

In the High Court of Punjab and Haryana at Chandigarh

**1. Criminal Revision No. 3283 of 2019 (O&M)
Date of Decision : 05.3.2020**

Pawan KumarPetitioner

Versus

State of PunjabRespondent

**2. CRM No. 38427 of 2019 IN/AND
Criminal Revision No. 3284 of 2019 (O&M)**

Pawan KumarPetitioner

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Atul Goyal, Advocate
for the petitioner(s).

Mr. Kirat Singh Sidhu, DAG, Punjab.

HARNARESH SINGH GILL, J.

This order shall dispose of the above noted two petitions as they have arisen out of same judgment dated 31.10.2019 passed by the Appellate Court.

The petitioner along with his co-accused had faced the trial qua commission of offence punishable under Sections 420, 465, 468, 471, 120-B IPC in FIR No. 172 dated 6.8.2012, registered at Police Station Sadar Ferozepur. The trial Court vide judgment and order dated 8.8.2017 convicted the petitioner under Sections 420, 465, 468 and 471 IPC and

sentenced him as under:-

Under Section	Sentence	Fine	In default
420 IPC	Rigorous imprisonment of one year	Rs. 2000/-	One month
465 IPC	Rigorous imprisonment of six months	Rs. 1000/-	15 days
468 IPC	Rigorous imprisonment of one year	Rs. 1000/-	One month
471 IPC	Rigorous imprisonment of six months	Rs. 1000/-	15 days

Aggrieved there-against, the accused preferred an appeal and the same was dismissed by the Appellate Court vide order dated 31.10.2019. Hence, the petitioner has preferred CRR-3283-2019.

In CRR-3284-2019, the petitioner along with his co-accused had also faced the trial qua commission of offence punishable under Sections 120-B, 406, 420 IPC in FIR No. 61 dated 13.4.2012, registered at Police Station Guruharsahai. The trial Court vide judgement and order dated 21.3.2018 convicted the petitioner under Section 406/120-B IPC and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 300/- and, in default of payment of fine, to further undergo rigorous imprisonment for a period of 15 days. The petitioner was also convicted under Section 420/120-B IPC and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- and, in default of payment of fine, to further undergo rigorous imprisonment for a period of 30 days.

In CRR-3284-2019, CRM-38427-2019 has been filed by the petitioner under Section 427 Cr.P.C. read with Section 482 Cr.P.C. for current running of the sentence imposed in this case with the sentenced imposed in the

the order challenged by way of CRR-3283-2019.

It has been contended by the learned counsel for the petitioner that after the registration of FIR No. 61 dated 13.4.2012 in which the petitioner has been convicted and sentenced as stated above (CRR No. 3284 of 2019), another FIR No. 172 dated 6.8.2012 under Sections 420, 465, 468, 471, 120-B IPC was registered at P.S. Sadar, District Ferozepur and vide judgment/order dated 8.8.2017, the petitioner was convicted under Sections 420, 465, 468, 471 IPC and sentenced to undergo rigorous imprisonment for a period of one year and the same was upheld vide judgment dated 31.10.2019 by the Court of Additional Sessions Judge, Ferozepur.

Learned counsel for the petitioner prays that sentence awarded in two separate FIRs may be ordered to run concurrently as both the FIRs were registered alleging that in order to increase the capacity of the sheller, a forged sale deed had been submitted and accordingly FIR No. 172 dated 6.8.2012 was registered and the trial Court and the Appellate Court relied upon the judgment of conviction and order of sentence, which was on record as Ex. DJ and Ex. DJI, respectively, passed in FIR No. 172 dated 6.8.2012.

He further submits that in FIR No. 61 dated 13.4.2012 (in CRR-3284-2019), the petitioner was shown as proprietor of M/s Narula Agro, but actually it was opened by Amit Kumar Narula and Raj Kumar Narula in the name of Pawan Kumar and when PW-2 visited M/s Narula Agro in March 2012, Amit Kumar and Raj Kumar (since deceased) were shifting rice from M/s Narula Agro to M/s Jai Shiv Bhola i.e. another firm and the FIR No. 172 dated 6.8.2012 alleging that in order to increase the capacity of sheller, a forged sale deed was submitted by M/s Narula Agro vide letters

dated 19.10.2010 and 29.10.2010. Moreover, M/s Narula Agro Firm was actually owned by Amit Narula and Raj Kumar Narula whereas the present petitioner, namely, Pawan Kumar, is the maternal uncle of co-accused Amit Narula.

It is contended by the learned counsel for the petitioner as the transactions alleged in both the aforesaid FIR arise out of the same incident and on the same set of allegations, therefore, the sentence imposed upon the petitioner in both the cases, should be ordered to run concurrent. In support of his assertions, learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court in *P.N.Mohanan Nair versus State of Kerala, 2017 (3) R.C.R. (Criminal) 646.*

Learned State counsel, on the other hand, has opposed the petitions.

I have heard the learned counsel for the petitioner and the learned State counsel and with their able assistance have gone through the paper book.

It would be relevant here to reproduce Section 427 Cr.P.C. which reads as under:-

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.

The Apex Court in **Vicky @ Vikas versus State (Govt. of NCT of Delhi)** Criminal Appeal No. 208 of 2020 decided on 31.1.2020 has held as under:-

“12. After referring to Mohd. Akhtar Hussain and other cases, in V.K. Bansal v. State of Haryana and Another (2013) 7 SCC 211, the Supreme Court held that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints may have been filed. In V.K. Bansal, it was held as under:-

“14. We may at this stage refer to the decision of this Court in Mohd. Akhtar Hussain v. Collector of Customs (1988) 4 SCC 183 in which this Court recognised the basic rule of convictions arising out of a single transaction justifying concurrent running of the sentences.”

15. In Madan Lal case (2009) 5 SCC 238 this Court relied upon the decision in Akhtar Hussain case (1988) 4 SCC 183 and affirmed the direction of the High Court for the sentences to run concurrently. That too was a case under Section 138 of the Negotiable Instruments Act. The State was aggrieved of the direction that the sentences shall run concurrently and had appealed to this Court against the same. This Court, however, declined interference with the

order passed by the High Court and upheld the direction issued by the High Court.

16. In conclusion, we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor.”

13. In V.K. Bansal, the appellant-accused was facing fifteen cases and the Supreme Court has grouped fifteen cases into three different groups:- (i) the first having twelve cases relating to advancement of loan/banking facility to M/s Arawali Tubes Ltd. acting through the appellant thereon as Director; (ii) the second having two cases relating to advancement of loan to the appellant M/s Arawali Alloys Ltd. acting through the appellant as its Director; and (iii) the third having a single case qua the criminal complaint by the State Bank of Patiala. The Court directed that the substantive sentences within first two groups would run inter-se concurrently. The Supreme Court directed that the substantive sentences in first two groups and that in respect of the case in the third group would run consecutively.

14. Following the decision in V.K. Bansal, in Benson v. State of Kerala (2016) 10 SCC 307, the Supreme Court directed that the sentences imposed in each of the cases shall run concurrently with the sentence imposed in Crime No.8 which was then currently operative. However, the Court held that the benefit of “concurrent running of sentences” is granted only with respect of substantive sentences; but the sentences of fine and default sentences shall not be affected by the direction. The Supreme Court observed that the provisions of Section 427 CrP.C. do not permit a direction for the concurrent running of the default sentence for non-payment of

fine.

15. Further, in the case of Anil Kumar v. State of Punjab (2017) 5 SCC 53, it was held by this court that “in terms of sub-section (1) of Section 427, if a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced. Only in appropriate cases, considering the facts of the case, the court can make the sentence run concurrently with an earlier sentence imposed. The investiture of such discretion, presupposes that such discretion be exercised by the court on sound judicial principles and not in a mechanical manner. Whether or not the discretion is to be exercised in directing sentences to run concurrently would depend upon the nature of the offence/offences and the facts and circumstances of each case.”

Keeping in view the law laid down by the Apex Court in **Vicky @ Vikas's** case (supra) and the fact that in FIR No. 172 dated 6.8.2012 registered at Police Station Sadar Ferozepur (in CRR-3283-2019), petitioner has also been convicted and sentenced to undergo rigorous imprisonment for 01 year, it would be just and expedient to order that sentence awarded to the petitioner in FIR No. 61 dated 13.4.2012 under Sections 406, 420, 120-B IPC, registered at Police Station Guruharsahai (in CRR-3284-2019) shall run concurrently with his sentence recorded in FIR No. 172 dated 6.8.2012.

CRM-38427-2019 stands allowed accordingly.

Though the learned counsel for the petitioner has argued that both the Courts below while passing the impugned judgments and orders, ignored the evidence on record, yet I do not find that there is any misreading

re-appreciation of evidence cannot be allowed, until and unless there is any patent illegality and irregularity in the findings recorded by the Courts. Thus, the conviction of the petitioner in both the cases as recorded by the Courts below, is upheld.

Coming to the sentence part. As per the custody certificate filed in CRR-3284-2019, the petitioner has undergone total sentence of 09 months and 16 days which includes 06 months and 03 months as under-trial (i.e. from 10.5.2013 to 13.11.2013) and 03 months and 13 days after conviction (i.e. from 31.10.2019 to 13.2.2020) in the case arising out of FIR No. 61 dated 13.4.2012. However, as per the custody certificate filed in CRR-3283-2019, the petitioner has undergone total sentence of 05 months and 26 days as under-trial (i.e. from 17.5.2013 to 12.11.2013) in FIR No. 172 dated 6.8.2012.

Thus, if cumulative sentence undergone by the petitioner in both the cases, at different period, is taken into consideration, it comes to 15 months and 12 days i.e. more than 01 year and 03 months. Thus, after ordering the sentence to run concurrently, the petitioner has undergone more than 01 year and 03 months period of actual sentence out of the total sentence of two years. Thus, taking into consideration the totality of the facts and circumstances of the case and the fact that the petitioner has been facing the agony of trial for the last 07 years as both the FIRs were registered in the year 2012, I feel that the ends of justice would be met if the sentence awarded to the petitioner in both the cases is reduced to the period already undergone by him.

Thus, while upholding the conviction of the petitioner as

recorded by the Courts below, the sentence imposed upon him is reduced to

the period already undergone by him. The petitioner is ordered to be released unless not wanted in any other case and on payment of fine, if not paid.

With the aforesaid order, both the revision petitions are disposed of.

**(HARNARESH SINGH GILL)
JUDGE**

**March 05, 2020
Gurpreet**

**Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No**