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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 09.12.2020

Pronounced on: 11.01.2021

+ CRL.A. 769/2015 & CrI.M.A. 230/2019

YAMIN

..... Appellant

Through: Mr. Kanhaiya Singhal, Adv.

versus

THE STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Mr. G. M. Farooqui, APP for State.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

CRL.M.A.No. 230/2019 in CRL. A. 769/2015

1. The hearing has been conducted through video conferencing.
2. Present applicant had filed the appeal mentioned above by seeking prayer as under:

*“directing the sentence awarded in pursuance to FIR
No.1013/2004 registered at Police Station Uttam Nagar
for the offences punishable under sections 307/324/34
IPC concurrently with the sentence awarded in*

pursuance to FIR No.67/2011 registered at Police Station Swaroop Nagar for the offences punishable under sections 394/397 IPC or to reduce the sentence to the period already undergone by the appellant.”

3. However, the appellant moved present application under section 427 read with section 482 Cr.P.C., seeking disposal of the appeal with a direction that the seven years sentence awarded to the appellant in case FIR No.1013/2004 for the offence punishable under section 307 IPC registered at Police Station Uttam Nagar should run concurrently with 10 years sentence awarded in case FIR No.67/2011 for the offence punishable under section 394/397 IPC registered at Police Station Swaroop Nagar; or, that in alternative, the sentence be reduced to the period already undergone.

4. The application came on hearing on 14.08.2019 before this Court and notice was issued. Thereafter, the issue of sentences to run concurrently (as in present application) was carried out by a co-accused namely Vicky @ Vikash in the case arising out of FIR No.65/2007 registered at Police Station Swaroop Nagar in which by order dated 31.01.2020 passed in Crl.A. No.208/2020, the Hon'ble Supreme Court has allowed the plea taken by the abovenamed co-accused. The said case is reported as **2020 SCC OnLine SC**

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5. During hearing of the present application on 02.07.2020, learned APP for State argued that the applicant/appellant has criminal antecedents and has been involved in 21 other cases. Accordingly, vide order dated 02.07.2020, the Social Welfare Department of the Government of NCT of Delhi was directed to appoint a Probation Officer, to examine the appellant's case and assess the family background, the family situation, the chances of reformation and reintegration of the appellant with family and society and other relevant factors, as per the protocol of the said Department, and submit the report.

6. Pursuant to the directions of this Court, Probation Officer, Mandoli Jail filed its report dated 21.07.2020 wherein stated as under:

“Name of the person under study: Yamin.

Personal History:- Accused/convict Yamin is 38 years old and married. He is presently lodged in Central Jail No.12, Mandoli, Delhi and his family lives in own substandard house built in an area around 25 sq. yards. along with family on the above said address, which comprises of 05 people. He is illiterate and wishes to live a normal social life after his release from the jail. He was running a meat shop to earn his livelihood as narrated by the convict. ***He is sole bread earner in his family.***

Details regarding Behaviour, Habits and moral values

etc:- The convict is habitual of beedi smoking, gutkha chewing and other prohibited and health threatening substances. He was addicted of intoxicants before his jail tenure. It has been narrated by the jail officials and also verified from the jail reports that the convict is indulged in nuisance conduct and engages in quarrels, threatening and undesirable behaviour with fellow convicts and jail officials. A summary of punishments/warnings imposed on the convict in the jail is enclosed herewith as Annexure-A.

Temperament, Character & Personality Traits:- The convict is aggressive and short tempered in his behaviour and emotionally unstable. He becomes violent too and none of the staff or fellow convicts has any appreciation for his behaviour.

Physical and Mental History and Present Conditions:- Convict's mental condition appeared to be normal and he shares about his plans to settle down peacefully after his release from jail.

Contact with Social & Religious Organization, if any:- Reported Nil.

Economic Conditions of the Family:- The family of the convict is presently residing in their own house covering an area around 25 Sq. Yards in JJ Colony Bindapur and falls in the lower income group.

Family Details:-

Sr. No.	Relationship with the Convict	Socio-economic status
1.	Father	Sh. Nayab Khan, aged 70 years, is under medication of tuberculosis.

2.	Mother	<i>Smt. Khurshid Begum, aged 68 yrs., is a housewife.</i>
3.	Brother	<i>First– Sh. Aftab, aged 35 yrs., is married and lives separately with his family.</i>
4.	Brother	<i>Second – Sh. Nawab, aged 32 yrs., is married and lives separately with his family.</i>
5.	Sister	<i>Smt. Malka, aged 39 yrs., is married and lives with her children and in-laws.</i>
6.	Wife	<i>Smt. Shabnam, aged 32 yrs., is an illiterate house wife and doing household works as a domestic labour in neighbourhood in order to earn livelihood for her family in the absence of her husband – the convict.</i>
7.	Daughter	<i>Ms. Sanna, aged 14 yrs., is studying in school.</i>
8.	Son	<i>Master Mannu @ Manohar, aged 8 yrs., is also a student.</i>

Report of Neighbours: Neighbours have not reported favourably in view of his past multiple criminal cases. The neighbours particularly requested the PO about non-disclosure of their identities.

Attitudes of Family Towards Offenders and Extent of his Influence of him/her:- The family members of the convict are willing to see him released from jail as early

as possible and want to resume their socio-economic life.

Home Surrounding and General Out Look:- *The family of the convict lives in JJ Colony and condition of civic amenities are poor. The home surrounding is very congested and unhygienic. People living in the locality belong to poor/low socio economic strata and unemployed youth of the neighbourhood are prone to criminal activities.*

Offenders Own Reaction to the Offence and his Attitude Towards Possible Punishment:- *Convict feels repentant about his guilt and confessed to have committed the offence. He is seeking lenient consideration from authorities and hope for his early release.*

Observation:- *The convict is desirous of restarting a normal social life after his release from the jail and he also expressed his willingness to build peaceful and cordial relations with everyone in society, though the convict's past criminal cases evidently establish that the convict is a threat to the society."*

7. Learned APP while opposing the present application filed by the appellant submitted that On 17.11.2004 on receiving of DD No 39 at Police Station Uttam Nagar, Delhi, ASI Ramphal along with Ct Rakesh reached at D-58B Chankya place where he came to know that injured had been taken to DDU Hospital by CAT ambulance. Then they reached at DDU hospital and found that injured Amardeep and Bharat Thakur were admitted. ASI Ramphal collected MLC of the injured and recorded the statement of Amardeep on 17.11.2004 wherein injured Amardeep reported that on

16.11.2004 at about 8:45 PM accused Yamin stabbed his father and Arvind stabbed him with knife while Kamlesh and Ram Pratap caught hold them. On the basis of said statement and a case vide FIR No. 1013/2004 U/s 307/34 IPC was registered at Police Station Uttam Nagar, Delhi.

8. During the course of investigation, statement of the witnesses were recorded, site plan was prepared, MLC also collected. Accused Arvind was arrested and his confessional statement was recorded. Nature of injuries of Amardeep and Bharat were opined as dangerous injuries. Later on Investigation was assigned to SI Neeraj Kumar who formally arrested the accused Kamlesh as he was on anticipatory bail. Later on, investigation was assigned to ASI Ram Chander who formally arrested the accused Yamin as he was arrested in FIR No. 669/2005 U/s 25 Arms act PS Uttam Nagar. Accused Ram Prasad could not be apprehended. Charge sheet u/s 307/34 IPC against accused Kamlesh @ Baby, Arvind and Yamin were filed and accused put to trial. Later on, accused Ram Prasad was also arrested and supplementary charge sheet was filed against him.

9. Vide orders dated 19.04.2006 and 21.09.2007, charge u/s 307/324/34 IPC was framed against all the accused persons by Trial Court in which accused pleaded not guilty and claimed trial.

10. During trial, accused Arvind has expired and proceeding qua him abated vide order 22.01.2008 and accused Ram Prasad was declared proclaimed offender.

11. After examination of prosecution witnesses, Trial Court held that the prosecution was able to prove its case beyond reasonable doubt that both the accused Yamin and Kamlesh@ Baby along with Arvind (since expired) and Ram Prasad (since PO) in furtherance of their common intention has caused injuries to Amardeep and Bharat Thakur with the intention to commit their murder. Accordingly, the Trial Court convicted both the accused for offence U/s 307/34 IPC for attempting to commit murder of Amardeep and Bharat Thakur.

12. Consequently, Trial Court has imposed a sentence of 7 years of rigorous imprisonment with fine of Rs 20,000/- each for the offence U/s 307 IPC for attempt to murder to injured Amardeep and Bharat Thakur, in default of payment of fine, convicts shall further sentence for six months simple imprisonment. Further directed that if fine is realized from both the convicts, Rs.35,000/- shall be paid to the injured Amardeep and Bharat Thakur as compensation U/s 357 Cr.P.C.

13. Learned APP further submitted that the appellant has following criminal antecedent:-

Sl. No.	FIR No.	Year	U/s	Police Station	Status of the case
1.	459	1997	380 IPC	Janakpuri	Acquitted
2.	475	1997	380 IPC	Janakpuri	
3.	1115	1998	457/380 IPC	Sadar Jaipur	
4.	591	1999	392/34 IPC	Uttam Nagar	Acquitted
5.	733	1999	307/34 IPC	Uttam Nagar	Acquitted
6.	662	2002	25 Arms Act	Uttam Nagar	
7.	767	2003	394/34 IPC	Dabri	
8.	875	2003	380/411 IPC	Uttam Nagar	Acquitted
9.	1180	2003	356/379/34 IPC	Uttam Nagar	Convicted
10.	63	2003	25 Arms Act	Hari Nagar	
11.	549	2004	379/411 IPC	Defence Colony	
12.	1013	2004	307/34 IPC	Uttam Nagar	Convicted
13.	669	2005	25 Arms Act	Uttam Nagar	Acquitted
14.	37	2006	341/323/34 IPC	Hari Nagar	Convicted
15.	8	2007	21 NDPS Act	Uttam Nagar	Convicted

16.	150	2008	452/352/34	Bindapur	Convicted
17.	258	2008	379 IPC	Bindapur	Convicted
18.	359	2009	356/379/400 IPC	Rajouri Garden	Convicted
19.	64	2011	394/34 IPC	Bhalswa Dairy	Convicted
20.	67	2011	397/34 IPC	Swaroop Nagar	Convicted
21.	161	2013	186/353/332/147/149/34 IPC	Hari Nagar	Acquitted.

14. Learned APP has informed this Court that the appellant also filed the Crl.M.A. No. 10016/2015 in Crl. Appeal No. 811/2015 before this court wherein he prayed to direct sentence awarded in case FIR No. 64/2011 registered under section 392/397/411/34 IPC PS Bhalswa Dairy to run concurrently with the sentence awarded in FIR No.67/2011 PS Swaroop Nagar. The said application was dismissed vide order/judgement dated 20.05.2016 by observing that sentence in the case i.e. 64/2011 and FIR No.67/2011 are commission of distinct offence at different periods. Sentence order records that A-2 has suffered conviction in FIR No.1180/2013 under section 356/379/34 IPC PS Uttam Nagar, FIR No.37/2006 under section 324/341/34 IPC PS Hari Nagar Delhi; he is involved in fifteen other criminal cases under various offences at various police stations. Apparently,

the appellants are habitual hard core criminal.

15. Learned APP submitted that in the instant case, not only the victim was robbed of valuable articles but also inflicted dangerous injuries on his body. Thus, present application deserves to be dismissed.

16. I have heard learned counsel for the parties and perused the material available on record.

17. The Appellant herein vide the instant Application U/s 427 Cr.P.C. r/w Section 482 Cr.P.C. is seeking the direction for concurrent running of sentences in FIR No. 1013/2004, FIR No. 67/2011 and FIR No. 64/2011. The Chart below delineates the FIR particulars, quantum of sentence awarded and the status of the respective Appeals filed by the Appellant.

F.I.R. Particulars	Quantum of Sentence	Status of Appeal
F.I.R. No. 64/2011, U/s. 394/397 I.P.C. P.S. Bhalswa Dairy	10 years RI with fine of Rs.10,000/- with default sentence of 1 month.	Crl. A. No. 1020/2013. Dismissed on 10.03.2016 by this Court
F.I.R. No. 67/2011 U/s. 392/394/397 I.P.C. P.S. Swaroop Nagar.	10 years RI with a fine of Rs.10,000/- □ Application U/s 427 Cr.P.C. seeking concurrent running of sentences in F.I.R. No. 64/2011 and F.I.R. No.	Crl. A. No. 811/2015. Dismissed on 20.05.2016 by this Court

	67/2011 dismissed by this Court on 20.05.2016.	
F.I.R. No.1013/2004 U/s. 307/324/34 IPC P.S. Uttam Nagar.	7 years RI with a fine of Rs.20,000/- with default sentence of 6 months on two counts with the direction that sentence shall run concurrently.	Crl. A. No. 769/2015 PRESENT APPEAL

18. It is pertinent to mention here that similar prayer was made by co-accused Vicky in the FIR No. 67/2011 & 64/2011 in Crl.A. No. 1496/2013 titled Vikas @ Vicky vs. State, before this Court. However, vide common judgment dated 20.05.2016 passed in Crl.A. Nos. 1496/2013 & 811/2015, pleased to reject the said prayer.

19. The co-accused Vikas @ Vicky filed Criminal Appeal before the Hon'ble Supreme Court vide Crl.A. No. 208/2020 against the common judgment dated 20.05.2016 of this Court. The Hon'ble Supreme Court allowed the said appeal vide judgment dated 31.01.2020 by directing the sentences to run concurrently in F.I.R. No. 64/2011, F.I.R. No. 67/2011 and F.I.R. No. 263/2009 and further directed to release the said accused since he had already suffered 10 years RI. [Criminal Appeal No. 208/2020 titled ***“Vicky @ Vikas v. State (Govt. of NCT of Delhi)” (2020 SCC Online SC***

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20. Section 427 Cr.P.C. is relevant 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.

21. It is settled position of the law that the direction to run the sentence concurrently may be passed by the Trial Court, Appellate Court and the Revisional Court.

22. The issue of concurrent running of the sentences awarded in different cases came up before the Full Bench of Bombay High Court, in the case of **Satnam Singh Puran Singh Gill vs. State of Maharashtra: 2009 SCC Online Bom 52**. The objection of State was as under:

“2. The objection raised by the learned APP to the application is on the ground that the conviction the applicant is not based only on one incident but the conviction is based on two totally independent incidents or transactions. The submission is that in view of the decision of the Division Bench of this Court the case of Ramesh Krishna Sawant Vs. State of Maharashtra (1994 Maharashtra Law Journal 825) power under section 427 cannot be exercised in the present case for directing that the sentence shall run concurrently. Reliance was also placed on judgment and order dated 04th June 2007 in Criminal Application No.3959 of 2006 (Sanjeev Kumar Sadanandan Pillai & Anr. Vs. The State of Maharashtra).”

23. However, while taking into consideration the legislative intent, interpretation of penal statute and the objections of the State, the Court observed as under:

“21. The provisions of Section 427 of the Code are titled to provide a benefit in favour of a convict. Whether the sentence awarded earlier or the sentence awarded on subsequent conviction to run consecutive or concurrent is a matter of importance not only from the point of view of the accused but even administration of criminal justice. The Court has been vested with this power and is expected to apply this provision in every case at the time

of awarding the sentence. The obligation cast upon the Court is of a mandatory nature as it has the impact of granting or declining to grant a benefit to a convict. Thus, it may not be appropriate to read into the provisions of Section 427 any restriction or limitation on the discretion of the Court which has not been specifically imposed by the Legislature.

22. As we have already noticed, the Legislature in its wisdom has not imposed any bar or limitation on the basis of which case of any subsequent conviction would fall outside the ambit or scope of Section 427. On the contrary, to apply these provisions to different cases is the very intent behind this provision. Sub-section (2) of Section 427 requires mandatorily that life imprisonment in two different cases shall run concurrently. To hold that the provisions of Section 427(1) would not apply to any case would be an interpretation which would neither be permissible on any principles or any accepted canons of interpretation of statutes nor with reference to the legislative intent behind this provision.

23. We are unable to see any statutory restriction on the powers of the Court or legislative mandate to exclude any class of cases from the provisions of Section 427 of the Code once the ingredients of the provision are satisfied. It is not for the Court to read into the provisions what is not stated unless it becomes imperative due to the rule of implied construction. On its plain reading, the language of the provision does not admit any direct or implied restriction. Of course, the Court has to exercise its discretion guided by law and legal principles. It must be governed by rules, not by humour and cannot be arbitrary, vague and fanciful. It essentially has to be legal, regular and according to the rules of reason and justice. (See Ramji Dayawala & Sons (P) Ltd. v. Invest Import, (1981) 1 SCC 80).

24. Moreover, while taking into consideration the discretionary powers of the criminal Courts, the Full Bench observed as under:

“28. Another aspect which needs to be clarified with reference to the legislative intent apparent from the language of the section is that imprisonment of subsequent conviction shall commence at the expiration of the imprisonment to which the accused has been previously sentenced unless the Court directs such sentence to run concurrently with the previous sentence. This clearly indicates that the normal rule would be that sentence would run consecutively and exception is that they would run concurrently. The pre-requisite of the exception being that Court has to apply its mind and pass a specific order directing that the sentences shall run concurrently with the previous sentence but for such specific exercise of discretion, the rule of sentence running consecutively would cover the case. We have already noticed that this requirement of law has to be satisfied by the Court. The law intends to provide a benefit to the accused of calling upon the Court to exercise discretion where a sentence awarded in a subsequent trial would run consecutively or concurrently with the previous sentence. Wherever the provisions of the Criminal Procedure Code are applicable the Court would be required to apply the provisions of Section 427 of the Code unless their application was specifically barred by the Legislature or by its necessary implication. The language of Section 427 read cumulatively does not command an accused or a convict to make such an application as consideration of this aspect of sentencing requires the Courts to exercise the discretion in terms of Section 427 of the Code. No doubt, it will be always more appropriate that the factum of previous conviction and sentence and the reasons for exercising the judicial discretion under Section 427 is brought before the Court by means of an appropriate application, but this cannot

be termed as a requirement absolutely mandatory and without which the Court would not be in a position to pass appropriate orders as regard directing the sentences to run concurrently or consecutively. While passing an order of imprisonment/sentence upon a subsequent conviction, it will always serve the ends of justice better and would be in conformity with public good that such discretion is even exercised by the Court suo motu. The Legislature in its wisdom did not leave any choice or discretion with the Courts in relation to sentences covered under Section 427 (2) of the Code and mandated that they would run concurrently. This is to be seen in contra-distinction to the judicial discretion vested by the Legislature in the Court under Section 427(1) of the Code, where all convicts undergoing imprisonment in a previous conviction, except imprisonment for life, can invoke the jurisdiction of the Court in terms of Section 427 of the Code. The expression “unless the Court directs” clearly suggested that the Court would apply its mind and by virtue of some reasoned directions direct that the sentences shall run concurrently with the previous sentence.

The Court while dealing with stringent laws and particularly penal statutes is required to ensure that the intention of the Legislature is not frustrated and even if necessary it should take recourse to the rule of purposive construction as more the stringent is the law less is the discretion with the Court. While dealing with such enactments, even on the first principle the course which is favourable to further the legislative cause should be adopted and an interpretation which would reduce the legislation to futility should be avoided. One provision alone need not be construed in isolation and it is always preferred rule of interpretation that a provision should be construed with reference to other relevant provisions as well as the scheme of law underlining the said provisions.

(See Prakash Kumar v. State of Gujarat, (2005) 2 SCC 409).

29. It is also equally well settled principle of law that the Court cannot enlarge the scope of legislation or intention when the language of the statute is plain and unambiguous as well as that the Court would not read into the provisions what has not been stated in the language of the provision. (A.N. Roy, Commissioner of Police v. Suresh Sham Singh, (2006) 5 SCC 745). Section 31 and Section 427 both should be read in conjunction with the other provisions of the Code which vests the Court with judicial discretion in regard to imposition of imprisonment and should be seen in the backdrop of the scheme of the Code and basic rule of criminal jurisprudence with an interpretation which provides an advantage to the under-trial is preferred to the one against him. May be parameters and criteria in awarding sentence under different provisions of the Code would largely be applicable even to exercise of jurisdiction under Section 427 of the Code. The nature and gravity of the previous offence, the punishment inflicted, the circumstances leading to the occurrence, conduct of the accused could be looked into by the Court through the judgment of the previous conviction while deciding whether the sentence in a subsequent conviction would run consecutively or concurrently. The gravity, nature and circumstances in relation to the crime committed in subsequent conviction could further help the Court to exercise the discretion in consonance with the settled principles. Merely because the conviction is in two different cases and the punishment awarded in previous conviction was for a heinous crime, per se would not exclude the jurisdiction of the Court under Section 427(1) of the Code. It is apparent that the Legislature in its wisdom has chosen not to impose any such restriction on the power of the Court. The provisions relating to vesting of jurisdiction or judicial discretion are not to be construed narrowly when they are capable of admitting

no ambiguity. the maxim Est boni judicis ampliare jurisdictionem is indicative of proper amplification of jurisdiction particularly in relation to matters arising out of procedural law.”

25. It is pertinent to mention here that the Full Bench discussed the precedents in this regard and also took note of the conflicting judgments and then observed as under:

“55. Thus, there is hardly any judgment brought to the notice of this court which lays universal principle that wherever the accused is convicted for two different transactions under two different enactments at two different points of time, then the court is divested of its power and jurisdiction under the provisions of section 427(1) of the Code. The emphasis in the language under section 427(1) is not on different offences but the application thereof is on the premise of undergoing sentence of imprisonment in a previous conviction and directing sentence of imprisonment on a subsequent conviction to run consecutively unless directed to run concurrently by the court of competent jurisdiction. The exclusion of the provisions of section 427(1) with reference to different transactions, different offences and different cases, is not comprehensible within the language, particularly, in view of the unambiguous and clear terms used by the legislature in section 427(1) of the Code. The section is probably intended to achieve a twin purpose, one which is beneficial to the accused where the court is expected to consider directing the imposition of subsequent sentences to run consecutively or concurrently with the previous sentence and secondly, a general and administrative concept that of overcrowded jails where under-trials and convicts are lodged

so as to even require the State to act in the interest of administration of criminal justice system and not to frustrate the purpose of sentencing by ill-treating the convict. These alongwith the above-referred criteria are relevant consideration for exercise of jurisdiction but certainly are not determinative as they would have to be seen in the facts and circumstances of a given case. the court which exercises such jurisdiction has to be the court of competent jurisdiction and the matter essentially should fall within its jurisdiction. Exercise of judicial discretion presupposes legal and inherent jurisdiction to entertain such matters.”

26. The Bench finally held as under:

“58. In view of our detailed discussion, now we proceed to answer the question referred as under:

a) Neither the court of competent jurisdiction is divested of its power to pass appropriate order in terms of Section 427(1) of the Code of Criminal Procedure, 1973 nor does the accused lose this statutory benefit of right of consideration by the Court, only on the ground that the accused has been tried in two or more cases separately and they arise from distinct and separate offences arising out of different transactions/incidents.

b) It is neither permissible nor possible to spell out universal principle or formula which would be applicable to all cases for exercise of power vested in Court under Section 427(1) of the Code. Such power and judicial discretion has to be exercised in terms of the settled precepts of criminal jurisprudence, sentencing policy and with reference to the facts and circumstances of a given case, where the previous and subsequent sentences of imprisonment awarded to the accused are in two

or more cases for distinct and separate offences arising out of different transactions/incidents and even under different enactments.”

27. Moreover, a full bench of the Kerala High Court in ***Mani vs. State of Kerala: 1983 Cri LJ 1262*** held that when no direction is given by the Trial court that the sentences were to run concurrently, direction can be issued by the High Court under inherent powers even if the stage of exercising discretion Under Section 427(1) of the Code is over, in circumstances which would serve the purposes mentioned in Section 482. The judgment of Kerala High Court was noted with approval by the Full Bench of Bombay High Court.

28. A Division Bench of the Andhra Pradesh High Court in ***V. Venkateswarlu vs. State of A.P.: 1987 Cri LJ 1621*** held that when two convictions and sentences are passed against accused by two different courts and orders have become final, on an application by accused under Section 482 that those sentences may be run concurrently, the High Court is competent to issue such direction.

29. The Hon'ble Supreme Court in the case of ***Benson vs. State of Kerala: (2016) 10 SCC 307*** has considered the question of conviction of an

accused in separate trials and the fact that whether the sentences would run concurrently or consecutively in exercise of powers under Section 427(1) of Cr.P.C. In the said case, the petitioner before the Supreme Court was convicted in **four different cases** and prayed for running of sentences concurrently in all those four cases. The petitioner of said case was having previous involvements in as many as **12 cases** (cases involving 392/457/205/379/414/120-B of IPC). Despite, the Supreme Court in terms of its judgment directed the running of substantive sentences concurrently.

30. The Hon'ble Supreme Court in the case of co-accused **Vicky @ Vikas** (*supra*) considered the issue of running the sentences concurrently. The petitioner of said case was convicted in 5 cases (including NDPS/Kidnapping/assault on public servant/ robbery). He had undergone only 1 year 6 months out of 7 years sentence. The Supreme Court directed the running of sentences in **three difference cases** concurrently.

31. Even recently, this Court in **Pankaj Verma @ Nikhil vs. State** (*Crl.M.A. No.40714/2019 in Crl. A. No. 611/2018, decided on 12.06.2020*) passed directions for the concurrent running of the sentences of the Petitioner (an accused in 4 cases) who had undergone about 1 year 5 months out of the actual sentence of 5 years and was in judicial custody for about 7

years.

32. Facts of the case in hand are as per the available information, Appellant has been languishing in jail for a protracted period of more than 12 years in F.I.R. No. 1013/2004, F.I.R. No. 67/2011 and FIR No. 64/2011. He has already undergone a period of more than 4 years and 3 months in the instant case (F.I.R. No. 1013/2004) and otherwise a total custody of about 12 years. If the remaining sentence awarded in F.I.R. No. 1013 of 2004 is also directed to run consecutively, then the Appellant shall be subjected to prolonged incarceration in prison for a total period of more than 24 years.

33. The Appellant was a young boy aged 18 years at the time of the commission of the alleged crime in question. Presently, he is aged about **35 years**. Further, poverty, illiteracy and misguidance resulting due to impressionable young age, led into Appellant's implications.

34. The Appellant is an illiterate person belonging to a poverty-stricken family which now comprises of an old and ailing mother only who has not only been living a distressful life burdened with financial debts for several years but also battling against several age-related diseases, since Appellant's

protracted incarceration. He has already reached to the age of maturity and the crimes were committed as an adolescent person.

35. As per report dated 21.07.2020 filed by Probation Officer mentioned above, the family of appellant is in great need of him. The appellant also needs a fresh lease of life.

36. The appellant undertakes to conduct himself as per the accepted norms of the society.

37. Regarding involvement of the applicant/appellant in 21 other cases mentioned above, he has been convicted in 9 cases whereas acquitted in 6 cases.

38. It was argued by learned counsel for the appellant that the appellant does not dispute the orders of conviction and sentence as raised in appeal, however, seeking directions to run the sentence awarded in the present case concurrently with the sentences awarded in other case mentioned above.

39. Keeping in view the facts and the law discussed above and the fact that despite having criminal record of co-accused Vicky @ Vikas, the Hon'ble Supreme Court directed to run concurrently, this Court is of the considered opinion that present applicant/appellant deserves same relief as

awarded in case of co-accused named above.

40. Accordingly, I hereby direct that 7 years sentence awarded to the appellant in case FIR No.1013/2004 registered at Police Station Uttam Nagar shall run concurrently with the 10 years sentence awarded in case FIR No.67/2011 registered at Police Station Swaroop Nagar.

41. In view of above, the present application is allowed and disposed of.

Crl.A. 769/2015

42. Keeping in view the submissions made by learned counsel for the appellant, while maintaining the orders of conviction and sentence, the present appeal is hereby dismissed.

43. The judgment be uploaded on the website forthwith.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 11, 2021
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