



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 29.08.2018

ORDERS PRONOUNCED ON : 31.08.2018

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1.OP (MD) No.12497 of 2017

Selvakumar @ Jeyakumar

... petitioner

Vs

1. The Inspector of Police,
Seidhunganallur PS.
[C No.307 of 2011 and
Cr.No.45 of 2012]

2. The Inspector of Police,
Sathankulam PS.
[Cr No.7 of 2012]

3. The Sub Inspector of Police,
Sayarpuram PS.
[Cr No.45 of 2011]

4. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunveli District.

... respondents

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to direct the subsequent sentences passed in SC No.167 of 2012 dated 18.01.2013 by the Assistant Sessions Judge/Chief Judicial Magistrate, Thoothukudi and in SC NO.102 of 2013 dated 11.11.2013 by the II Additional Sessions Judge, Thoothukudi and in CC No.208 of 2012 dated 24.07.2014 by the Judicial Magistrate No.I, Thoothukudi shall run concurrently with the sentence passed in SC No.220 of 2012 dated 18.12.2012 by the II Additional Sessions Judge, Thoothukudi.

For Petitioner : Mr.V.Santhakumaresan
For Respondents : Mr.K.Suyambulinga Bharathi,
Government Advocate (Cr1 Side)

ORDER



passed in SC No.167 of 2012, dated 18.01.2013, SC No.102 of 2013, dated 11.11.2013, CC No.208 of 2012, dated 24.07.2014 to run concurrently with the sentence passed in SC No.220 of 2012.

2.The petitioner was an accused in SC No.220 of 2012, on the file of the Additional Sessions Court, Thoothukudi. The said Court by judgment dated 18.12.2012 convicted the petitioner for an offence under Section 397 IPC and sentenced him to undergo seven years rigorous imprisonment and to pay a fine of Rs.500/- in default to undergo six months simple imprisonment. The petitioner was also an accused in SC No.167 of 2012, on the file of the Assistant Sessions Judge / Chief Judicial Magistrate, Thoothukudi. The said Court by judgment dated 18.01.2013, convicted the petitioner for an offence under Section 397 IPC and sentenced him to undergo seven years rigorous imprisonment.

3.The petitioner was also an accused in SC No.102 of 2013, on the file of the II Additional Sessions Judge, Thoothukudi. The said Court by judgment dated 11.11.2013 convicted the petitioner for an offence under Section 397 IPC and sentenced him to undergo seven years rigorous imprisonment.

4.The petitioner was also an accused in CC No.208 of 2012 on the file of the Judicial Magistrate - I, Thoothukudi. The said Court by judgment dated 24.07.2014, convicted the petitioner for the offence under Section 394 IPC and sentenced him to undergo three years rigorous imprisonment.

5.The learned Counsel for the petitioner submitted that as per Section 427 of CrPC, the subsequent sentence passed in SC No.167 of 2012, SC No.102 of 2013 and CC No.208 of 2012, could have been directed by the concerned Courts to run concurrently with the previous sentence passed in SC No.220 of 2012. The learned Counsel for the petitioner would further submit that as per Section 427 (2) CrPC, the petitioner is entitled for the benefit of order of concurrent sentence in the subsequent convictions.

6.The learned Counsel would further submit that the total period of sentence passed in all the four cases comes to around twenty four years and according to the learned Counsel, it is more or less like a life imprisonment and therefore, as per the principle laid down under Section 427(2) CrPC, the petitioner is entitled for the benefit of subsequent sentence running



7. The learned Government Advocate appearing on behalf of the respondents would submit that till there is a specific direction by the Courts below that the subsequent sentence will run concurrently, the sentence will have to only run consecutively for each of the conviction and Section 427 of CrPC cannot be brought into operation. Therefore, the learned Government Advocate would submit that the prayer as sought by the petitioner is not maintainable.

8. It will be apposite to extract Section 427 of CrPC hereunder:

"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."

9. Section 427 CrPC fixes the time from which the sentence passed on offender, who is already undergoing another sentence should run. The general rule is that the sentence commences to run from the time of it being passed, but Section 427 creates an exception in the case of a person already undergoing imprisonment and postpones the operation of the subsequent sentence until after the expiry of the previous sentence. The power conferred on the Court under Section 427 of CrPC to order concurrent sentence is discretionary. The salutary principle adopted by the Court is the <https://hcservices.reports.gov.in/hcservices/> equality of the sentence. The policy of the legislature is that the sentences should run normally consecutively. Only in an



appropriate case, considering the facts of the case, the Court can make the sentence concurrently with an earlier sentence imposed.

10. Where the Court does not specify, whether the sentences awarded shall run concurrently or consecutively, the presumption is that the Court intended that sentences shall run consecutively and only the High Court in exercise of its inherent powers under Section 482 of CrPC may direct that the sentence shall run concurrently.

11. The scope of Section 427(2) of CrPC is that in respect of the convict undergoing imprisonment for life, the sentence of imprisonment passed on subsequent conviction shall run concurrently. The reason being that the sentence for life must be understood to mean as the sentence to serve remainder of life in prison unless commuted or remitted by the appropriate authority and the person having only one life span, the sentence on the subsequent conviction of imprisonment for a term of imprisonment for life can only be superimposed to the earlier life sentence and certainly not added to it.

12. A Division Bench of this Court had an occasion to consider a case of similar nature in **K. Arasan and others Vs. The State of Tamil Nadu**, reported in **2012 (6) CTC 510**. The relevant portion of the judgment is extracted hereunder.

"2. The crux of the question involved in this matter is that whether this Court can invoke the inherent powers under Section 482 of the Code of Criminal Procedure [hereinafter referred to as "Cr.P.C."] for Granting the relief under Section 427, Cr.P.C., for ordering the sentence imposed in the former case to run concurrently along with the sentence of imprisonment awarded in the latter case.

3. It is seen that two conflicting views expressed by two learned Single Judges in respect of invoking the jurisdiction under Section 482, Cr.P.C. for granting the relief of ordering the subsequent sentence to run concurrently with the previous sentence awarded against a person in an earlier case which necessitated the learned referring Single Judge to refer the matter to a Division Bench to resolve the said conflict between two decisions. It is seen that a learned Single Judge in *A. Palanisamy @ Kaithan v. Inspector of Police, B1 Police Station, Kaundharpet, Coimbatore and others*, 2011 (3) MWN (Cr.) 555 : 2011 (4) MLJ (Cr.) 813, after referring to various judgments of the Hon'ble Apex Court, has



held in paragraph 27, as hereunder

27. In the instant case on hand also, the provision of Section 427, Cr.P.C. was not invoked either in the original cases or in the Appeals. Under the above said circumstances, Section 427, Cr.P.C. cannot be applied in a separate and independent proceedings by this Court in exercising the inherent jurisdiction under Section 482, Cr.P.C.

4. Another learned Single Judge in *A. Paulraj v. Maria Chellammal and others*, 2011 (4) MLJ (Cr1.) 798, has taken a contrary view by placing reliance on the decision of the Larger Bench of the Hon'ble Apex Court and held as hereunder:

26. Since the Larger Bench of the Supreme Court in *State of Punjab v. Madhan Lal* [supra] had considered on Application filed, under Section 482, Cr.P.C. the decision rendered in *M.S. Kudva v. State of Andhra Pradesh* [supra] may not be applicable and invoking jurisdiction under Section 482, Cr.P.C. is indeed available to the Petitioner.

5. We have gone through the above two conflicting decisions rendered by the two learned Single Judges.

13.0. It is pertinent to refer the following decisions rendered by the other High Courts in respect of the issue involved in this matter.

13.1. A Division Bench of the Andhra Pradesh High Court in *V. Venkateswarlu v. State of A.P.*, MANU/AP/0024/1987 : 1987 Cri.L.J. 1621, has held as here under:

10. The High Court, while exercising its Revisional jurisdiction suo motu or in exercise of its inherent power under Section 482, can direct the sentences to run concurrently as provided under Section 427, Cr.P.C., even though the convictions and sentences that have been passed by the Additional Sessions Judges of different Sessions Divisions have become final."

<https://hcservices.ecourts.gov.in/hcservices/> Full Bench of Madhya Pradesh High Court in *Shersingh v. State of M.P.*, 1989 Cri.L.J. 632 [1], has held as here under:



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Inherent powers of the High Court can be invoked under Section 482 even if the Trial Court or the appellate or Revisional Court has not exercised its discretion under Section 427(1) of the Code in directing running of previous and subsequent sentences concurrently. The inherent powers of the High Court is not in any way fettered by the provisions of Section 427(1) and it can be invoked at any stage even if there is no such order passed under Section 427(1) by the Trial Court or Appellate or Revisional Court and even though the conviction has become final."

13.3. The view taken by the Division Bench of the Andhra Pradesh High Court and the Full Bench of the Madhya Pradesh High Court are in line with the view taken by the Larger Bench of the Hon'ble Apex Court in *State of Punjab v. Madhan Lal*, 2009 (5) SCC 238. As a matter of fact, as already pointed out, the learned Single Judge of this Court in *A. Paulraj v. Maria Chellammal and others*, 2011 (4) MLJ (Cr1.) 798, also referred the decision of the Hon'ble Apex Court in *M.R. Kudva v. State of Andhra Pradesh*, 2007 (2) SCC 772 (Two-Judge Bench) and preferred to place reliance on the decision rendered by the Larger Bench consisting of Three Judges of the Hon'ble Apex Court.

14.0. At this juncture, it is relevant to refer the following decisions of the Hon'ble Apex Court:

14.1. In *Union of India v. K.S. Subramanian*, AIR 1976 SC 2433, the Hon'ble Apex Court has held as follows:

The proper course for a High Court is to try to find out and follow the opinions expressed by Larger Benches of the Supreme Court in preference to those expressed by smaller Benches of the Court. That is the practice followed by the Supreme Court itself. The practice has not crystallized into a rule of law declared by the Supreme Court. If however, the High Court is of the opinion that the views expressed by Larger Benches of the Supreme Court are not applicable to the facts of the case it should say so giving reasons supporting its point of view."

14.2. The Hon'ble Apex Court in *State of Uttar Pradesh v. Ram Chandra*, AIR 1976 SC 2547, has held as follows:



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.

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13. From a reading of the above judgment it is clear that this Court can exercise its jurisdiction under Section 482 of CrPC and issue direction ordering the sentences imposed in the later case to run concurrently with the sentence imposed in the former case. Of course, the Court has to take into consideration the gravity of the charges levelled against the accused in each of the cases.

14. In the present case, it is seen that the petitioner has repeatedly involved in the offence of Robbery on all occasions and each of the case he has been found guilty and has been sentenced by the respective Courts. Therefore, it is seen that the petitioner is a habitual offender and he is involved in the grave offence of robbery.

15. This Court has to therefore, necessarily strike the balance between the interest of the society and also the liberty of the petitioner. Therefore, it would be appropriate, if the petitioner would undergo a total period of fourteen years of imprisonment in respect of all the convictions passed against him and that will be sufficient to meet the ends of justice.

16. This Court therefore directs that the sentence imposed on the petitioner in SC No.220 of 2012, will have to be undergone by the petitioner for a period of seven years. After the completion of seven years, the sentence imposed against the petitioner in SC No.167 of 2012, should be undergone by the petitioner in full. By undergoing the sentence in these two cases, the petitioner would have undergone a total period of fourteen years. Consequently, the sentence imposed against the petitioner in SC No.102 of 2013 and CC No.208 of 2012 will run concurrently.

17. The criminal original petition is disposed of with the above directions.

Sd/-

Assistant Registrar (CO)

/True Copy/



To

1. The II Additional Sessions Judge,
Thoothukudi.
2. The Assistant Sessions Judge /
Chief Judicial Magistrate,
Thoothukudi.
3. The Judicial Magistrate No.I,
Thoothukudi.
4. The Inspector of Police,
Seidhunganallur PS.
5. The Inspector of Police,
Sathankulam PS.
6. The Sub Inspector of Police,
Sayapuram PS.
7. The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunveli District.
8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

DSK

TE/RSK/SAR-2 : 20/09/2018 : 9P/9C

order made in
Cr1.O.P. (MD) No.12497 of 2017
31.08.2018