

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.38811 of 2018 (O&M)
Date of Decision: May 15, 2019

Sachin Kumar ...Petitioner
Versus
State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.Bikramjit Singh Randhawa, Advocate for the petitioner.

Mr.Karanbir Singh, Assistant Advocate General, Punjab.

HARINDER SINGH SIDHU, J.

The petitioner has been convicted and sentenced in two cases as
under:

Sr. No.	FIR No. Dated	U/s	P.S.	Sentence	Date of sentence	Name of Court
1.	FIR No.73/20.11.15	379-B IPC	Sri Har Gobindpur	5 years	29.7.16	ASJ Gurdaspur
2.	FIR No.107/9.11.15	379-B/411/473 IPC	Ghuman	5 years	15.11.16	ASJ Gurdaspur

The above mentioned judgments of both the courts were challenged by him by filing two separate appeals. One Cr.Appeal No.138-SB of 2017 filed by him was dismissed on 26.6.2018. The other Criminal Appeal No.1380-SB of 2017 is pending.

It is the case of the petitioner that while convicting the petitioner in the second case no order for the two sentences to run concurrently has been passed. Accordingly, he has filed the present petition under Section 482 read with Section 427 of the Code of Criminal Procedure

seeking directions that both the sentences awarded to him be ordered to run

concurrently.

It has been settled by this Court that discretion to direct sentences to run concurrently lies only with the Trial Court, the Appellate Court or the Revisional Court and no petition for the same is maintainable under Section 482 and 427 of the Code.

In **Prem Chand v. State of Haryana** 2008(2) CriCC 312 it was observed as under :-

“8. A Full Bench of this Court in Jang Singh v. State of Punjab 2008(1) Criminal Court Cases 358 (P&H) (FB) : 2008(1) RCR (Criminal) 323 after considering Mehal Singh and Balbir Singh's cases (supra) while dealing with the issue of converting consecutive sentences into concurrent opined as under: (See Cr.C.C., p.368)

"18. The consensus of the judicial opinion, as may emerge from different judgments passed by various High Courts and the Hon'ble Supreme Court, seems to be that normal rule, as per Section 427 Cr.P.C. is that, a person who is undergoing a sentence of imprisonment and is sentenced on a subsequent conviction to an imprisonment or an imprisonment for life, then such imprisonment or imprisonment of life shall commence after the expiration of the imprisonment, to which he has been previously sentenced. This, however, would not be so if the Court directs that the subsequent sentence shall run concurrently with the previous sentence. Such direction to make the sentences to run concurrently, as per various decisions noted above, 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. However, if the trial Court does not pass any such direction for making the sentences to run concurrently and appeal or revision against said decision is also decided, then 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 482/427 Cr.P.C. The view taken by one set of the High Courts that such an application can be entertained while exercising inherent powers under Section 482 Cr.P.C. would no more appear to be a good law in view of the decision of the Hon'ble Supreme Court in M.R. Kudva, 2007(1) Criminal Court Cases 516 (S.C.) case. We are, thus, bound to take this view that this discretion though available with the trial Court, appellate Court or the

revisional Court while holding trial or entertaining appeal or revision but would not be so available to be exercised in isolation when application in this regard is moved either under Sections 482 or 427 Cr.P.C. What principle and consideration will govern the exercise of this discretion, as already noted above cannot be exhaustively enumerated. Certain relevant factors, as can be culled out from different judgments referred to above, may give an indication where such discretion may be exercised. These factors generally would be the nature or character of the offences committed, the prior criminal record of the offender, character his age and sex etc. ghastly nature of the crime. The offender being habitual would also be the factor, which can be relevantly taken into consideration. It may be stated at the cost of repetition that these are not the only reasons for which the Court can exercise this discretion. Discretion always is open to be exercised by any Court dependent upon the facts and circumstances of each case on any relevant or valid consideration as may be considered so by the Court while holding the trial or deciding the case at the stage of appeal or revision. It may require a notice that Section 427 Cr.P.C as observed by Hon'ble Supreme Court is aimed at amelioration and this aspect may also require to be kept in view while exercising the discretion."

9. Once issue has already been settled authoritatively by a Full Bench of this Court opining that discretion to direct sentences to run concurrently lies only with the trial Court, the Appellate Court or the revisional Court and no petition for the same is maintainable under Section 482 and 427 of the Code, no relief could possibly be granted to the petitioner in a petition filed under Sections 482 and 427 of the Code. Accordingly, the present petition is dismissed."

In view thereof there is no merit in the petition and the same is dismissed. It would be open to the petitioner to make the necessary prayer in the pending criminal appeal.

May 15, 2019

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No