



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.O.P(MD)No.14056 of 2019

G.Saravanan

... Petitioner

Vs.

J.Sankaranarayanan

... Respondent

PRAYER: Criminal Original Petition is filed Under Section 482 of Criminal Procedure Code, to issue a direction for the sentence passed in C.A.No.39 of 2016, on the file of the Additional District and Sessions Judge, Theni at Periyakulam dated 27.02.2017 confirmed by this Hon'ble Court in CrI.R.C(MD)No.769 of 2017 dated 10.10.2018 to run concurrently along with the sentence passed in Criminal Appeal No.40 of 2016, on the file of the Additional District and Sessions Judge, Theni at Periyakulam dated 27.02.2017 confirmed by this Hon'ble Court in CrI.R.C(MD)No.770 of 2017 dated 10.10.2018 within the time period stipulated by this Court.

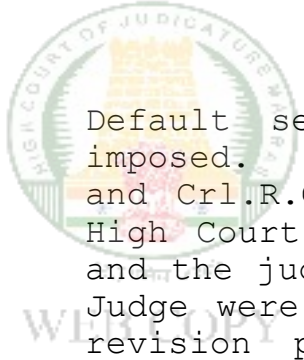
For Petitioner : Mr.N.Dilip Kumar

For Respondent : Mr.J.Jeyakumaran

ORDER

Heard the learned counsel on either side.

2.The petitioner was prosecuted for the offences under Section 138 of the Negotiable Instruments Act, 1881 in S.T.C No.100 of 2015 and S.T.C No.106 of 2015, on the file of the learned Judicial Magistrate/Fast Track Court, Theni. Thiru.J.Sankaranarayanan was the complainant in S.T.C.No.100 of 2015. Thiru.B.Suruliraj was the complainant in S.T.C.No.106 of 2015. The petitioner who was accused in both the cases was acquitted by the learned trial Magistrate after a full-fledged trial on 02.02.2016. Aggrieved by the same, the respective complainants filed Criminal Appeals in CrI.A No.39 of 2016 and CrI.A.No.40 of 2016 before the learned Additional District and Sessions Judge, Theni at Periyakulam. The learned appellate Judge, by judgment dated 27.02.2017, set aside the orders passed by the trial court and allowed both the appeals. The petitioner herein was found guilty and was sentenced to undergo one year Simple Imprisonment in each case and levied with a fine of Rs.1000/-.

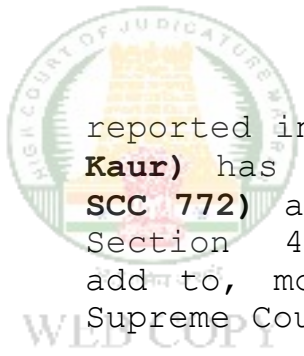


Default sentence of three months Simple Imprisonment was also imposed. The petitioner thereupon filed CrI.R.C No.769 of 2017 and CrI.R.C.(MD)No.770 of 2017 before the Madurai Bench of Madras High Court. Both the revision cases were dismissed on 10.10.2018 and the judgments of conviction and sentence passed by the Sessions Judge were confirmed. The trial Court was directed to secure the revision petitioner and commit him to prison to undergo the remaining period of sentence. Pursuant to the aforesaid outcome, the petitioner was taken to custody on 13.12.2018.

3.This Criminal Original Petition has been filed for issuing a direction that the sentence passed in CrI.A.No.39 of 2016, dated 27.02.2017 and confirmed in CrI.R.C(MD)No.769 of 2017 dated 10.10.2018 shall run concurrently along with the sentence passed in the other case. The learned counsel appearing for the petitioner relied on a host of decisions. He first drew my attention to the decision rendered by the Hon'ble Supreme Court in **State of Punjab vs. Madan Lal (2009) 5 SCC 238**. In the said case, the accused was found guilty in three cases for the offence under Section 138 of the Negotiable Instruments Act. He filed an application under Section 482 r/w 427 of the Criminal Procedure Code for directing that the sentences in all the three cases should run concurrently. It was allowed. The same was put to challenge before the Hon'ble Supreme Court. The Hon'ble Supreme Court dismissed the said appeal as devoid of merits.

4.Subsequently, the very same issue arose before a learned Judge of the Madras High Court who was confronted with another decision of the Hon'ble Supreme Court rendered in **M.R.Kundva v. State of A..P. (2007) 2 SCC 772**. In the said case, it was held that when Section 427 of Cr.P.C., was not originally invoked, a separate application could not have been filed before the High Court after the SLPs were dismissed. It was further observed in Kundva's case that Section 482 of Cr.P.C., was not an appropriate remedy and could not be applied in a separate and independent proceedings by the High Court. The matter was referred to a Division Bench. The Hon'ble Division Bench in the decision reported in **2012 (6) CTC 510 (K.Arasan vs. State of Tamil Nadu)**, after referring to earlier decisions, answered the reference by holding 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 latter case on conviction to run concurrently with a sentence imposed a former case as provided under Section 427 of Cr.P.C., **Arasan** case was followed in a number of subsequent cases by the Madras High Court. Useful reference can be made to the decision reported in **2018 (2) LW (CrI.) 773 (Selvakumar @ Jeyakumar Vs. the Inspector of Police, Seihunganallur Police Station)**. It has been followed in CrI.O.P No.8664 of 2019, dated 10.04.2019, (Eswaran @ Kotteswaran vs. The Jail Superintendent, Coimbatore).

5.Per contra, the learned counsel appearing for the respondent pointed out that the Hon'ble Supreme Court in its recent decision



reported in 2020 (1) MWN (Cr.) 161 (SC) (State of Punjab Vs. Ranjit Kaur) has chosen to follow **M.R.Kundva v. State of A.P., (2007 (2) SCC 772)** and hold that the inherent power of the High Court under Section 482 of Cr.P.C., does not enable the High Court to alter, add to, modify or vary any order that has been affirmed by the Supreme Court.

6.The petitioner's counsel would want me to distinguish **Kundva** and **Ranjit Kaur** decisions on this short factual aspect. In both the cases, the High Court had chosen to exercise its jurisdiction under Section 482 of Cr.P.C., after the SLPs filed by the accused challenging the convictions and sentences were dismissed. The petitioner's counsel would want me to hold that inasmuch as in the case on hand, the order made in the revisional jurisdiction by this Court was not assailed before the Hon'ble Supreme Court, I could as well adopt the approach indicated by the Hon'ble Division Bench in **Arasan** case. His pointed contention is that the Hon'ble Division Bench specifically considered **Kundva**. **Ranjit Kaur** cannot be said to have laid down any new proposition. It had after all followed **Kundva** case without referring to the case of **Madan Lal**. **Kundva** and **Ranjit Kaur** cases were decided by two judge Benches. **Madan Lal** on the other hand is by a three judge Bench.

7.The learned counsel appearing for the respondent/complainant would point out that when SLPs are dismissed, the order or judgment passed by the High Court will not merge with that of the Supreme Court. Therefore, the fact that the revisional orders passed by this Court were not put to challenge by filing SLP cannot make any difference. He submitted with utmost humility and respect that **Madan Lal** case though by a three Judge Bench of the Hon'ble Supreme Court, does not contain any proposition with regard to Section 427 of Cr.Pc. More than anything else, if I allow this petition, it would amount to altering the sentence imposed by this Court in exercise of its revisional jurisdiction. Such a course of action is not permissible in view of Section 362 of Cr.P.C. My attention was drawn to the decision of the Apex Court reported in **(2019) 10 SCC 161 (State of Madhya Pradesh vs. Man Singh)**. The Hon'ble Supreme Court in the said decision held that the High Court had no power to entertain the petition under Section 482 Cr.Pc and alter the sentence imposed by it. This is because the inherent power under Section 482 Cr.Pc cannot be used by the High Court to reopen or alter an order disposing of a petition decided on merits. After disposing of a case on merits, the court become *functus officio* and Section 362 Cr.Pc expressly bars review and specifically provides that no court after it has signed its judgment shall alter or review the same except to correct a clerical or arithmetical error. The learned counsel for the complainant strongly submitted that the decision rendered in **Arasan** case by the Division Bench will have to be revisited in the light of the aforesaid subsequent decisions. He requested me to direct the Registry to place the papers before the Hon'ble Chief Justice for constituting a larger Bench.



8.I must observe that the contentions put forth by the counsel for the respondent/complainant are very strong and rather formidable. I am however relieved of the need to answer the issue of maintainability or refer the matter to the Hon'ble Chief Justice as it is possible to dispose of this O.P on another ground altogether.

9.Let us go back to the facts again. The petitioner was acquitted by the trial Court. He was found guilty only by the appellate Court. The learned appellate Judge allowed the Criminal Appeals filed by the respective complainants and convicted and sentenced the petitioner in both the cases on the same day i.e., on 27.02.2017. The revision cases filed by the petitioner herein were also dismissed only on the same date ie., on 10.10.2018. The contention of the complainants' counsel is that the petitioner was already found guilty and sentenced to undergo one year Simple Imprisonment in Crl.A.No.39 of 2016, when he was found guilty in the subsequent case in Crl.A.No.40 of 2016. The learned appellate Judge did not specifically give a direction while allowing Crl.A.No.40 of 2016 that the sentence of one year Simple Imprisonment imposed in Crl.A.No.40 of 2016 will run concurrently along with the sentence imposed in Crl.A.No.39 of 2016. Therefore, the effect of consecutiveness set out in Section 427 of Cr.P.C., will kick in. While dismissing Crl.R.C.(MD)Nos.769 and 770 of 2017 no direction was issued in favour of the petitioner. This Court had merely confirmed the conviction and sentence passed by the appellate Court in Crl.A.No.39 of 2016 and Crl.A.No.40 of 2016. Therefore, the consequences set out in Section 427(1) of Cr.P.C., will have to be worked out and there is no escape from the same.

10.To test the correctness of the aforesaid contention, it is necessary to carefully understand the true scope and meaning of Section 427(1) of Cr.P.C. Section 427 (1) of Cr.P.C., reads as under:-

"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 of 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."

Let me now parse the main provision and break it into its component parts.

(i) A person is already undergoing a sentence of



imprisonment.

(ii) he is sentenced on a subsequent conviction to imprisonment or imprisonment for life.

(iii) such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced.

(iv) unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.

The aforesaid provision states that if the sentencing court fails to give a specific direction that the subsequent sentence shall run concurrently with the previous sentence, it would run only consecutively.

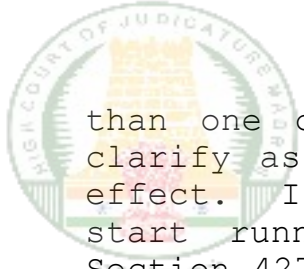
11. The question is whenever the sentencing court failed to pass any direction in terms of Section 427 of Cr.Pc, will the effect of consecutiveness kick in automatically ?. A closer reading of the provision would indicate that the condition precedent for the application of Section 427 of Cr.Pc is that the person must be already undergoing a sentence of imprisonment when he is convicted on a subsequent occasion and sentenced. The whole issue turns on the expression "already undergoing a sentence of imprisonment". "Already" means "before a particular time in the past or before now". "Undergoing" means "experiencing something" (Oxford Advanced Learner's Dictionary, New 9th Edition). One cannot be said to be undergoing a sentence of imprisonment unless warrant for its execution had been issued under Section 425 of Cr.Pc and it had taken effect. Only if the convict had been physically detained pursuant to such warrant, he can be said to be undergoing a sentence of imprisonment and not otherwise.

12. Thus, for Section 427 (1) of Cr.Pc to apply, the condition precedent must be that the person convicted and sentenced on the subsequent occasion was already undergoing a sentence of imprisonment in the previous case. If he was not so undergoing a sentence in the previous case, Section 427 (1) will not apply at all. I must emphasize that Section 427 of Cr.Pc does not talk of a person already sentenced to a term of imprisonment being sentenced on a subsequent conviction to a term of imprisonment. The legislature has carefully added the words "already undergoing". This is significant. No word occurring in a statutory provision can be ignored. Each expression has to be given its full effect.

13. The expression "undergoing" is also found in Section 426 of Cr.Pc dealing with sentence on escaped convict. Only a person undergoing sentence in a prison can escape and that would be an independent offence by itself. Section 428 of Cr.Pc is about setting off the period of detention already undergone by the accused against the term of imprisonment.

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14. Suppose on a single day, an accused is found guilty in more



than one case and sentenced. It is for the court concerned to clarify as to when the sentence in the subsequent case will take effect. If the court is silent on this aspect, the sentences will start running from the date when they were given effect to. Section 427 (1) has prescribed the manner in which the sentence will run. It states that if the court is silent and had not given any direction that the sentence given in the subsequent case will run concurrently, it will run only consecutively. Such an adverse consequence emanating from the silence of the court has a serious implication for personal liberty. The Constitution attaches a very high value to personal liberty. Therefore, such a provision must be construed in a manner that is at once fair, just and reasonable. Only by giving full effect to the expression "already undergoing" such a result can be obtained.

15. In case on hand both the judgments of conviction and sentence were handed out on the same day. When the second judgment of conviction and sentence was pronounced, the petitioner had only been sentenced to a term of imprisonment and he was not undergoing a sentence of imprisonment. Therefore, this Court has to necessarily hold the effect of consecutiveness provided for Section 427(1) of Cr.P.C., will not kick in, because the petitioner was not undergoing any sentence of imprisonment when he was found guilty in the second case.

16. Thus, as a result of the silence on the part of the appellate court or the revisional court in the case on hand, the petitioner cannot be made to undergo the two sentences consecutively. I make it clear that I am not for a moment giving a direction that the sentences will run concurrently. Even without a specific direction that would be the result. Thus, by giving relief to the petitioner I am in no way transgressing the mandate set out in Section 362 of Cr.P.C.

17. The learned counsel appearing for the complainant submitted that the petitioner had deposited a sum of Rs.75,000/- in each case when he filed revision petition and obtained suspension of sentence. The counsel for the complainant pointed out that the petitioner had engaged the complainants in court battles for over five years and he absconded and could be secured on 13.12.2018 only after NBW was issued against him by the trial court. According to the complainants, they had given a sum of Rs.9.00 lakhs to the petitioner herein. The said sum was not returned. They had also spent a huge sum towards litigation cost. I cannot be oblivious of these considerations. The petitioner has invoked the inherent powers of this Court. It embodies the power to do justice. Interest of justice warrants that the petitioner pays a sum of Rs.75,000/- each as cost to the complainants. The petitioner need not mobilise any amount afresh. It appears that they are in court deposits. I permit the respondents herein to withdraw the same without issuing any fresh notice to the petitioner herein.



18. This Criminal Original Petition is allowed on the above terms.

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Sd/-

Assistant Registrar (Cr1. Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

skm

To

1. The Additional District & Sessions Judge,
Theni at Periyakulam.
2. The Judicial Magistrate,
Fast Track Court (M.L)
Theni.

Cr1.O.P (MD) No.14056 of 2019

Dated: 12.05.2020

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