S.P.GARG, J