



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.17093 of 2018

and

Crl.MP(MD)No.7574 of 2018

Kannan

: Petitioner

Vs.

The Inspector of Police,
District Crime Branch,
Trichy.

(Crime No.1 of 2000)

: Respondent

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to direct that the sentences imposed on the petitioner by the learned 1st Additional District Judge, PCR cases, Tiruchirappalli, vide the judgment in Crl.A Nos.42, 43, 44 and 45 of 2008, dated 27.07.2017 to run concurrently.

For Petitioner : Mr.C.Jeganathan
M/s.Veera Associates

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

O R D E R

This petition is filed seeking for a direction to order the sentences that has been imposed upon the petitioner by the I Additional District Judge, (PCR), Trichy, in Crl.A Nos.42, 43, 45 of 2008, dated 27.07.2017 to run concurrently.

2.The case of the petitioner in brief:-

The petitioner was working as Assistant in Kathi and Handloom Departments during the period 1993 to 1998 at Karungulam Hadloom Unit and per the allegation that has been made by the prosecution, he has stated to have misappropriated a sum of Rs.5,86,367.35 paise. Totally, 4 accused persons have been charge sheeted. After investigation, final report was filed before the Judicial Magistrate, Manaparai, by splitting the charges into four cases, namely CC Nos.327, 328, 329 and 330 of 2008. By order, dated



17.08.2016, the petitioner was convicted and sentenced to undergo one year RI and a fine of Rs.1,000/- was imposed for the offence under section 409 IPC. Similarly, he was sentenced to undergo for the offence under section 477(A) IPC. It was ordered to run concurrently. The fine amount was paid and the period of detention during trial was also ordered to set aside, under section 428 of Cr.P.C. In respect of 4 cases also, very same sentence have been imposed and against which, this petitioner preferred 4 appeals in C.A Nos.42, 43, 44 and 45 of 2016 before the Additional District Judge (PCR), Trichy. By judgment, dated 27.07.2017, the sentence was modified to undergo 3 months of RI by reducing one year of RI period. But failed to order the concurrent running of sentence period of 3 months. The appellate court has erroneously ordered that the sentence must run separately, this petition is filed seeking for a direction to order the sentence to run concurrently, since all the cases have been tried jointly and the appeals have also been heard jointly. The prayer now sought for is perfectly legal. On that ground, this petition is filed.

3.Heard both sides.

4.It is not in dispute that the petitioner was charged for the offence under section 409, 477(A) r/w 39 & 109 IPC along with the co-accused before the trial court in 4 separate cases viz., CC Nos.327, 328, 329 and 330 of 2008. In all cases, the petitioner was convicted and sentenced to undergo 1 year RI for the offence 409 and Section 477(A) IPC. Against which, he has also filed separate criminal appeals before the Additional District Judge, Trichy in CrI.A Nos.42, 43, 44 and 45 of 2016 and that came to be modified to reduce the RI period of one year to 3 months.

5.Now the only point arises for consideration before this court is whether the petitioner can express any grievance or not. So during the appeal proceedings, the only argument that has been advanced is that the petitioner is aged about 70 years and the date of occurrence is stated to be the year 1997-98. When the appeal was ultimately taken up in 2009, considering the 20 years period, age of the petitioner and the period of detention during trial process, a modification was requested and that was accepted by the appellate court. So that the sentence was modified to 3 months SI and the period of detention already undergone during the period investigation was ordered to be set aside under section 428 of Cr.P.C. and the sentence under section 409 and 477-A IPC was ordered to run concurrently. But as pointed by the learned counsel appearing for the petitioner, there is no specific order by the appellate court to the effect that the petitioner must undergo the sentence of 3 months that has been imposed upon him in all the four cases must run consecutively or concurrently. There is no such specific order. So in the absence of any such specific order



by the appellate court, now the question arises for consideration is whether this court by exercising the jurisdiction under 482 Cr.P.C can order to run all the sentence period concurrently in all four cases.

6.The learned counsel appearing for the petitioner would straightaway relied upon the judgment of this court rendered in **K.Arasan Vs. The State of Tamil Nadu [2012(6) CTC 510]** wherein the Division Bench of this court on reference made by a civil judgment decided the issue whether this court can exercise its jurisdiction under section 482 Cr.P.C to issue a direction under section 427 Cr.P.C. The Hon'ble Division Bench answered the reference to the effect that inherent power can very well be extended to issue such a direction. So the power of this court is now being clarified and conferred.

7.The Hon'ble Supreme court in the case of **State of Punjab Vs. Madhan Lal [(2009)5 SCC 238]** has also clarified the position to the effect that such a power can be exercised by the High Court. The Hon'ble Supreme Court in the case of **State of Panjab Vs. Madhan Lal [(2009)5 SCC 238]** has observed as follows:-

"16.It is to be stated 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 gravity of the charge levelled against the accused in each case."

8.So, in the opinion of the Hon'ble Supreme Court, what is required is that the ends of justice must demand such a direction. Now the question narrows down to a single point whether under the facts and circumstances, such a power can be exercised by this court. For that purpose, as mentioned earlier, the facts and circumstances of the case as well as the other mitigating circumstances are the criteria, which are required to be taken into account. So as mentioned earlier, the offence had taken place in the year 1997-98, when the petitioner was working as Assistant in Kadhi and Handloom Cooperative Department and he was also undergoing the detention during the pretrial period for more than 3 months i.e., from 13.12.2000 to 09.04.2001. So he was about 70 years when the appeal was heard by the appellate court.



Now five years lapsed from the date of appeal. Now the petitioner would have been 74 or 75 years. At the advance of life, I am of the considered view that sending back to prison to undergo consecutive sentence will not be fair. So considering the age of the petitioner and the period of detention that has been undergone during pretrial process, I am of the considered view that this is the fittest case to exercise the jurisdiction of 482 Cr.P.C to meet the ends of justice.

9. In view of the above, this criminal original petition is **allowed**, directing the sentence of 3 months imposed upon the petitioner in Cr1.A Nos.42 to 45 of 2008, dated 27.07.2017 to run concurrently. Since concurrent order has been passed and the period of sentence undergone is already over, the petitioner need not surrender before the authorities for serving out the sentences. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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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.

1. The I Additional District Judge,
PCR cases, Trichy.
2. The Inspector of Police,
District Crime Branch,
Trichy.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-35699[F] dated 24/11/2021)

Cr1.OP(MD)No.17093 of 2018
23.11.2021