

In the High Court of Punjab and Haryana at Chandigarh

1. Crl. Revision No. 2599 of 2016 (O&M)
Date of Decision: 29.10.2019

Raj KumarPetitioner

Versus

State of PunjabRespondent

2. Crl. Revision No. 2601 of 2016 (O&M)

Raj KumarPetitioner

Versus

State of PunjabRespondent

3. Crl. Revision No. 2606 of 2016 (O&M)

Raj KumarPetitioner

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. D.S.Kahlon, Advocate for the petitioner (s).

Ms. Bhavna Gupta, DAG, Punjab.

HARNARESH SINGH GILL, J.

This order shall dispose of above mentioned three revision petitions.

FIR No. 113 dated 7.9.2010 was registered against the petitioner under Section 61 (1) (b) of Punjab Excise Act, 1914 ('Act' for short) at Police Station Qila Lal Singh in which vide judgment and order dated 21.7.2014, passed by the Judicial Magistrate Ist Class, Batala, he was

convicted under Section 61 (1) (b) of the Act and sentenced to undergo

rigorous imprisonment for a period of one year and to pay a fine of Rs. 3000/- and, in default of payment of fine, to further undergo rigorous imprisonment for 15 days.

FIR No. 124 dated 23.9.2010, was also registered against the petitioner under Section 61 (1) (c) of the Act at Police Station Qila Lal Singh and vide judgment and order dated 28.7.2014 passed by the Judicial Magistrate Ist Class, Batala, the petitioner was convicted under Section 61 (1) (c) of the Act and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 5000/- and, in default of payment of fine, to further undergo rigorous imprisonment for 30 days.

Vide judgment and order dated 28.7.2014 passed by the Judicial Magistrate Ist Class, Batala, the petitioner was also convicted under Section 61 (1) (c) of the Act and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 5000/- and, in default of payment of fine to undergo rigorous imprisonment for 30 days in another FIR No. 132 dated 1.12.2009, registered under Section 61 (1) (c) of the Act at Police Station Qila Lal Singh.

In all the three cases, the appeals filed by the petitioner were dismissed vide judgments dated 3.12.2014 passed by the learned Additional District Judge, Gurdaspur.

In CRR No. 2606 of 2016, the petitioner has moved an application under Section 427 read with Sections 219 and 482 of the Code of Criminal Procedure, 1860 ('Cr.P.C.' for short) bearing CRM No. 32118 of 2019 seeking concurrent running of the sentences passed by the Courts below convicting him in three different FIRs of same nature.

I have heard learned counsel for the petitioner and the learned

State counsel.

Learned counsel for the petitioner has argued that as per Section 427 Cr.P.C., a person who is undergoing sentence of imprisonment and is sentenced on a subsequent conviction to an imprisonment or an imprisonment for life, then such imprisonment or imprisonment for life shall commence at 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. He has further argued that in the present cases, the trial Court has not passed any such direction for making the sentence to run concurrently but as per the custody certificate tendered by way of affidavit of Balkar Singh, Superintendent, Central Jail, Gurdaspur dated 10.9.2019, in FIR No. 113 of 2010, the petitioner has completed his sentence of one year. Learned counsel for the petitioner has relied upon the Full Bench judgment of this Court in case of ***Jang Singh versus State of Punjab, 2008 (1) RCR (Criminal) 323*** wherein a mandate has been passed that as per the normal rule, the person who is undergoing a sentence of imprisonment and is sentenced on a subsequent conviction to an imprisonment, then such an imprisonment shall commence after the expiry of the imprisonment to which he has been previously sentenced, however, if the Court directs that the subsequent sentence shall run concurrently with the previous sentence then the subsequent sentence shall run concurrently and such directions can be issued by the Revisional Court as well.

On the other hand, learned State counsel has argued that the petitioner is a habitual offender and the application preferred by the petitioner for running the sentences concurrently may be dismissed and the

conviction held in three different FIRs be upheld. Learned State counsel has pointed out that FIR No. 226 dated 29.10.2011 under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 also stands registered against the petitioner at Police Stations Civil Line Batala.

A perusal of the Full Bench judgment of this Court in ***Jang Singh's*** case (supra), shows that in that case two different appeals were pending before the Court for adjudication, in which the application was filed in one of the appeals for concurrent running of the sentences and the Full Bench exercised the power under Section 427 Cr.P.C. which it could do. The Full Bench of this Court has categorically given a mandate that it is the discretion of the Court to make the sentence to run consecutively or concurrently and the decision has to be taken keeping in view the facts of the case, nature and character of the offences, criminal history and record of the offender, his age and sex.

In ***Anil Kumar versus State of Punjab 2017 (1) RCR (Criminal) 691***, the Hon'ble Apex Court had similarly allowed an appeal for concurrent running of sentences in two different cases against the appellant after he was first convicted under Section 22 of the NDPS Act, 1985 and, subsequently under Section 27(b) (ii) and Section 28 of the NDPS Act.

Keeping in view the nature of the offences for which the petitioner was convicted and the law laid down by the the Full Bench judgment of this Court in ***Jang Singh's*** case (supra) and the Apex Court in ***Anil Kumar's*** case (supra), the application i.e. CRM-32118-2019 moved by the petitioner under Section 427 read with Section 219 and 482 Cr.P.C., is allowed. The sentences awarded to the petitioner in FIR Nos. 132 dated 1.12.2009, 113 dated 7.9.2010 and 124 dated 23.9.2010 registered at Police

Station Qila Lal Singh are ordered to run concurrently.

It may be noticed that after ordering the concurrent running of the sentences in all the three cases, the actual sentence undergone by the petitioner till now needs to be considered. In FIR No. 113 dated 7.9.2010, the petitioner has already undergone the entire sentence of one year. However, after the expiry of the said sentence on 10.7.2017, the next sentence imposed in FIR No. 132 dated 1.12.2009 has started commencing and till 10.9.2019, the petitioner has already undergone a period of 08 months and 25 days whereas in another FIR No. 124 dated 23.9.2010, the petitioner has undergone 05 days as under-trial. The total substantive sentence in all three cases if taken to be concurrent one, comes to two years. Thus, keeping in view the aforesaid actual sentence undergone, the petitioner has by now undergone 01 year and 09 months. Yet further, it may be noticed that as per the custody certificate dated 10.5.2016, filed in the Criminal Appeal arising out of FIR No. 266 dated 29.10.2011, under Sections 22/61 of the NDPS Act, the petitioner has actually undergone the sentence of 04 years, 02 months and 29 days.

In view of the above, while ordering the concurrent running of the sentence in all the three cases, the total substantive sentence imposed upon the petitioner i.e. 02 years is ordered to be reduced to the period already undergone by him.

All the revision petitions stand disposed of.

(HARNARESH SINGH GILL)
JUDGE

October 29, 2019
Gurpreet

GURPREET SINGH
2019.10.29 16:34
I attest to the accuracy and
authenticity of this document
chandigarh

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes