

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-14750 of 2013 (O&M)

Date of decision: 06.10.2018

Dharampal

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Gaurav Saini, Legal Aid Counsel
for the petitioner(s).

Mr. Rajesh Bhardwaj, Sr. DAG, Punjab.

Jitendra Chauhan, J. (Oral)

The present petition was received through jail, wherein suo moto cognizance on the representation of the petitioner was taken on judicial side.

By way of the present petition, the petitioner seeks issuance of directions with a prayer that both the sentences awarded to the petitioner by different trial Courts in different cases and on different dates be ordered to be run concurrently.

On behalf of the petitioner, it is asserted that petitioner is a poor man and there is no one in family except his wife. The petitioner was convicted for 10 years in two different FIRs, therefore, the concurrence of sentences in both FIRs has been prayed for.

On the other hand, learned State counsel opposes the prayer made.

Heard.

In **Jang Singh** Vs. **State of Punjab**, 2008(1) RCR (Crl.) 323, it has been held as under:-

“Para No.4 Direction to make the sentences to run concurrently 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. 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 and 427 of Criminal Procedure Code.”

Hon'ble the Supreme Court in SLP (Criminal) No.3757 of 2016 titled as **Benson** Vs. **State of Kerala** held as under:-

Section 427 of the Code of Criminal Procedure, 1973 is as under:-

“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.” In terms of sub-section (1) of Section 427, if a person already undergoing a sentence of

imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced. Going by this normal principle, the sentence chart indicated in the communication dated 27.05.2016 is quite correct. However this normal rule is subject to a qualification and it is within the powers of the Court to direct that the subsequent sentence shall run concurrently with the previous sentence.

In V.K.Bansal v. State of Haryana and Another[1] it was stated by this Court:

“It is manifest from Section 427(1) that the Court has the power and the discretion to issue a direction but in the very nature of the power so conferred upon the Court the discretionary power shall have to be exercised along the judicial lines and not in a mechanical, wooden or pedantic manner. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. There is no cut and dried formula for the Court to follow in the matter of issue or refusal of a direction within the contemplation of Section 427(1). Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed, and the fact situation in which the question of concurrent running of the sentences arises.” This Court then went on to club various crimes in respect of which sentences were imposed upon the appellant therein in three groups; i) the first having 12 cases, ii) the second having 2 cases and iii) the third having a single case. This Court directed that substantive sentences within first two groups would run inter se concurrently and the substantive sentences in first two groups and that in respect of the case in the third group would run consecutively. The benefit was confined only in respect of substantive sentences and no qua sentences in default.

We have gone through the record and considered rival submissions. We do not find anything incorrect in the assessment made by the Courts below and in our view the orders of conviction recorded against the appellant in the present cases are quite correct. We also do not find anything wrong in the quantum of sentence imposed in respect of the respective crimes. However going by the sentence calculation, the sentence imposed in respect of the first crime started with effect from 20.11.2003 and the last sentence would be over by 19.08.2022, which would effectively mean that the total length of sentences in

aggregate would be around 19 years. We are not concerned with first eight matters and sentences imposed in respect of those crimes. The sentence in respect of 8th crime is presently running against the appellant and would be over on 30.08.2017.

The maximum sentence in respect of the present crimes is two years' rigorous imprisonment. As per the record, these crimes were committed on the same day. Having considered the matters, we deem it appropriate to direct that the sentences imposed in each of the cases, i.e. (i) CC No.158 of 2004, (ii) CC No. 1039 of 2003, (iii) CC No. 390 of 2004 and (iv) CC No. 1168 of 2006 namely those at Sl.Nos.9 to 12 respectively as indicated in the sentence chart in the communication dated 27.05.2016 shall run concurrently with the sentence imposed in Crime No.8 which is currently operative. We grant this benefit in respect of substantive sentences to the appellant but maintain the sentences of fine and the default sentences. If the fine as imposed is not deposited, the default sentence or sentences will run consecutively and not concurrently.

The appeals are thus allowed in part and the orders of sentences stand modified accordingly."

The petitioner has been convicted in FIR No.66 dated 21.06.2001, registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station Division No.2, Ludhiana and and FIR No.236 dated 09.10.2009, registered under Section 15 of the Act at Police Station Sadar, Rajpura, wherein in both the FIRs, he has been sentenced to undergo rigorous imprisonment for 10 years.

In view of the above, finding no merit in the instant petition, the same is hereby dismissed.

06.10.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No

