

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

117)

Date of Decision: 18.12.2019
CRM-M-29368 of 2019 (O&M)

Jarnail Singh @ Jaila

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Lakhwinder Singh , Advocate,
for the applicant-petitioner.

Mr. Surender Singh, AAG, Haryana.

Amol Rattan Singh, J. (Oral)

CRM no.32058 of 2019

Notice having been issued in this application, seeking advancement of the date of hearing in the accompanying petition, in fact without stating so, the application had been virtually allowed on 25.11.2019 itself, with the matter adjourned till today for final arguments.

Consequently, the application is disposed of as such.

CRM-M-29368 of 2019

By this petition, the petitioner seeks that the sentences imposed upon him by the learned trial courts should run concurrently, the first having been imposed in proceedings after FIR no.228, dated 22.05.2004, had been registered against him, and then after the subsequent FIR no.46, dated 22.01.2015, had been registered against him (both under the provisions of

Section 15 of the NDPS Act, 1985). He relies upon the provisions of Section 427 of the Cr.P.C. in furtherance of his prayer.

He also relies upon an order of a coordinate Bench of this court, in **Davinder Singh v. State of Haryana** (1997) 2 CLR 615.

A perusal of that order shows that the petitioner in that case, initially was convicted for the commission of offences punishable under Sections 395 and 397 of the IPC and sentenced to undergo rigorous imprisonment for 7 years (with a fine also imposed upon him), pursuant to FIR no.54, dated 13.02.1991, having been registered at Police Station Sampla, District Rohtak.

Subsequently, FIR no.60, dated 04.03.1991, was registered against him at the same police station, alleging therein the commission of offences punishable under Sections 307, 323, 393 and 452 of the IPC, for the commission of which offences also he was convicted and sentenced to undergo rigorous imprisonment, for 5 years for the first offence, with lesser imprisonment imposed for the commission of the remaining offences. The sentences imposed after those two trials were ordered to run concurrently.

This court, (in that case), after noticing that the petitioner was tried separately in the two cases and was convicted also separately, while observing that since the previous conviction had not been brought to the notice of the court that was trying him in the second case, there had been no occasion for that court to consider whether the sentences imposed pursuant to the two trials should be ordered to run concurrently or consecutively.

Noting as above, it was thereafter simply ordered that they were to run concurrently.

To similar effect is another order of a coordinate Bench of this Court, in the case of **Joginder Singh v. State of Haryana**, (1984) 2 CLR 394.

Learned counsel for the petitioner also relies upon a judgment of a Division Bench of the Bombay High Court, in **Abidkhan alias Salman Mukhtar Khan Pathan v. State of Maharashtra**, (2014) 9 RCR (Crl.) 284, in which case it is seen that the petitioner had been tried and convicted in 6 criminal cases for the commission of various offences, as follows:-

- “a) Under Section 379 r/w 34, 120B of IPC to suffer S.I. for 1 year 3 months.
- b) Under Section 465 r/w 34, 120B of IPC to suffer S.I. for 1 year.
- c) Under Sections 467 r/w 34, 120B of IPC to suffer S.I. for 1 year 9 months.
- d) Under Sections 468 r/w 34, 120B of IPC to suffer S.I. for 1 year.
- e) Under Sections 471 r/w 34, 120B of IPC to suffer S.I. for 1 year.
- f) Under Sections 420 r/w 34, 120B of IPC to suffer S.I. for 1 year.”

The Division Bench of the Bombay High Court, after noticing what is contained in Section 427 of the Cr.P.C., first observed as follows:-

“9. A plain reading of Section 427 makes it clear that ordinarily subsequent sentence of imprisonment commences at the expiration of the imprisonment, not being life imprisonment, to which a

person has been previously sentenced unless the Court directs obvious that sub-section (1) of Section 427 confers power upon the Court to order concurrent running of subsequent sentence with the previous sentence of imprisonment for a term and this power being discretionary in nature, has to be exercised prudently in appropriate cases. So, when the power exists, it becomes a part of public duty of the Court to apply its mind to the question of exercise of the power one way or the other.”

Eventually, relying upon a judgment of the Supreme Court in **Mohd. Akhtar Hussain v. Assistant Collector of Customs (Prevention), Ahmedabad**, AIR 1988 SC 2143, their Lordships recorded that it having been seen by the Supreme Court that the petitioner before them was not defended by any Advocate, nor was offered any legal aid by the trial court and that he belonged to a poor family, with the members of the family dependent upon him, with none of those factors having been considered by the trial court, he was entitled to the benefit of discretionary powers conferred under sub-section (1) of Section 427 of the Cr.P.C.

Per contra, Mr. Surender Singh, learned AAG, Haryana, has relied upon two judgments, one of the Supreme Court in **Nand Kishore v. State of Haryana** (2015) 6 RCR (Crl.) 94, and one of the Full Bench of this Court in **Jang Singh v. State of Punjab**, (2008) 1 RCR (Crl.) 323.

In the judgment of the Supreme Court, the essential facts were that the petitioner therein had first been tried and convicted in respect of an offence punishable under Section 18 of the NDPS Act, pursuant to FIR no.75 dated 12.05.1991 having been registered against him in the jurisdictional police station of District Bhiwani, with him subsequently

having been also tried for the commission of the same offence, i.e. one punishable under Section 18 of the NDPS Act, pursuant to FIR no.235 dated 15.10.1995 having been registered against him in the jurisdictional police station of District Sirsa.

In each case, he was sentenced to undergo rigorous imprisonment of 10 years, in addition to a fine of Rs.10 lacs having been imposed upon him in each trial.

After noticing the provisions of the Cr.P.C., i.e. Section 427 of the Cr.P.C., their Lordships referred to Section 31 of the NDPS Act, 1985, both of which are reproduced herein below:-

Code of Criminal Procedure, 1973

“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.”

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NDPS Act, 1985**“31. Enhanced punishment for offences after previous conviction.**

(1) If any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under this Act is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence punishable under this Act with the same amount of punishment shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which may extend to one-half of the maximum term of imprisonment and also be liable to fine which shall extend to one-half of the maximum amount of fine.

(2) Where the person referred to in sub-section (1) is liable to be punished with a minimum term of imprisonment and to a minimum amount of fine, the minimum punishment for such person shall be one-half of the minimum term of imprisonment and one-half of the minimum amount of fine: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding the fine for which a person is liable.

(3) Where any person is convicted by a competent court of criminal jurisdiction outside India under any corresponding law, such person, in respect of such conviction, shall be dealt with for the purposes of sub-sections (1) and (2) as if he had been convicted by a court in India.”

Thereafter, it was held that in view of what is contained in Section 31 of the Act of 1985, there was no room for doubt that the intent of the legislature in respect of a second conviction under the NDPS Act, was very clear, i.e. in fact an enhanced punishment is to be imposed upon a convict.

Therefore, it was further observed that if the appellant before their Lordships was allowed the benefit of Section 427 of the Cr.P.C., it

would factually amount to reduction in the sentence which was obviously not the intent of the legislature while incorporating Section 31 into the Act of 1985.

Consequently, also noticing the facts of that case as were presented before the Supreme Court, it was held that the appellant before that court was not entitled to the benefit of Section 427 of the Cr.P.C, with his appeal therefore dismissed.

That being so, the details of what has been held by the Full Bench of this Court (as has also been relied upon by the learned State counsel) need not be gone into by this Court, especially as the case before the Full Bench pertained to offences committed by the applicant-petitioner as were all punishable under the provisions of the Indian Penal Code, though even then, after noticing Section 427 of the Cr.P.C., he was held to be not entitled to the benefit of the benefit 'contained' therein.

In the present case, admittedly, both the FIRs registered against the petitioner are for the commission of two offences punishable under Section 15 of the NDPS Act, 1985, with the said FIRs registered about 10 ½ years apart.

Hence, there being no continuity of the commission of one offence with the other, so as to enable the learned counsel for the petitioner to show that the second FIR was actually a consequent result of the first FIR having been registered, or that it had been registered upon any disclosure made in the first FIR, and with the Supreme Court having very clearly

enunciated in Nand Kishores' case (supra), that Section 427 of the Cr.P.C. would not apply to the benefit of a convict in the face of Section 31 of the NDPS Act, 1985, I see no ground to allow this petition, which is consequently dismissed.

(AMOL RATTAN SINGH)
JUDGE

18.12.2019
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Whether reasoned/speaking: Yes
Whether reportable: Yes