



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2020

CORAM

THE HONOURABLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

CRL.O.P. (MD) .No.17144 of 2019

Kumar

...Petitioner

Vs.

1.State rep by

The Superintendent of Police
Madurai Central Prison
Madurai.

2. The Inspector of Police

Rajapalayam South Police Station
Rajapalayam, Virudhunagar District
(Crime No.268 of 2006)

3. The Inspector of Police

Vellakovil Police Station
Thiruppur District
(Crime No.472 of 2012)

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C, to run the sentence of imprisonment imposed in the judgment made in S.C.No.104 of 14 dated 05.07.16 by III Additional District and Sessions Judge, Dharmapuram, Thiruppur District concurrently in Crl.A.No.439/2010 along with the sentence of imprisonment imposed by the Madurai Bench of Madras High Court by the judgment dated 03.08.2012.

For Petitioner : Mrs.S. Prabha

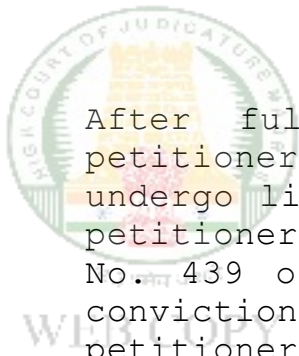
For Respondents : Mr.S.Chandrasekar

1 to 3 Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed for a direction to direct the petitioner to run the sentence of imprisonment imposed in the judgment made in S.C.No.104 of 14 dated 05.07.16 by III Additional District and Sessions Judge, Dharmapuram, Thiruppur District concurrently in Crl.A.No.439/2010 along with the sentence of imprisonment imposed by the Madurai Bench of Madras High Court by the judgment dated 03.08.2012.

2. The learned counsel for the petitioner would submit that a case in Crime No.268 of 2006 was registered by the second respondent police for offences under Sections 302 r/w.34 and 201 of IPC as against the petitioner and two others. After investigation final report was filed and the same culminated into SC No. 190 of 2007 and the petitioner was tried by the learned Principal District Judge, Virudhunagar at Srivilliputhur .



After full fledged trial by judgment dated 29.07.2009 the petitioner was found guilty and convicted and sentenced to undergo life imprisonment for life. Aggrieved over the same, the petitioner had preferred an appeal before this Court in Crl.A(MD) No. 439 of 2010 and the same was dismissed by confirming the conviction and sentence by a judgment dated 03.08.2012. The petitioner has not filed any Special Leave Petition against the same and the judgment has become final.

3. She would further submit that the third respondent has registered a case in Crime No. 472 of 2012 for the offence under Sections 302,392 and 201 of IPC. After investigation final report was filed and the same culminated into SC No. 104 of 2014 and the petitioner was tried by the learned III Additional District and Sessions Judge, Dharapuram, Thiruppur District. After full fledged trial by judgment dated 05.07.2016 the petitioner was found guilty and convicted and sentence to undergo imprisonment for life. The petitioner had not preferred any appeal challenging the conviction and sentence.

4. The learned counsel would further submit that as per Section 427(2) of Cr.P.C 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. He would further submit that though the learned III Additional District and Sessions Judge, Dharapuram, Thiruppur District while delivering the judgment had taken note of the fact that the petitioner was earlier convicted and sentenced to undergo life imprisonment by the learned Principal District Judge, Virudhunagar at Srivilliputhur in SC No. 190 of 2007 on 03.08.2012 and that appeal had been dismissed by the High Court he did not pass any order directing the subsequent sentence of life imprisonment to run concurrently with the earlier sentence. Hence he has filed the present petition under Section 482 of Cr.P.C seeking to direct subsequent sentence of life imprisonment in S.C.No.104 of 2014 dated 05.07.2016 by the learned III Additional District and Sessions Judge, Dharmapuram, Thiruppur District to run concurrently with the sentence of imprisonment for life imposed in S.C.No.190 of 2007 dated 20.07.2009 by the learned Principal District Judge, Virudhunagar at Srivilliputhur and confirmed in Crl.A(MD) No. 439 of 2010 by this Court. In support of her contention the learned counsel relied on the judgment of the Honourable Apex Court in Ranjith Singh -Vs- Union Territory of Chandigarh reported in (1991) 4 SCC 304 and K.Arasan and others -Vs- State of Tamil Nadu reported in (2012) 5 MWN(Crl.)184.

5. The learned Additional Public Prosecutor on instructions would submit that though this Court has jurisdiction to direct



the sentence to run concurrently this Court shall take into consideration the gravity of charges levelled against the petitioner in each of the case and would submit that the petitioner has to undergo imprisonment in both cases separately and prays for dismissal of this petition.

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6. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the state and perused the materials on record.

7.The Constitution Bench of the Honourable Supreme Court has answered the reference that multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life., the life sentences so awarded cannot be directed to run consecutively. The judgment of the Constitution Bench of the Honourable Supreme Court has been reported in **Muthuramalingam & Others Vs. State rep. by Inspector of Police, (2017-1-L.W. (Crl.) 852)**, wherein in paragraph No.31 of the judgment, it is held as follows:

"31.In conclusion our answer to the question is in the negative. We hold that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. Such sentences would, however, be super imposed over each other so that any remission or commutation granted by the competent authority in one does not ipso facto result in remission of the sentence awarded to the prisoner for the other."

8.After observing so, the Honourable Constitution Bench, has further observed in paragraph Nos.32 and 33 as follows:

"32.We may, while parting, deal with yet another dimension of this case argued before us namely whether the Court can direct life sentence and term sentences to run consecutively. That aspect was argued keeping in view the fact that the appellants have been sentenced to imprisonment for different terms apart from being awarded imprisonment for life. The Trial Court's direction affirmed by the High Court is that the said term sentences shall run consecutively. It was contended on behalf of the appellants that even this part of the direction is not legally sound, for once the prisoner is sentenced to undergo imprisonment for life, the term sentence awarded to him must run concurrently. We do not, however think so. The power of the Court to direct the order in which sentences will run is



unquestionable in view of the language employed in Section 31 of the Cr.P.C. The Court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31. The converse however may not be true for if the Court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence. Whether or not the direction of the Court below calls for any modification or alteration is a matter with which we are not concerned. The Regular Bench hearing the appeals would be free to deal with that aspect of the matter having regard to what we have said in the foregoing paragraphs.

33.The reference is accordingly answered."

9.The Honourable Constitution Bench, after answering the reference, as stated above, sent back the matter to the Regular Bench for disposal of the appeal regarding other issues. Accordingly, the Regular Bench of the Honourable Supreme Court by the judgment, dated 09.12.2016, has dismissed the appeals with certain modifications. The relevant portion of the said judgment is extracted hereunder:

"21.Hence, all the criminal appeals filed by the appellants are sans merit and are liable to be dismissed. We uphold the judgment passed by the High Court as far as awarding of sentences is concerned. However, the sentences shall run in conformity with the observations made by the Constitution Bench of this Court in its judgment dated 19.07.2016 passed in these appeals. The impugned judgment passed by the High Court is modified to the above extent and all the appeals are disposed of accordingly."

10. So, it is clear that the sentence awarded to the petitioner in S.C.No.190 of 2007 on the file of the learned Principal District Judge, Virudhunagar at Srivilliputhur under various sections have been finally ordered by the Madurai Bench of Madras High Court in CrI.A(MD) N. 439 of 2010 to run concurrently. But at the time of awarding sentences in S.C.No.104 of 2014 on the file of the III Additional District and Sessions Judge, Dharapuram, Thiruppur District, though the trial Court was aware that the petitioner was already sentenced to undergo imprisonment for life for the offences under Section 302 r/w.34



and 201 of I.P.C in S.C.No.190 of 2007 on the file of the learned Principal District Judge, Virudhunagar at Srivilliputhur the learned Judge has not specifically ordered whether the sentences awarded in S.C.No.190 of 2007 shall run concurrently or consecutively with the sentence awarded in S.C.No.104 of 2014.

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11.The learned counsel for the petitioner, relying upon the decision in **Ranjith Singh Vs. Union Territory of Chandigarh (1991) 4 SCC 304**, contended that as per sub-section 2 of Section 427 Cr.P.C that the subsequent sentence shall run concurrently with previous sentence of imprisonment for life. In the aforesaid decision, the Honourable Supreme Court in paragraph No.8 of the judgment, has observed as follows:

"8.xxxxxxxxxx

As rightly contended by Shri Garg, and not disputed by Shri Lalit, the earlier sentence of imprisonment for life being understood to mean as a sentence to serve the remainder of life in prison unless commuted or remitted by the appropriate authority and a persons having only one life span, the sentence on a subsequent conviction of imprisonment for a term or imprisonment for life can only be superimposed to the earlier life sentence and certainly not added to it since extending the life span of the offender or for that matter anyone is beyond human might. It is this obvious situation which is stated in sub-section (2) of Section 427 since the general rule enunciated in sub-section (1) thereof is that without the court's direction the subsequent sentence will not run concurrently but consecutively. The only situation in which no direction of the court is needed to make the subsequent sentence run concurrently with the previous sentence is provided for in sub-section (1) which has been enacted to avoid any possible controversy based on sub-section (1) if there be no express direction of the court to that effect..."

Having stated so, the Honourable Supreme Court declared that once the subsequent imprisonment for life awarded to the prisoner is superimposed over the earlier life sentence, the grant of remission or commutation qua, the earlier sentence of life imprisonment will not *ipso facto* benefit the prisoner qua the subsequent sentence of life imprisonment. Such subsequent sentence would continue and shall remain unaffected by remission or commutation of earlier sentence. The relevant portion of the said judgment is extracted hereunder:

"9.xxxxxxxxxx



In other words, the operation of the superimposed subsequent sentence of life imprisonment shall not be wiped out merely because in respect of the corresponding earlier sentence of life imprisonment any remission or commutation has been granted by the appropriate authority. The consequence is that petitioner would not get any practical benefit of any remission or commutation in respect of his earlier sentence because of the superimposed subsequent life sentence unless the same corresponding benefit in respect of the subsequent sentence is also granted to the petitioner. It is in this manner that the direction is given for the two sentences of life imprisonment not to run concurrently."

12.From the aforesaid decision, it is clear that where any person already undergoing sentence of imprisonment for life, if sentenced to undergo imprisonment for a term or imprisonment for life can only be superimposed to the earlier life sentence. It is also clear that the operation of the superimposed subsequent sentence of life imprisonment shall not be wiped out merely because in respect of the corresponding earlier sentence of life imprisonment any remission or commutation has been granted by the appropriate authority, unless the same corresponding benefit in respect of the subsequent sentence is also granted.

13.The learned counsel for the petitioner relying upon the decision of the Honourable Division Bench of this Court in **K.Arasan & Others Vs. The State of Tamil Nadu rep. by Inspector of Police & Others reported in CDJ 2012 MHC 5335 = 2012 (5) MWN (Cr) 184 and 2012 (6) CTC 510**, contended that the inherent power of the High Court under Section 482 Cr.P.C can be extended to issue a direction ordering the sentence imposed in a latter case of conviction to run concurrently with the sentences imposed in a former case as provided under Section 427 Cr.P.C. In the aforesaid decision, in paragraph Nos.16 and 17, it has been observed as follows:

"16.It is to be reiterated that invoking the jurisdiction under Section 482 Cr.P.C, in order to grant the relief under Section 427 Cr.P.C would not amount to altering, varying or modifying the findings of the trial Court or appellate court. On the other hand, it is always open to this Court to exercise power under Section 482 Cr.P.C to secure the ends of justice. It is needless to say that this Court has to exercise its judicial discretion for invoking the power under Section 482 Cr.P.C. for granting the relief under Section 427 Cr.P.C., on the basis of the facts and circumstances and of the charge levelled against the accused



in each case.

17. In the result, we are answering the reference to the effect 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 a latter case on conviction to run concurrently with the sentence imposed in a former case as provided under Section 427 Cr.P.C."

15. In view of the aforesaid decision, it is clear that this Court is having inherent power under Section 482 Cr.P.C to issue direction ordering the sentence imposed in a latter case to run concurrently with the sentence imposed in the former case as provided under Section 427 Cr.P.C.

16. Therefore, it is ordered that the sentence of imprisonment for life awarded to the petitioner in S.C.No.104 of 2014 on the file of the learned III Additional District and Sessions Judge, Dharapuram, Thiruppur District, date 05.07. 2016 shall be superimposed over the sentence of life imprisonment awarded in S.C.No. 190 of 2007 by the learned Principal District Judge, Virudhunagar at Srivilliputhur dated 29.06.2009 and later confirmed by this Court in Crl.A. 439 of 2010 dated 03.08.2012. However, it is made clear that as held by the Hon'ble Supreme Court in **Ranjith Singh Vs Union of Territory of Chandigarh** (supra) and Constitution Bench of the Hon'ble Supreme Court in **Muthuramalingam & Others Vs. State rep. by Inspector of Police (supra)** the operation of the superimposed subsequent sentences of imprisonment for term and sentence of life imprisonment shall not be wiped out merely because in respect of corresponding earlier sentence of life imprisonment any remission or commutation has been granted by the appropriate authority, unless the same corresponding benefit in respect of the subsequent sentences is also granted to the petitioner.

17. Accordingly, this Criminal Original Petition stands allowed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)



- 1.The III Additional District and Sessions Judge,
Dharmapuram, Thiruppur District
 2. The Principal District Judge, Virudhunagar at Srivilliputhur
 - 3.The Superintendent of Police
Madurai Central Prison
Madurai.
 4. The Inspector of Police
Rajapalayam South Police Station
Rajapalayam, Virudhunagar District
 5. The Inspector of Police
Vellakovil Police Station
Thiruppur District
 - 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- +1 CC to MR.S.PRABHU, Advocate (SR-3488[F] dated 28/01/2020)

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