



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2020

CORAM

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Crl.O.P.(MD)No.11066 of 2020

Kandan @ Viral Kandan

...Petitioner

vs.

1.The State represented by
The Inspector of Police,
Srivaikundam Police Station,
Thoothukudi District.
(Crime No.236 of 2007
and Crime No.20 of 2008).

2.The Superintendant,
Central Prison,
Palayamkottai,
Tirunelveli District.

... Respondents

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to issue direction by passing an order praying for the sentences imposed on the petitioner to run concurrently passed in the judgment dated 25.04.2011 in Crl.A.(MD)No.86 of 2010 by this Court and the judgment dated 22.11.2012 passed in Crl.A.(MD)No.54 of 2011 by the Division Bench of this Court.

For Petitioner : Mr.A.Saravanan

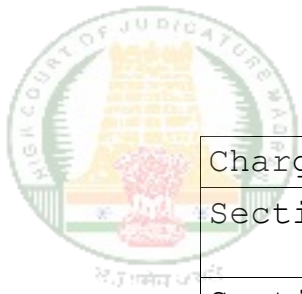
For Respondents: Mr.V.Neelakandan,

Additional Public Prosecutor.

O R D E R

This criminal original petition has been filed for a direction to run the sentences imposed on the petitioner in Crl.A.(MD)No.86 of 2010, dated 25.04.2011 and Crl.A.(MD)No.54 of 2011, dated 22.11.2012 concurrently.

2.The learned counsel for the petitioner would state that the petitioner had undergone trial in two cases In respect of the case in S.C.No.168 of 2009 for the offence under Sections 294(b) and 506 (ii) of I.P.C. and Section 3(a) of Explosive Substances Act, he was convicted by the learned Additional Sessions Judge, Fast Track Court-I, Thoothukudi, dated 08.12.2009 to the following effect:-



Charge	Conviction
Section 294(b) of IPC	Fine of Rs.10,000/- with default sentence of 15 days S.I.
Section 506(ii) of IPC	Sentence of 7 years R.I and fine of Rs.25,000/- with default sentence of 1½ years S.I
Section 3(a) of Explosive Substance Act	R.I for 25 years and fine of Rs.1,00,000/- with default sentence of 6 years S.I.

The said sentences were ordered to run concurrently by the trial Court. In the appeal preferred by the petitioner as against the said judgment of conviction before this Court in Crl.A.(MD)No.86 of 2010, this Court by judgment dated 25.04.2011, had modified the said judgment of conviction and sentence to the following effect:-

'i) 5 years of R.I and fine of Rs.10,000/- with default sentence of 1 year S.I for the offence under Section 506(ii) of IPC.

ii) 10 years R.I and fine of Rs.25,000/- with default sentence of 2 years S.I for the offence under section 3(a) of Explosive Substance Act.

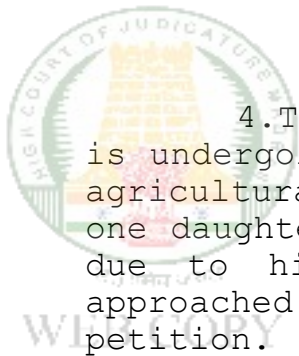
iii) The sentences of fine imposed under section 294(b) of IPC stands confirmed.

iv) The said sentences are ordered to be run concurrently.'

3.The learned counsel for the petitioner would further state that in respect of the petitioner's involvement in another case in S.C.No.105 of 2009 for the offence under Section 302 of I.P.C and Section 25(1-B) (a) of the Indian Arms Act, 1959, he was convicted by the learned Additional District and Sessions Judge, Fast Track Court-II, Thoothukudi, dated 25.10.2010 to the following effect:-

Charge	Conviction
Section 302 of IPC	Life imprisonment and fine of Rs.100/- with default sentence of 1 year R.I.
Section 25 (1-B) (a) of the Indian Arms Act 1959	Sentence of 3 years R.I and fine of Rs.500/- with default sentence of 2 months R.I

The said sentences were ordered to run concurrently by the trial Court. In the appeal preferred by the petitioner as against the said judgment of conviction before this Court in Crl.A.(MD)No.54 of 2011, a Division Bench of this Court by judgment dated 22.11.2012, has confirmed the said conviction and sentence.



4.The learned counsel would further state that the petitioner is undergoing the sentence from the year 2009 onwards and he was an agricultural coolie at the time of occurrence and his two sons and one daughter were married and one daughter is yet to be married and due to his family circumstances and inability, the petitioner approached the Legal Services Committee to file the present petition. Considering the facts and circumstances of the case, the learned counsel would pray for a direction to run the sentences in both the cases concurrently. In support of his contention, he would rely on the order passed by this Court in Crl.O.P.No.16223 of 2017, dated 10.08.2017 (Palanisamy vs. The Director General of Police, Chennai and another).

5.The 2nd respondent/Superintendent of Prison, Central Prison, Palayamkottai, Tirunelveli District, has filed counter affidavit. The learned Additional Public Prosecutor would state that as per Section 427 of the Criminal Procedure Code, 1973, after completion of the conviction period in S.C.No.168/2009, the life sentence awarded to the petitioner in S.C.No.105.2009 will commence. The ten years conviction awarded in S.C.No.168/2009 completed on 29.12.2018 and from 29.12.2018 onwards, the petitioner is undergoing his life sentence in S.C.No.105/2009. Thus, he would pray that the interference of this Court is not necessary.

6.Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor.

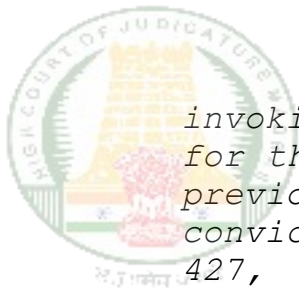
7.In the decision relied on by the learned counsel for the petitioner in Crl.O.P.No.16223 of 2017, dated 10.08.2017 (Palanisamy vs. The Director General of Police, Chennai and another), the Principal Seat of this Court has held as follows:-

In this connection a ***Division Bench judgement of this Court in K. Arasan and Others v. The State of Tamil Nadu, Rep.by Inspector of Police and others reported in CDJ 2012 MHC 5335***, has held that under 427 Cr.P.C., a discretion may be given to the subsequent convicting Court to consider and order the sentences to run concurrently with the previous sentence awarded to the same accused. The relevant portion of the judgment is as follows:

"12. (1)

(2)

A cursory reading of the above said provision makes it crystal clear that as per the said Section, a direction may be given for a sentence awarded in the subsequent case to run concurrently with the previous sentence. There may be a situation that the subsequent convicting Court was not appraised about the existence of the previous sentence and as such, the said Court convicting the same Accused in the latter or subsequent case, may not be in a position to consider the relief to be given to the said Accused by



invoking the provision under Section 427, Cr.P.C. It is for the concerned Accused to bring it to the notice of the previous conviction and sentence to the subsequent convicting court by invoking the provision under Section 427, Cr.P.C. It is needless to state that as per the provision under Section 427, Cr.P.C., a discretion is given to the subsequent convicting Court to consider and order the sentences to run concurrently with the previous sentence awarded to the same Accused. In the event of the Accused not raising the plea either before the original Court, namely, Trial Court or before the Appellate Court invoking the provision under Section 427, Cr.P.C. due to inadvertence or under other circumstances, the Accused cannot be left at lurch without any remedy.

13.0. It is pertinent to refer to 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 Vs. State of A.P.** Reported in **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 S.482, can direct the sentences to run concurrently as provided under S.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."

8.From the above, it is clear that under Section 427, Cr.P.C., a discretion is given to the subsequent convicting Court to consider and order the sentences to run concurrently with the previous sentence awarded to the same accused and even if the accused did not raise the plea either before the original Court, namely, Trial Court or before the Appellate Court. As per the judgment of the Division Bench in Andhra Pradesh High Court in **V.Venkateswarlu Vs. State of A.P.** reported in **1987 Cri.L.J.1621**, this Court by exercising its inherent powers under Section 482 Cr.P.C can direct the sentences to run concurrently as provided under S.427, Cr.P.C., even though the convictions and sentences that have been passed by the Sessions Court became final. In the present case, the petitioner has approached the Legal Services Committee to file the present petition. Considering the facts and circumstances of the case and considering the poverty of the petitioner, this Court exercising its power under Section 482 Cr.P.C, relying on the above judgment, is inclined to allow this petition and accordingly, the sentences passed in Crl.A.(MD)No.86 of 2010 dated 25.04.2011 and Crl.A.(MD)No.54 of 2011 dated 22.11.2012 are ordered to be run concurrently.



Accordingly, this Criminal Original Petition is allowed

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:-

- 1.The Inspector of Police,
Srivaikundam Police Station,
Thoothukudi District.
- 2.The Superintendant,
Central Prison,
Palayamkottai,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.A.SARAVANAN, Advocate (SR-22093[F] dated 19/11/2020)

ORDER MADE IN
Crl.O.P.(MD)No.11066 of 2020
DATED : 18.11.2020

SS (CO)
NR (21/12/2020) 5P : 6C