



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.09.2019**

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.3779 of 2019

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K.Vinothkumar

... Petitioner

-Vs-

1.The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2.The Superintendent of Prison,
Madurai Central Prison,
Madurai.

3.The Inspector of Police,
R.S.Mangalam Police Station,
Ramanathapuram District.

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to direct the petitioner to undergo the sentences in concurrent manner relating to the punishment imposed against the petitioner in the judgments in C.C.No.1 of 2017 to C.C.No.6 of 2017, dated 24.01.2017 on the file of the learned District Munsif cum Judicial Magistrate, Thiruvadanai, Ramanathapuram District in accordance with law within the time stipulated by this Court.

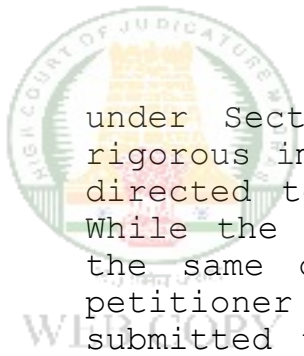
For Petitioner : Mr.R.Rajaselvan
for Mr.R.Alagumani

For Respondents : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.side)

O R D E R

This Criminal Original Petition has been filed seeking a direction to direct the petitioner to undergo sentences in concurrent manner relating to the punishment imposed as against the petitioner in C.C.Nos.1 to 6 of 2017, dated 24.01.2017 on the file of the learned District Munsif Cum Judicial Magistrate, Thiruvadanai, Ramanathapuram District.

2.The learned counsel for the petitioner would submit that the petitioner was convicted in all the C.C.Nos.1 to 6 of 2017 and sentenced to undergo one year rigorous imprisonment for an offence



under Section 454 of IPC and sentenced to undergo eight months rigorous imprisonment for an offence under Section 380 of IPC., and directed to run the sentences concurrently by separate judgments. While the trial Court delivered the judgments in all six cases on the same day, failed to specifically mention as to whether the petitioner has to undergo in concurrently or not?. He further submitted that the petitioner is a third gender and he is in the advance stage of HIV. The prison hospital did not have infrastructure to treat HIV positive patient and that apart, the petitioner is a trans gender. Now he has been incarceration of imprisonment from the date of judgment namely 24.01.2017. He also relied upon various judgment of the Hon'ble Supreme Court and this Court to run sentences concurrently as contemplated under Sections 427 of Cr.P.C.

3. The learned Government Advocate submitted that the petitioner have committed very serious offences under Sections 454 and 380 of IPC. If the petitioner allowed to undergo imprisonment concurrently again the petitioner will commit the same nature of offence. Therefore, he vehemently opposed this petition and prays for dismissal of this petition.

4. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.side) appearing for the respondents.

5. The petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of one year rigorous imprisonment for an offence under Section 454 of IPC., and for a period of eight months rigorous imprisonment for an offence under Section 380 of IPC., in C.C.Nos.1 to 6 of 2017 by separate judgment dated 24.01.2017. Though all the judgments passed by the same Court, the trial Court did not mentioned specifically as to whether the petitioner has to undergo the sentences for all six cases in concurrently or not? In this regard, it is relevant to rely upon the judgment of the Division Bench of this Court reported in **2018-2-LW(Crl)773** in the case of **Selvakumar Vs. The Inspector of Police, Seidhunganallur Police Station** and ors. held as follows:-

"11.The scope of Section 427(2) of Cr.P.C. is that in respect of the convict undergoing imprisonment for life, the sentence of the 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 <http://www.judis.nic.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 MANU/TN/1953/2012 : 2012 (6) CTC 510. The relevant portion of the judgment is extracted hereunder.

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"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, 2011 (3) MWN (Cr.) 555 : 2011 (4) MLJ (Crl.) 813, after referring to various judgments of the Hon'ble Apex Court, has held in paragraph 27, as here-under. 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, 2011 (4) MLJ (Crl.) 798, has taken a contrary view by placing reliance on the decision of the <http://www.judis.nic.in> 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.*, 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.LJ 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 <http://www.judis.nic.in> 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*, 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 <http://www.judis.nic.in> 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*, 2011 (4) MLJ (Crl.) 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." <http://www.judis.nic.in> 6. In the case, on hand, it is seen that the petitioner was involved in two cases only viz., C.C.No.22 of 2017 and C.C.No.23 of 2017. The petitioner is not an habitual offender and he did not commit any other offences, similar to those cases. Further it is also seen that the learned Judicial Magistrate, Sathiyamangalam sentenced him to undergo imprisonment for a period of two years for both sentences viz., offences under Sections 454 and 380 of IPC to run concurrently. The High Court of Bombay(Nagpur Bench) held as follows:

PRECEDENTS:

13. We are fortified in this view as per the judgment in case of Abidkhan @ Salman Mukhtar Khan Pathan vs. State of Maharashtra, reported in MANU/MH/0954/2013 : 2014 ALL Mr. (Cri.) 1719 (in which Justice Shukre authored the Judgment). Three cases were tried and convicted by one Court. (Metropolitan Magistrate), whereas in case before us, two different Magistrate Courts (from two places) tried and convicted these petitioners. This is the only distinguishable factor. Otherwise, the observation made therein are perfectly applicable to the case before us.

14. We are also fortified in taking this view on the basis of judgment delivered by Hon'ble Supreme Court. In case of Benson vs. State of Kerala, reported in MANU/SC/1177/2016 : (2016) 10 SCC 307, Hon'ble Supreme converted the sentence into concurrent sentences. There were almost 11 cases.

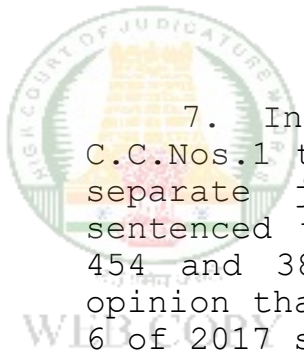
APPROACH OF TRIAL COURT:



15. It is true that Bhandara Court and Tumsar may or may not be aware of cases pending in two different Courts. But, it is certain that both these Courts are fully aware of cases dealt with by them. Can we say that these two courts are unaware about legal provisions contained in Section 427 of Cr.P.C. These two Courts have not given them the benefit of concurrent theory of sentences. These two Courts are fully aware about the provisions of Probation of Offenders Act and they have <http://www.judis.nic.in> denied the benefit to the petitioners.

16. Ultimately, the Judicial Officers dealing with the case is also having human element on it. So, while convicting the petitioners, they must be having "repetitive tendency of these petitioners while committing these offences" in their mind. They were fully justified in denying them benefits of concurrent theory. The theory of deterrence must have weighed with their mind. But what we feel is that the trial Courts are unaware of these provisions of law. We say so because there is no discussion on this issue. Judge may consciously deny benefit. But, it must be reflected from the judgment. In case of Abidkhan, there was direction to place the matter before Registrar General. In order to sensitize the judges in the State of Maharashtra, we feel some more needs to be done. Hence, we intend to direct the Registrar (Judicial) to circulate this judgment amongst all Judges in State of Maharashtra. We hope the Judges of trial Court and the appellate Court will consider the provisions of Section 427 of Cr.P.C. while dealing with the issue of sentence. Ultimately, it is the discretion of the concerned Judge whether to grant him benefit or not. It depends upon facts of each case. But it should not happened that due to ignorance of this provisions of law, a rightful convict may be denied benefit of this provision of law.

6. In view of the above judgments, the scope of Section 427 of Cr.P.C. is that, in respect of conviction to undergo the sentence of imprisonment passed on subsequent cases for the offence of same nature shall go concurrently. It is also clear that this Court can exercise its jurisdiction under Section 482 of Cr.P.C. and issue direction that the sentence imposed by the trial Court to run concurrently.



7. In the case on hand, the petitioner was convicted in C.C.Nos.1 to 6 of 2017, dated 24.01.2017 by the same trial Court by separate judgments. In each cases, the petitioner has been sentenced to undergo imprisonment for both offences under Sections 454 and 380 of IPC. Therefore, this Court is of the considered opinion that the sentences imposed on the petitioner in C.C.Nos.1 to 6 of 2017 shall run concurrently.

8. Accordingly, this Criminal Original Petition stands allowed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

To

1. The District Munsif Cum Judicial Magistrate,
Thiruvadanai,
Ramanathapuram District.
2. The Principal Secretary to Government,
State of Tamilnadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
3. The Superintendent of Prision,
Madurai Central Prison,
Madurai.
4. The Inspector of Police,
R.S.Mangalam Police Station,
Ramanathapuram District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.3779 of 2019
19.09.2019(1/2)

VSD

MK (23.10.2019) 8P 6C