

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.01.2019

CORAM
THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH
Crl.O.P.No.1653 of 2019

Mani

... Petitioner

Vs.

1. State Represented by
The Sub Inspector of Police,
Peerkankaranai Police Station,
Chennai.
Crime No.1089/2017

2. State Rep. by
The Sub Inspector of Police,
Chitlapakkam Police Station,
Chennai.
Crime No.883/2017

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to run the sentence of imprisonment imposed in the judgment dated 01.03.2018 made in C.C.No.22 of 2018 to run concurrently with the sentence of imprisonment imposed in the judgment dated 01.03.2018 made in C.C.No.48/2018 on the file of the learned Judicial Magistrate, Tambaram.

For Petitioner : Mr.G.Ravikumar

For Respondents: Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed seeking for a direction for the sentence passed in C.C.No.22 of 2018, dated 01.03.2018 and C.C.No.48 of 2018, dated 01.03.2018 to run concurrently.

2.The learned counsel for the petitioner submitted that the petitioner was convicted by the Judicial Magistrate Court, Tambaram for the offence under Sections 457 and 380 of IPC and was sentenced to undergo simple imprisonment for a period of six months for each of the offences in C.C.No.22 of 2018, by judgment dated 01.03.2018. Similarly, the petitioner was also convicted by the very same Court for the very same offences carrying the very same sentence in C.C.No.48 of 2018, by judgment dated 01.03.2018. The learned counsel submitted that both the sentences will have to run concurrently.

3.The learned counsel for the petitioner in order to substantiate his submissions, relied upon the judgment of this Court in Selvakumar @ Jeyakumar Vs. Inspector of Police reported in 2018-2-L.W.(Crl.) 773. By relying upon the judgment, the learned counsel for the petitioner submitted that this Court has followed the earlier judgment of the Hon'ble Supreme Court and had categorically held that this Court can exercise its jurisdiction under Section 482 Cr.P.C., and issue a direction ordering the sentence imposed in the later case to run concurrently with the sentence imposed in the former case.

4.The learned Additional Public Prosecutor, on instructions would submit that even though it is true that this Court has the jurisdiction to direct the sentence to run concurrently, this Court has to take into consideration the gravity of the charges levelled against the petitioner in each of the cases.

5.This Court has carefully considered the submissions made on either side and also taken note of the judgment cited by the learned counsel for the petitioner.

6.It will be relevant to extract the portion of the judgment relied upon by the learned counsel for the petitioner in Selvakumar @ Jeyakumar Vs. Inspector of Police referred supra.

"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 totality of the sentence. The policy of the legislature is that the sentences should be 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 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, Kadaiveethi, Coimbatore and others, 2011 (3) MWN (Cr.) 555 : 2011 (4) MLJ (CrI.) 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 (Crl.) 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."

13.2. A 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:

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 (CrL.) 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:

"Constitutional position as regards the powers of Court to go behind the orders of termination to find out motive of Government is clear. Even in cases where a High Court finds any conflict between the views expressed by larger and smaller Benches of this Court, it cannot be disregard or skirt the views expressed by the Larger Benches. The proper course for a High Court in such a case is to try to find out and follow the opinion expressed by Larger Benches of the Supreme Court in preference to those expressed by smaller benches of the Court which practice, hardened as it has into a rule of law, is followed by the Supreme Court itself.

The above decisions rendered by the Hon'ble Apex Court make it crystal clear that the High Court has to follow

the opinion expressed by the Larger Benches of the Hon'ble Apex Court in preference to those expressed by smaller Benches.

15. As far as the issue involved in this matter, we are of the considered view that the learned Single Judge in A. Paulraj v. Maria Chellammal and others, 2011 (4) MLJ (Cr1.) 798, has rightly placed reliance on the decision of the Larger Bench consisting of Three Judges of the Hon'ble Apex Court in State of Punjab v. Madhan Lal, 2009 (5) SCC 238, which is binding on this Court and taken a correct view.

16. It is to be stated 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. 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."

7. It is clear from the above judgment that this Court has jurisdiction to issue directions to order the sentences to run concurrently. Of course, this Court has to take into consideration the gravity of the offences. In the instant case, it is seen that the petitioner was convicted by the Court below for a similar offence under Sections 457 and 380 IPC. In both

the judgments, the conviction and sentence were imposed on the ground that the petitioner himself has pleaded guilty. Therefore, this Court is of the considered view that the petitioner must be given an opportunity to reform himself in his life. This Court does not find the offence committed by the petitioner to be grave in nature.

8.This Court therefore directs that the sentence imposed on the petitioner in C.C.No.48 of 2018, will have to be undergone by the petitioner and the latter sentence imposed in C.C.No.22 of 2018 shall run concurrently. In effect the sentence imposed in C.C.No.48 of 2018 will run concurrently with the imposed sentence in C.C.No.22 of 2018 and it will be enough the petitioner to undergo the sentence imposed in C.C.No.22 of 2018.

9.This Criminal Original Petition is ordered accordingly.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

dh/rpl

To

1.The Sub Inspector of Police,
Peerankaranai Police Station,
Chennai.

2.The Sub Inspector of Police,
Chitlapakkam Police Station,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.G.Ravikumar, Advocate, S.R.No.6140

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rrs 30/01/2019

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