



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2021

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.(MD)No.13487 of 2020

Maruthupandian

... Petitioner

Vs.

1.The Superintendent of Police
Central Prison,
Madurai.

2.The Inspector of Police,
Bodi Town Police Station,
Theni District.
Crime Nos.641/2015 & 938/2016

... Respondents

Prayer : Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to order the sentence to run concurrently passed in C.C.No.18 of 2016 and C.C.No.29 of 2017 dated 07.01.2019 by the learned Judicial Magistrate, Bodinayakkanur, against the petitioner.

For Petitioner : Mr.M.Jerin Mathew

For Respondents : Mr.A.Robinson,
Government Advocate (Criminal side)

ORDER

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, seeking to order the sentence of imprisonment imposed on him to run concurrently in C.C.Nos.18 of 2016 and 29 of 2017 dated 07.01.2019 by the learned Judicial Magistrate, Bodinayakkanur.

2.The main grievance of the petitioner is that the Judicial Magistrate, Bodinayakkanur, though pronounced judgments in C.C.Nos.18 of 2016 and 29 of 2017 on the same day ie., 07.01.2019, did not pass any specific orders as to whether the sentences imposed in both the cases would run concurrently or consecutively.

3.The learned counsel for the petitioner drew the attention of this Court to the decision of the Single Bench of this Court in Crl.OP(MD) No.14056 of 2019 dated 12.05.2020 and would submit that since the order of the Judicial Magistrate, Bodinayakkanur is silent on the aspect that whether the sentences imposed in both the cases



would run concurrently or consecutively, an order can be passed by this Court to make both the sentence to run concurrently.

4.Mr.A.Robinson, learned Government Advocate (Criminal side) who accepts notice on behalf of the respondents, did not raise any serious objections.

5. A Single Bench of this Court in Crl.OP(MD) No.14056 of 2019 has held that,

"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 sentence of imprisonment.

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,

<https://hcservices.ecourts.gov.in/hcservices/> 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."

6. In the instant case, a perusal of the sentence of imprisonment passed by the learned Judicial Magistrate, Bodinayakanur, in both the cases in C.C.Nos.18 of 2016 and 29 of 2017 on 07.01.2019, would show that the learned Judicial Magistrate, did not pass any specific order, as to whether the sentences have to run concurrently or consecutively. In the absence of the same and in view of the decision cited supra, both the sentences have to run concurrently.

7. In the circumstances, the Criminal Original Petition is allowed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

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 Judicial Magistrate,
Bodinayakkanur.
- 2.The Superintendant of Police
Central Prison,
Madurai.
- 3.The Inspector of Police,
Bodi Town Police Station,
Theni District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.JERIN MATHEW, Advocate (SR-2656[F] dated 01/02/2021)

Crl.O.P. (MD) No.13487 of 2020

29.01.2021

NR (02/02/2021) 4P : 6C