



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :13.02.2018

Pronounced on :23.02.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

WEB COPY

Cr1.O.P.(MD) No.1154 of 2018

N.Jayaraman

... Petitioner

-Vs-

1. The Superintendent of Prison,
Central Prison,
Madurai District.

2. The Inspector of Police,
Kovilangulam Police Station,
Kovilangulam,
Ramanathapuram District.
(In Cr.No.50 of 1986)

3. The Inspector of Police,
Kovilangulam Police Station,
Kovilangulam,
Ramanathapuram District.
(In Cr.No.6 of 19894

.. Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to issue a direction to run concurrently the sentence in S.C.No.99 of 1988 passed by the Court of Sessions of the Ramanathapuram Division at Madurai and the sentence in Sessions Case No.10 of 1996 passed by the Additional and District Sessions Judge (Fast Track Court, Ramathapuram), concurrently.

For Petitioner : Mr.M.Subash Babu
For Respondents : Mr.N.Shanmuga Selvam
Spl. G.P

O R D E R

This Criminal Original petition has been filed by the accused to issue a direction to run concurrently the sentence passed in S.C.No.99/1988 by the learned Principal Sessions Judge, Ramanathapuram, at Madurai and the sentences passed in S.C.No.10/1996 by the Additional and District Sessions Judge (Fast Track Court, Ramanathapuram.

2.The petitioner herein was convicted by the Principal Sessions Judge, Ramanathapuram at Madurai in S.C.No.99 of 1988 for the offence under Section 302 I.P.C and sentenced to undergo life imprisonment by the judgment dated 28.02.1989. Challenging the said conviction and sentence, the petitioner herein has filed an appeal in Crl.A.No.258 of 1989. This court has dismissed the said appeal by the judgment dated 23.04.1998. Subsequently, the petitioner was convicted in another case in S.C.No.10 of 1996 on the file of the Additional Sessions Judge (Fast Track Court) Ramanathapuram by the judgment dated 30.05.2006, whereunder, he was convicted and sentenced as detailed below:

Sl.No	Conviction under Sections	Punishment
1.	148 I.P.C	Rigorous imprisonment for one year
2.	302 r/w 34 I.P.C	Imprisonment for life
3.	302 r/w 149 I.P.C (7 counts)	Imprisonment for life for each count
4.	307 r/w 149 I.P.C	Rigorous imprisonment for 10 years

and the trial court has directed the sentences to run consecutively.

3.As against the said conviction and sentences, the petitioner herein has filed an appeal in Crl.A.(MD).No.539 of 2006 before this Court. This Court has disposed of the said appeal along with the criminal appeals filed by the other accused persons, by the judgment, dated 14.12.2007 and modified the conviction and sentence imposed by the trial court as detailed below.

sl.no	Conviction under Section	punishment
1.	148 I.P.C	Rigorous imprisonment for one year
2.	302 r/w Section 149 I.P.C (8 counts) in stead of Section 302 r/w 34 I.P.C	Imprisonment for life for each count
3.	307 r/w 149 I.P.C	10 years rigorous imprisonment

With the aforesaid modification, the said criminal appeal has been dismissed.



4. Aggrieved by the aforesaid judgment, the petitioner herein and other accused persons have preferred Criminal Appeal Nos. 231-233 of 2009, 225, 226-227 and 895 of 2009 before the Honourable Supreme Court of India. A three Judge Bench of the Honourable Supreme Court has referred the matter to the Constitution Bench for deciding the question "Whether consecutive life sentences can be awarded to a convict on being found guilty of a series of murders, for which he has been tried in a single trial?"

5. The Constitution Bench of the Honourable Supreme Court has answered the reference that multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life., the life sentences so awarded cannot be directed to run consecutively. The judgment of the Constitution Bench of the Honourable Supreme Court has been reported in **Muthuramalingam & Others Vs. State rep. by Inspector of Police, (2017-1-L.W. (Crl.) 852)**, wherein in paragraph No.31 of the judgment, it is held as follows:

"31. In conclusion our answer to the question is in the negative. We hold that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. Such sentences would, however, be super imposed over each other so that any remission or commutation granted by the competent authority in one does not ipso facto result in remission of the sentence awarded to the prisoner for the other."

6. After observing so, the Honourable Constitution Bench, has further observed in paragraph Nos. 32 and 33 as follows:

"32. We may, while parting, deal with yet another dimension of this case argued before us namely whether the Court can direct life sentence and term sentences to run consecutively. That aspect was argued keeping in view the fact that the appellants have been sentenced to imprisonment for different terms apart from being awarded imprisonment for life. The Trial Court's direction affirmed by the High Court is that the said term sentences shall run consecutively. It was contended on behalf of the appellants that even this part of the direction is not legally sound, for once the prisoner is sentenced to undergo imprisonment for life, the term sentence awarded to him must run concurrently. We do not, however think so. The power of the Court to



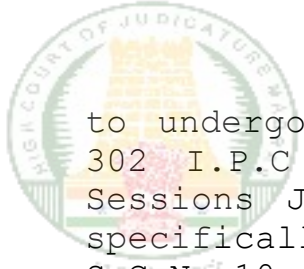
direct the order in which sentences will run is unquestionable in view of the language employed in Section 31 of the Cr.P.C. The Court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31. The converse however may not be true for if the Court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence. Whether or not the direction of the Court below calls for any modification or alteration is a matter with which we are not concerned. The Regular Bench hearing the appeals would be free to deal with that aspect of the matter having regard to what we have said in the foregoing paragraphs.

33.The reference is accordingly answered."

7.The Honourable Constitution Bench, after answering the reference, as stated above, sent back the matter to the Regular Bench for disposal of the appeal regarding other issues. Accordingly, the Regular Bench of the Honourable Supreme Court by the judgment, dated 09.12.2016, has dismissed the appeals with certain modifications. The relevant portion of the said judgment is extracted hereunder:

"21.Hence, all the criminal appeals filed by the appellants are *sans merit* and are liable to be dismissed. We uphold the judgment passed by the High Court as far as awarding of sentences is concerned. However, the sentences shall run in conformity with the observations made by the Constitution Bench of this Court in its judgment dated 19.07.2016 passed in these appeals. The impugned judgment passed by the High Court is modified to the above extent and all the appeals are disposed of accordingly."

8.So, it is clear that the sentences awarded to the petitioner in S.C.No.10/1996 on the file of the Additional Sessions Judge (Fast Track Court), Ramanathapuram under various sections have been finally ordered by the Honourable Supreme Court to run concurrently. But at the time of awarding sentences in S.C.No.10/1996 on the file of the Additional Sessions Judge (Fast Track Court), Ramanathapuram, it was not brought to the knowledge of the court that the petitioner was already sentenced



to undergo imprisonment for life for the offences under Section 302 I.P.C in S.C.No.99 of 1988 on the file of the Principal Sessions Judge, Ramanathapuram at Madurai and hence, it was not specifically ordered as to whether the sentences awarded in S.C.No.10 of 1996 shall run concurrently or consecutively with the sentence awarded in S.C.No.99 of 1988.

9.The learned counsel for the petitioner, relying upon the decision in **Ranjith Singh Vs. Union Territory of Chandigarh (1991) 4 SCC 304**, contended that as per sub-section 2 of Section 427 Cr.P.C that the subsequent sentence shall run concurrently with previous sentence of imprisonment for life. In the aforesaid decision, the Honourable Supreme Court in paragraph No.8 of the judgment, has observed as follows:

"8.xxxxxxxxxxx

As rightly contended by Shri Garg, and not disputed by Shri Lalit, the earlier sentence of imprisonment for life being understood to mean as a sentence to serve the remainder of life in prison unless commuted or remitted by the appropriate authority and a persons having only one life span, the sentence on a subsequent conviction of imprisonment for a term or imprisonment for life can only be superimposed to the earlier life sentence and certainly not added to it since extending the life span of the offender or for that matter anyone is beyond human might. It is this obvious situation which is stated in sub-section (2) of Section 427 since the general rule enunciated in sub-section (1) thereof is that without the court's direction the subsequent sentence will not run concurrently but consecutively. The only situation in which no direction of the court is needed to make the subsequent sentence run concurrently with the previous sentence is provided for in sub-section (1) which has been enacted to avoid any possible controversy based on sub-section (1) if there be no express direction of the court to that effect..."

10.Having stated so, the Honourable Supreme Court declared that once the subsequent imprisonment for life awarded to the prisoner is superimposed over the earlier life sentence, the grant of remission or commutation qua, the earlier sentence of life imprisonment will not *ipso facto* benefit the prisoner qua the subsequent sentence of life imprisonment. Such subsequent sentence would continue and shall remain unaffected by remission or commutation of earlier sentence. The relevant portion of the said judgment is extracted hereunder:



"9. xxxxxxxxxx

In other words, the operation of the superimposed subsequent sentence of life imprisonment shall not be wiped out merely because in respect of the corresponding earlier sentence of life imprisonment any remission or commutation has been granted by the appropriate authority. The consequence is that petitioner would not get any practical benefit of any remission or commutation in respect of his earlier sentence because of the superimposed subsequent life sentence unless the same corresponding benefit in respect of the subsequent sentence is also granted to the petitioner. It is in this manner that the direction is given for the two sentences of life imprisonment not to run concurrently."

11. From the aforesaid decision, it is clear that where any person already undergoing sentence of imprisonment for life, if sentenced to undergo imprisonment for a term or imprisonment for life can only be superimposed to the earlier life sentence. It is also clear that the operation of the superimposed subsequent sentence of life imprisonment shall not be wiped out merely because in respect of the corresponding earlier sentence of life imprisonment any remission or commutation has been granted by the appropriate authority, unless the same corresponding benefit in respect of the subsequent sentence is also granted.

12. The learned counsel for the petitioner relying upon the decision of the Honourable Division Bench of this Court in **K. Arasan & Others Vs. The State of Tamil Nadu rep. by Inspector of Police & Others reported in CDJ 2012 MHC 5335** equivalent to **2012 (5) MWN (Cr) 184** and **2012 (6) CTC 510**, contended that the inherent power of the High Court under Section 482 Cr.P.C can be extended to issue a direction ordering the sentence imposed in a latter case of conviction to run concurrently with the sentences imposed in a former case as provided under Section 427 Cr.P.C. In the aforesaid decision, in paragraph Nos. 16 and 17, it has been observed as follows:

"16. It is to be reiterated that invoking the jurisdiction under Section 482 Cr.P.C, in order to grant the relief under Section 427 Cr.P.C would not amount to altering, varying or modifying the findings of the trial Court or appellate court. On the other hand, it is always open to this Court to exercise power under Section 482 Cr.P.C to secure the ends of justice. It is needless to say that this Court has to exercise its judicial discretion for invoking the power under Section 482 Cr.P.C. for granting the relief under Section 427 Cr.P.C., on the basis of the facts and circumstances and



gravity of the charge levelled against the accused in each case.

17. In the result, we are answering the reference to the effect that the inherent power of the High Court under Section 482 Cr.P.C, can very well be extended to issue a direction ordering the sentence imposed in a latter case on conviction to run concurrently with the sentence imposed in a former case as provided under Section 427 Cr.P.C."

13. In view of the aforesaid decision, it is clear that this Court is having inherent power under Section 482 Cr.P.C to issue direction ordering the sentence imposed in a latter case to run concurrently with the sentence imposed in the former case as provided under Section 427 Cr.P.C.

14. Therefore, it is ordered that the sentence of imprisonment for a term and sentences of imprisonment for life (8 counts) awarded to the petitioner in S.C.No.10 of 1996, on the file of the Additional Sessions Judge (Fast Track Court), Ramanathapuram and modified by this Court in Crl.A.No.539 of 2006, dated 14.12.2007 and further modified by the Honourable Supreme Court in Crl.A.Nos.231-233 of 2009, 225, 226-227 and 895 of 2009 and 429 of 2015, dated 09.12.2016, shall be superimposed over each other and also over the earlier life sentence awarded in S.C.No.99 of 1988 on the file of the Principal Sessions Judge, Ramanathapuram at Madurai. As held by the Hon'ble Supreme Court in **Ranjith Singh Vs Union Territory of Chandigarh** (supra) and Constitution Bench of the Hon'ble Supreme Court in **Muthuramalingam & Others Vs. State rep. by Inspector of Police (supra)** that the operation of the superimposed subsequent sentences of imprisonment for term and sentences of life imprisonment shall not be wiped out merely because in respect of corresponding earlier sentence of life imprisonment any remission or commutation has been granted by the appropriate authority, unless the same corresponding benefit in respect of the subsequent sentences is also granted to the petitioner.

15. With the aforesaid observation, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Superintendent of Prison,

<https://hcservices.ecourts.gov.in/hcservices/> Prison,

Madurai District.



2. The Inspector of Police,
Kovilangulam Police Station,
Kovilangulam,
Ramanathapuram District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.Subash Babu, Advocate Sr.No.50893

VS

VB/SKN/RSK/SAR4/09/03/2018/8P/5C

order made in
Crl.O.P. (MD) No.1154 of 2018
23.02.2018