

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 53 OF 2021

Mahadev Asaram Sillode (C.No. 10644)
Nagpur Central Prison
Nagpur

...Petitioner

Versus

1. The State of Maharashtra
Through the Secretary
Home Department,
Mantralaya, Mumbai.
2. The Inspector General of Prisons
Maharashtra State, Pune
3. The Superintendent,
Nagpur Central Prison
Nagpur

...Respondents

.....
Ms. Neha Kamble, Advocate for the petitioner (appointed)
Mr. M.M. Nerlikar, A.P.P. for respondents
.....

**CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

**Date of Reserving
the Judgment : 13.01.2022**

**Date of pronouncing
the Judgment : 06.04.2022**

JUDGMENT (PER V.K. JADHAV, J.) :-

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally at admission stage.
2. The petitioner, who is a life convict, has invoked the writ

jurisdiction of this Court under Article 226 of the Constitution of India seeking directions that the life sentence imposed by the 4th Adhoc Additional Sessions Judge, Jalna in Sessions Case No. 100 of 2005, confirmed by this Court in criminal appeal No. 576 of 2006 and the sentence of 10 years rigorous imprisonment imposed by the learned Additional Sessions Judge, Aurangabad in Sessions Case No. 305 of 2011, to run concurrently in terms of the provisions of Section 427(2) of Cr.P.C.

(a) The petitioner was tried by the 4th Adhoc Additional Sessions Judge, Jalna in Sessions Case No. 100 of 2005 for the offence punishable under Section 302 of I.P.C. in connection with crime No. 90 of 2005 and by judgment and order of conviction dated 20.6.2006, the petitioner was convicted for the offence punishable under Section 302 of I.P.C. and sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- i/d to suffer R.I. for two years. By judgment and order dated 20.10.2008, this Court (Coram: P.V. Hardas and P.R. Borkar, JJ.) in criminal appeal No. 576 of 2006, dismissed the appeal and confirmed the order of conviction and sentence passed by the trial court.

(b) The petitioner was further tried by the Additional Sessions Judge, Aurangabad in connection with crime No. 26 of 2010 for the offences punishable under Sections 307 and 333 of I.P.C. vide Sessions Case No. 305 of 2011. The petitioner, while in the custody

of the jail authority, assaulted a jail employee and thus, crime No. 26 of 2010 was registered against him as stated above. The learned Additional Sessions Judge, Aurangabad, by judgment and order of conviction dated 8.3.2016 in Sessions Case No. 305 of 2011 convicted the petitioner for the offence under Section 307 of I.P.C. and sentenced him to suffer R.I. for 10 years and to pay fine of Rs.5000/- i/d to suffer simple imprisonment for three months and further convicted him for the offence punishable under Section 333 of I.P.C. and sentenced him to suffer R.I. for 10 years and to pay fine of Rs.5,000/- i/d to suffer simple imprisonment for three months, directing further that both the sentences shall run concurrently. The petitioner has not preferred any appeal against his conviction and sentence in Session Case No. 305 of 2011.

3. Learned counsel for the petitioner submits that the inherent powers under section 482 of Cr.P.C. are required to be exercised to prevent the abuse of process of any Court or otherwise to secure the ends of justice. In the case of ***Gian Singh vs. State of Punjab & Anr, reported in 2012 Cr.L.J. 4934 (1)*** the Apex Court in para 49 has made the following observations:-

"49. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, 'nothing in this Code' which

means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.”

4. Learned counsel for the petitioner submits that Articles 226 and 227 of the Constitution of India are devised to advance justice and provide court with exemplary powers to meet the ends of justice. More specifically, Article 226 is the tool for redressal of grievance of aggrieved person to secure the ends of justice. Learned counsel submits that the issue for consideration in the present writ petition is for exercising the powers under Article 226 of the Constitution of India to invoke Section 427 (2) of Cr.P.C. and direct the sentences awarded in two different cases to run concurrently. Learned counsel submits that the issue on similar facts has been considered and decided by the Rajasthan High court in the matter of **Arjun Ram vs. State of Rajasthan and others, reported in 2016 SCC Online Raj. 57**. It is also held that by exercising the powers under Article 226 of

the Constitution of India, the High Court can correct the error.

5. Learned counsel for the petitioner submits that Section 427 of Cr.P.C. prescribes the manner of execution of sentence in the subsequent crime. In terms of sub-section (1) of Section 427 of Cr.P.C., the person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment for a term 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. So far as sub-section (2) of Section 427 of Cr.P.C. is concerned, it provides that if the offender 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. Learned counsel submits that the Court has to consider the totality of the sentence which the accused has to undergo if the sentences are to be consecutive. In the present case, the learned Additional Sessions Judge, Aurangabad in Sessions Case No. 305 of 2011 did not consider the provisions of Section 427 (2) of Cr.P.C. and merely sentenced the petitioner to suffer R.I for 10 years under Sections 307 and 333 of I.P.C. each.

Learned counsel for the petitioner, in order to substantiate her

contentions, placed reliance on the following cases:-

- i) Arjun Ram vs. State of Rajasthan and Ors, reported in 2016 SCC Online Raj. 57;
- ii) Syed Noor vs. State of Maharashtra and Ors. reported in 2020 ALL MR (Cri.) 1770;
- iii) Bhupesh Tukaram Meshram vs. State of Maharashtra and Ors. reported in 2017 ALL MR (Cri.) 2178;
- iv) Istiyak Khan Iqubal Khan vs. State of Maharashtra, reported in 2014 ALL MR (Cri.) 3045;
- v) Surya Dev Rai vs. Ram Chander Rai and Ors., reported in AIR 2003 SC 3044;
- vi) Pepsi Foods Ltd. and Ors vs. Special Judicial Magistrate and Ors, reported in AIR 1998 SC 128;
- vii) Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Mohan Singh and others, reported in AIR 1975 SC 1002;
- viii) Ranjit Singh vs. Union Territory of Chandigarh and Ors. reported in AIR 1991 SC 2296
- ix) State of Maharashtra vs. Raju Dadaba Borge, reported in 2001 Bom CR (Cri.) 98;
- x) Vasudeo Shankar Rajput vs. The State of Maharashtra,

reported in 2013 ALL MR (Cri.) 3878;

- xi) Dilubhai Hadabhai Vank vs. State of Gujrat, reported in MANU/SC/1605/2015;
- xii) Hanuman vs. State of Maharashtra, reported in 2019 ALL MR (Cri) 2124;

6. Learned A.P.P. Mr. Nerlikar, for the respondents submits that it is not incumbent upon the court to direct that both the sentences shall run concurrently and not consecutively. Learned A.P.P. submits that the courts below have not exercised the powers under Section 427 of Cr.P.C. and in view of the same, the said provisions could not be applied in separate and independent proceedings by the High Court. Learned A.P.P. submits that the provision of Section 427 of Cr.P.C. has clearly ruled that a person who is undergoing a sentence of imprisonment and is sentenced on a subsequent conviction to an imprisonment or an imprisonment for life, then such imprisonment or imprisonment of life shall commence after the expiration of the imprisonment, to which he has been previously sentenced. This, however, would not be so if the Court directs that the subsequent sentence shall run concurrently with the previous sentence. Learned A.P.P. submits that such directions to make sentences to run concurrently can be exercised by the trial court or by the appellate court or the revisional court at the time of exercising appellate or revisional jurisdiction as well. However, if the trial court

does not pass any such direction for making the sentence to run concurrently and appeal or revision against said decision is also decided, then it may not be open for a person to seek such direction for making the sentence to run concurrently by moving an application under Sections 482/427 of Cr.P.C. Learned A.P.P. submits that in view of the decision of the Supreme court in the case of ***M.R. Kudva vs. State of Andhra Pradesh (SC), reported in 2007 AIR (SC) 568***, such application under Section 482 of Cr.P.C. and writ petition under Article 226 of the Constitution of India cannot be entertained. Learned A.P.P. submits that the petitioner, while undergoing life imprisonment in terms of the earlier sentence, has committed another offence while in jail. He had attempted to commit murder of a jail employee while the said jail employee was discharging his official duty. Learned A.P.P. submits that the petitioner deserves no sympathy. There is no substance in this writ petition. The writ petition is liable to be dismissed.

Learned A.P.P., in order to substantiate his submissions, placed reliance on the following cases:-

- i) M.R. Kudva vs. State of Andhra Pradesh (SC), reported in 2007 AIR (SC) 568
- ii) Jagdev Singh vs. State of Punjab, criminal revision No. 1019 of 2017 (O&M) decided on 21.8.2018.

7. We have carefully considered the submissions advanced by learned counsel for the petitioner and learned A.P.P. for the respondents. With their able assistance, we have perused the grounds taken in the petition, annexures thereto and the case laws cited by the respective parties.

8. Section 427 of Cr.P.C. 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”.

In terms of sub-section (1) of Section 427 of Cr.P.C., if 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. Only in appropriate cases, considering the facts of the case, the Court can make the sentence to run concurrently with earlier sentence of imprisonment.

However, sub-section (2) of Section 427 of Cr.P.C. provides that when the offender already undergoing a sentence of imprisonment for life is sentence on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence. It is well settled that the imprisonment for life is a sentence for the remainder of the life of the offender unless the remaining sentence is commuted or remitted by the appropriate authority. This being so, the earlier sentence of imprisonment for life must be understood as life imprisonment for remainder of the life and therefore, the subsequent sentence of imprisonment for a term or for life cannot run consecutively. The provisions of sub-section (1) of Section 427 of Cr.P.C. lays down the general rule and sub section (2) of Section 427 is specific provisions directing the subsequent sentence to run concurrently under certain circumstances.

9. In the case of **Ranjit Singh vs. Union Territory of Chandigarh and Ors. (supra)**, in para 8, the Supreme court has made the following observations:-

"8. Sub-section (1) of Section 427 Cr.PC provides for the situation when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or life imprisonment. In other words, Sub-section (1) of Section 427 Cr.PC deals with an offender who while undergoing sentence for a fixed term is subsequently convicted to imprisonment for a fixed term or for life. In such a situation, the first sentence, being for a fixed term, expires on a definite date which is known when the subsequent conviction is made. Sub-section (1) says that in such a situation, the date of expiry of the first sentence which the offender is undergoing being known, ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the Court directs the subsequent sentence to run concurrently with the previous sentence. Obviously, in cases covered by Sub-section (1) where the sentence is for a fixed term, the subsequent sentence can be consecutive unless directed to run concurrently. Sub-section (2), on the other hand, provides for an offender "already undergoing sentence of imprisonment for life" who is sentenced on a subsequent conviction to imprisonment for a term or for life. It is well-settled since the decision of this Court in Gopal Vinayaka Godse and reiterated in Maru Ram that imprisonment for life is a sentence for the remainder of the life of the offender unless the remaining sentence is commuted or remitted by the appropriate authority. This being so at the stage of sentencing by the Court on a subsequent conviction, the earlier sentence of imprisonment for life must be understood in this manner and, therefore, there

can be no question of a subsequent sentence of imprisonment for a term or for life running consecutively which is the general rule laid down in Sub-section (1) of Section 427. As rightly contended by Shri Garg, and not disputed by Shri Lalit, the earlier sentence of imprisonment for life being understood to mean as sentence to serve the remainder of life in prison unless commuted or remitted by the appropriate authority and a person 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 (2) 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. Sub-section (2) is in the nature of an exception to the general rule enacted in Sub-section (1) of Section 427 that a sentence on subsequent conviction commences on expiry of the first sentence unless the Court directs it to run concurrently. The meaning and purpose of Sub-sections (1) & (2) of Section 427 and the object of enacting Sub-section (2) is, therefore, clear."

10. In para 9 of the judgment, however, the Supreme Court has considered the effect of any remission or commutation granted in respect of the earlier sentence of life imprisonment alone and held that in that case the benefit of that remission or commutation will not

be *ipso facto* available in respect of the subsequent sentence of life imprisonment. However, the observations in para 9 of the judgment may not be relevant to deal with the issue arising in this matter.

11. In the case of ***State of Maharashtra vs. Raju Dadaba Borge (supra)***, in para 23 and 24, this Court has made the following observations:-

“23. A perusal of section 427(1) of the Cr.P.C. would show that where a person is undergoing a sentence of imprisonment, and is sentenced to undergo imprisonment or imprisonment for life on a subsequent conviction, his sentence in the latter case, shall commence after the expiry of his sentence in the former case, unless the Court directs that the subsequent sentence shall run concurrently with the previous sentence. Under section 427(2) of the Cr.P.C. the position is however different. It stipulates that when a person already undergoing 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 the previous sentence.

In the instant case, section 427(1) of the Cr.P.C. would not be applicable, but, section 427(2) would be because after we had converted the sentence of death into one of life imprisonment in Confirmation Case No. 1 of 2000 and decided Criminal Appeal No. 222 of 2000 in the said terms yesterday (3rd October, 2000) we took up Confirmation Case No. 2 of 2000 along with Criminal Appeal No. 222 of 2000, (by a common appeal, the death sentences have been challenged in both the cases) which we decided today i.e. in 4th October 2000. In them, we also converted sentence of death into imprisonment for life.

In the said factual matrix the appellant was undergoing sentence of imprisonment for life in Confirmation Case No. 1/2000 when we sentenced him to undergo imprisonment for life in Confirmation Case No. 2/2000. Hence, section 427(2) of the Cr.P.C. would be applicable. Consequently, the sentences would run concurrently.

24. There is a rationale as to why section 427(2) of the Cr.P.C. has been enacted. It is because a sentence of imprisonment for life means a sentence for entire life and therefore, there can be no question in the event of a person being sentenced to life imprisonment for two offences, of his sentence commencing to run in the latter offence after he has served out his sentence in the former offence.”

12. In the case of **Vasudeo Shankar Rajput vs. The State of Maharashtra (supra)** and **Hanuman vs. State of Maharashtra (supra)**, the Division Bench of this Court (Nagpur Bench) has also taken a similar view by referring the case of **Ranjit Singh vs. Union Territory of Chandigarh and Ors. (supra)**.

13. The learned A.P.P. has placed reliance on the judgment in the case of **M.R. Kudva v. State of Andhra Pradesh (supra)** wherein in para 5 to 10 the Supreme Court has made the following observations:-

“5. The learned Sessions Judge while passing the judgment and conviction in Criminal Case No. 5 of 1993 took note of the fact that the appellant had been convicted in

Criminal Case No. 9 of 1992 also. He, however, categorically opined that the accused did not deserve any sympathy. The appellant was convicted under all the charges levelled against him and sentenced him to undergo rigorous imprisonment for different periods. For commission of the offences punishable under Section 420 IPC, he was sentenced to undergo rigorous imprisonment for two years. The sentences of imprisonment imposed upon him, however, were directed to run concurrently.

6. *Although according to the appellant, the High Court heard both the matters almost at the same time, no such prayer appears to have been made, nor the same fell for consideration by the High Court. The Special Leave Petitions filed by the appellant, as noticed herein before, have also been dismissed.*

7. *Strong reliance has been placed by Mr. Joshi on a decision of this Court in Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti v. Assistant Collector of Customs (Prevention), Ahmedabad and Another [(1988) 4 SCC 183]. Therein the court upheld a contention that if a given transaction constitutes two offences under the enactments, generally it would be wrong to impose consecutive sentences. It was, however, opined that it would be proper and legitimate to have concurrent sentences; but at the same time, it was held that the said rule would have no application if the facts constituting the same offences are quite different. The said decision, therefore, in view of the fact that the appellant has been convicted in two distinct and different offences, runs counter to the submission of Mr. Joshi.*

8. *Reliance has also been placed by Mr. Joshi in Ammavassi and Another v. Inspector of Police, Valliyanur and Others [AIR 2000 SC 3544]. Therein, the appellants were convicted in four-five different cases, during a period of three to four months. The appellants therein claimed benefit under*

Section 427 of the Code in order to avoid undergoing imprisonment of a total period of 28 or 35 years in jail. This Court opined that 14 years rigorous imprisonment would meet the ends of justice. It is, therefore, clear that even in that case whereas Section 427 of the Code was applied in three cases, but in two cases, the sentences were directed to run consecutively.

9. *The said decisions, therefore, are not the authorities for the proposition that it is incumbent upon the court to direct in a case of this nature that both the sentences shall run concurrently and not consecutively.*

10. *However, in this case the provision of Section 427 of the Code was not invoked in the original cases or in the appeals. A separate application was filed before the High Court after the special leave petitions were dismissed. Such an application, in our opinion, was not maintainable. The High Court could not have exercised its inherent jurisdiction in a case of this nature as it had not exercised such jurisdiction while passing the judgments in appeal. Section 482 of the Code was, therefore, not an appropriate remedy having regard to the fact that neither the Trial Judge, nor the High Court while passing the judgments of conviction and sentence indicated that the sentences passed against the appellant in both the cases shall run concurrently or Section 427 would be attracted. The said provision, therefore, could not be applied in a separate and independent proceeding by the High Court. The appeal being devoid of any merit is dismissed."*

In the facts of the cited case, the bank employee was subjected to prosecution in two cases. In criminal case No. 9 of 1992 the Special Judge, C.B.I. Court has convicted him for the offence punishable under Sections 120B/420, 468, 471 of I.P.C. r.w. Section 5(1) of the Prevention of Corruption Act, 1947 and was sentenced to

undergo 18 months R.I. on 4.7.1997. By judgment and order of conviction and sentence dated 6.8.1997, the Special Judge, CBI, found him guilty for commission of offences punishable under Sections 120B/420, 468, 471 r.w. Section 5(1) of the Prevention of Corruption Act, 1947 in criminal case No. 5 of 1993 and sentenced him to undergo R.I. for two years. Different amounts of fines for offences punishable under the said sections were also imposed against him. Learned Special Judge, while passing the judgment and order in criminal case No. 5 of 1993 (later in date), though took a note of the fact that the appellant/bank employee was convicted in criminal case No. 9 of 1992, however, categorically opined that the accused did not deserve any sympathy. In the backdrop of these facts, the Supreme Court in para 10 of the judgment has made the observations, as quoted above. In para 9, the Supreme court has also observed that there is no proposition of law that it is incumbent upon the court to direct in a case of this nature that both the sentences shall run concurrently and not consecutively. In the facts of the case the Supreme Court has observed that the provisions of Section 427 could not be applied in a separate and independent proceeding by the High Court.

14. Learned A.P.P. has placed reliance on the judgment in the case of **Jagdev Singh vs. State of Punjab (supra)** wherein the Punjab and Haryana High Court has quoted para 18 of the judgment of the Full Bench in the case of **Jang Singh vs. State of Punjab,**

2008 (1) RCR (Cri.) 323. The said para 18 reads as follows:-

"18. The consensus of the judicial opinion, as may emerge from different judgments passed by various High Courts and the Hon'ble Supreme Court, seems to be that normal rule, as per Section 427 Criminal Procedure Code, 1973 is that, a person who is undergoing a sentence of imprisonment and is sentenced on a subsequent conviction to an imprisonment or an imprisonment for life, then such imprisonment or imprisonment of life shall commence after the expiration of the imprisonment, to which he has been previously sentenced. This, however, would not be so if the Court directs that the subsequent sentence shall run concurrently with the previous sentence. Such direction to make the sentences to run concurrently, as per various decisions noted above, can be exercised by the trial Court or by the appellate Court or a revisional Court at the time of exercising appellate or revisional jurisdiction as well. However, if the trial Court does not pass any such direction for making the sentences to run concurrently and appeal or revision against said decision is also decided, then it may not be open for a person to seek such direction for making the sentences to run concurrently by moving an application under Sections 482/427 Criminal Procedure Code. The view taken by one set of the High Courts that such an application can be entertained while exercising inherent powers under Section 482 Criminal Procedure Code, 1973 would no more appear to be a good law in view of the decision of the Hon'ble Supreme Court in M.R. Kudva vs. State of Andhra Pradesh, 2007 (1) RCR (Crl.) 868. We are, thus, bound to take this view that this discretion though available with the trial Court, appellate Court or the revisional Court while holding trial or entertaining appeal or revision but would not be so available to be exercised in isolation when application in this regard is moved either under section 482 or 427 Criminal Procedure Code, 1973. What

principle and consideration will govern the exercise of this discretion, as already noted above cannot be exhaustively enumerated. Certain relevant factors, as can be culled out from different judgments referred to above, may give an indication where such discretion may be exercised. These factors generally would be the nature or character of the offences committed, the prior criminal record of the offender, character, his age and sex etc. ghastly nature of the crime. The offender being habitual would also be the factor, which can be relevantly taken into consideration. It may be stated at the cost of repetition that these are not only reasons for which the Court can exercise this discretion. Discretion always is open to be exercised by any Court dependent upon the facts and circumstances of each case on any relevant or valid consideration as may be considered so by the Court while holding the trial or deciding the case at the stage of appeal or revision. It may require a notice that Section 427 Criminal Procedure Code, 1973 as observed by Hon'ble Supreme Court is aimed at amelioration and this aspect may also require to be kept in view while exercising the discretion."

15. The aforesaid observations are in the context of Section 427(1) and even the Full Bench of Punjab and Haryana High Court in the case of **Jang Singh vs. State of Punjab (supra)** had no occasion to consider the provisions of section 427(2) of Cr.P.C. In view of the same, even in the case stated above, the Punjab and Haryana High Court has referred the view expressed by the Supreme Court in the case of **M. R. Kudva vs. State of Andhra Pradesh (supra)**.

16. In the case of **Sundaram @ Vellian vs. The Secretary, State of T.N. Home department, Chennai (2014 Cr.L.J. 2140)** by keeping

in mind the law laid down by the Apex Court in the case of **M.R. Kudva vs. State of Andhra Pradesh (supra)** and also by taking into consideration the judgment of the Full Bench of Punjab and Haryana High Court in the case of **Jang Singh (supra)**, the Division Bench of Madras High Court, in para 4, 5 and 7, has observed as follows:-

“4. It is the grievance of the petitioner (detenu) that the two life sentences should have been directed to run concurrently in terms of Section 427(2) Cr.P.C. It appears from the records that this petitioner had made a similar request by filing an application by invoking the jurisdiction of this Court u/S. 482 Cr.P.C, in CrI.MP No. 170/2009 in CrI.A No. 142/1996, before this Court, which came to be dismissed on 15.03.2010. This Court had relied upon the judgment of the Hon'ble Apex Court in *M.R. Kuduva v. State of Andhra Pradesh* ((2007) 1 SCC (Cri) 648) : ((2007) 2 SCC 772 : AIR 2007 SC 568) and had dismissed the prayer on the ground that this plea should have been taken only before the trial court and cannot be taken up by way of a petition U/s. 482 Cr.P.C. It may be relevant to state here that a three Judges Bench of the Hon'ble Apex Court in *State of Punjab v. Madhanlal* ((2009) 5 SCC 238) : (AIR 2009 SC (Supp) 2836) has refused to interfere with an order of Punjab and Haryana High Court passed under Section 482 Cr.P.C, whereby the sentences were directed to run concurrently under Section 427 Cr.P.C, in a matter relating to an accused who was convicted and sentenced for offences under Section 138 of the Negotiable Instruments Act in three different cases. The conflicting views between the judgment in Kuduva's case (which is by a two Judges Bench) and Madhanlal's case (AIR 2009 SC (Supp) 2836) (which is by a three Judges Bench) was considered by a Division Bench of this Court in *K. Arasan v. State of Tamil Nadu* (2012 (6) CTC 510) and this Court held that a prisoner can invoke the

jurisdiction of this Court under Section 482 Cr.P.C in a case where both the trial Court and the First Appellate Court or the Revision Court, as the case may be, had failed to give the benefits under Section 427(1) Cr.P.C in the judgment. Had, either the trial Court, appellate Court or revisional Court, consciously applied its mind under Section 427(1) Cr.P.C and denied the benefits to a prisoner, then the prisoner cannot invoke Section 482 Cr.P.C to once again review that portion in the judgment, for, that would be a bar under Section 362 Cr.P.C This Court further held that, while granting the discretionary relief, the Court should bear in mind the gravity of the charge levelled against the accused in each case. In the present case, Section 427(1) Cr.P.C will have no application and therefore, neither Kuduva's case nor Madhanlal's case will have any bearing. In the facts of this case, Section 427(2) Cr.P.C will apply. Section 427(2) Cr.P.C reads as under:

“427. Sentence on offender already sentenced for another offence:—

(1)

(2) When 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.”

This Section, in no uncertain terms shows that a prisoner will be entitled to have two life sentences, imposed on him in different cases, to run concurrently. This provision stands to common sense and logic. There is a subtle distinction between section 427(1) and 427(2), Cr.P.C Under Section 427(1), Cr.P.C, if the life sentence is awarded to a prisoner already undergoing a lesser sentence, then the subsequent life sentence will start running only after the expiry of the lesser sentence unless directed by the Court otherwise. Under Section 427(2), Cr.P.C, if the life sentence or lesser sentence

is awarded to a person who is already undergoing life sentence, then the subsequent sentence, be it life or lesser, shall run concurrently with the earlier life sentence. In *Gopal Vinayak Gotse v. State of Maharashtra* (AIR 1961 SC 600) the Constitution Bench of the Supreme Court held that a sentence for imprisonment for life means imprisonment for the whole of the remaining period of the convicted person's natural life. The concept of consecutive running of two or more life sentences has received judicial imprimatur at the hands of the Supreme Court of India in *Kamalananda v. State of Tamil Nadu* ((2005) 5 SCC 194 : AIR 2005 SC 2132), where the consecutive life sentences awarded on the accused by the trial court was confirmed by this Court in appeal as well by the Apex Court. That was a case where, in the same trial the accused therein were charged for various offences like sections 376 and 302, IPC and were awarded life imprisonment, which were directed to run consecutively under section 31 Cr.P.C. In this case, the prisoner herein, was awarded life imprisonment by two different Courts in two different cases and therefore, section 31, Cr.P.C will not apply.

5. Section 427(2) Cr.P.C. is a direction to the prison authorities to treat two life imprisonments as concurrent and there is no scope for Court's charity here, because it is a legislative guarantee. The Courts cannot take away this right nor the jail authorities deny the prisoner this right. It is manifestly clear that the prisoner need not have to invoke any jurisdiction, be it under Section 482, Cr.P.C. or under Article 226 of the Constitution of India, and cringe for mercy to have two life sentences run concurrently. Unfortunately in this case, the prisoner filed application in M. P. No.170/2009 in CrI.A. No.142/1996 without understanding the scope of Section 427(2), Cr. P. C., and obtained negative order from this Court on 15.03.2010. One can understand that the detenu may not be conversant with the nuances of law. Ignorantia juris non excusat [Ignorance of law is not an excuse] applies rigorously

to the learned than to the lay. Even the prison authorities, who would have otherwise given the benefits of Section 427(2), Cr.P.C. automatically, will now remain hands tied and will be wondering as to when and where the prisoner will be undergoing the second life sentence after completing the first stint.

6.

7. The maxim *Actus Curiae Neminem Gravabit* [An act of the Court shall prejudice no man] will surely come to our rescue in this case. Section 362 Cr.P.C. will not hinder us, because we are not in any way altering the substantive portion of the trial Court judgment or the appellate Court judgment that imposed the second life sentence on the prisoner. Sitting in the HCP jurisdiction, we have as our hand tool Article 226 of the Constitution of India with which we propose to do justice to the prisoner by simply saying that he will be entitled to the benefits of Section 427(2) Cr.P.C. We are not conferring any new benefit on him and we are only re-stating the legal position in order to dispel confusion in the minds of the prison authorities on account of the order dated 15.03.2010 passed by this Court.”

17. In the case of ***Arjun Ram vs. State of Rajasthan and others***, (*supra*) relied upon by learned counsel for the petitioner, in para 24 to 26, the Rajasthan High Court has made the following observations:-

“24. As per Section 427 Code of Criminal Procedure, in normal course a person already undergoing a sentence of imprisonment, if sentenced on a subsequent conviction to imprisonment, such imprisonment commence at the expiration of the imprisonment to which he has been previously

sentenced, but the court in its discretion based on settled principles may direct that the subsequent sentence shall run concurrently with previous sentence. While exercising such discretion, the trial court, appellate court or revisional court, as the case may be, keeps in mind several factors. While examining such factors, the possibility of some error cannot be ruled out. Not only the error, but absolutely non-consideration of the issue about invoking this discretion, may also be there and that may cause great injustice. In general, it can be said that every provision of law is meant to impart justice and to ensure fair and objective treatment with every subject, but while doing so, the chances of causing injustice or failure in extending complete justice cannot be denied. To meet such an eventuality the inherent powers like Section 482 Code of Criminal Procedure are meant and those are always open to be invoked to prevent abuse of process of court and secure the ends of justice. The inherent jurisdiction is having a very large amplitude but should always be exercised cautiously and only to prevent miscarriage of justice. While keeping in mind that the inherent powers must be exercised sparingly, the court should not restrain itself to invoke the same if any injury is caused to the justice.

25. We are of considered opinion that to meet the ends of justice and to rectify the gross error the powers under Section 482 Code of Criminal Procedure can be exercised, if court arrives at a conclusion that the trial court, appellate court or the revisional court, as the case may be, failed in completing the circuit of justice while invoking/not invoking the discretion vested with it as per Section 427 Code of Criminal Procedure. The court while doing so must keep in mind all necessary ingredients and precedents which are to be taken into consideration to exercise the discretion as per Section 427 Code of Criminal Procedure.

26. The reference made by learned Single Bench is answered accordingly. Let the Criminal Miscellaneous Petitions be listed

before learned Single Bench for their adjudication on merits.”

18. In the instant case, so far as the subsequent conviction of the petitioner in Sessions Case No. 305 of 2011 for the offence punishable under Sections 307 and 333 of I.P.C. sentencing him to suffer 10 years imprisonment for each of the offences is concerned, the trial court has failed to consider the provisions of Section 427 (2) of Cr.P.C. despite the earlier conviction of life imprisonment brought to the notice of the Court. In fact, the petitioner has committed offence, which is subject matter of the second trial, in jail premises while undergoing the life imprisonment in connection with the earlier sentence. So far as the subsequent sentence of the petitioner under the aforesaid sections is concerned, the petitioner has not preferred any appeal against the said judgment and order of conviction. Thus, the said judgment and order of conviction passed without following the mandate of Section 427(2) of Cr.P.C. is required to be corrected to secure the ends of justice.

19. In the facts of the present case, the case squarely falls within the ambit of the provision of sub-section (2) of Section 427 of Cr.P.C. In terms of the general rule enunciated in sub-section (1) of Section 427 of Cr.P.C., without the court's direction, the subsequent sentence will not run concurrently, but consecutively. However, the only situation in which no direction of the court is needed to make the subsequent sentence to run concurrently with the previous sentence

is provided for in sub-Section (2) which has been enacted to avoid any possible controversy based on sub-section (1) of Section 427 of Cr.P.C.. Sub-section (2) is in the nature of an exception to the general rule enacted in sub-section (1) of Section 427. Thus, the meaning and purpose of sub-sections (1) and (2) of Section 427 and the object of enacting sub-section (2) is therefore clear. The Supreme Court has held in the case of **Gopal Vinayak Godse v. State of Maharashtra** [AIR 1961 SC 600] and reiterated in **Maru Ram** that imprisonment for life is a sentence for the remainder of the life of the offender. In terms of provisions of Section 427(2) of Cr.P.C., if the earlier sentence of imprisonment for life is imposed, then there can be no question of a subsequent sentence of imprisonment for a term or for life running consecutively.

20. In view of above, we now deal with the question as to the maintainability of the petition.

21. In the case of **Bhupesh Tukaram Meshram vs. State of Maharashtra (supra)**, the Division Bench of this Court had an occasion to deal with the similar issue in criminal writ petition when the learned trial Judge has observed that the prosecution has failed to bring home the guilt of the accused beyond reasonable doubt, however, instead of acquitting the accused simplicitor, acquitted him by giving benefit of doubt. In para 12 of the judgment, the Division Bench of this Court considered the view expressed in the case of

Istiyak Khan Iqubal Khan vs. The State of Maharashtra and another, reported in 2014 ALL MR (Cri) 3045 and has examined the question as to whether by invoking the powers under Section 482 of Cr.P.C. and under Article 226 of the Constitution of India the Court could set aside the conviction under the MCOC Act or not. Para 18 and 22 of the judgment in the case of **Istiyak Khan Iqubal Khan vs. The State of Maharashtra and another** (supra) are referred in para 12 of the judgment. Para 12 of the judgment is reproduced herein below:-

"12. A Division Bench of this Court in the case of Istiyak Khan Iqubal Khan vs. The State of Maharashtra and another reported in 2014 ALL MR (Cri) 3045, to which one of us (Gavai, J) was a party, was considering a case wherein, out of twelve accused, one accused had pleaded guilty for the offence punishable under the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as "the MCOC Act") and on the basis of said plea of guilt, conviction was awarded under the MCOC Act. However, the learned trial Judge, at the conclusion of the trial, had found that the prosecution has failed to make out a case against the rest of the accused and had acquitted them. In these circumstances, this Court examined the question as to whether by invoking the powers under Section 482 of the Code of Criminal Procedure or under Article 226 of the Constitution of India this Court could set aside conviction under the MCOC Act or not. This Court observed thus :

"18. In view of these backgrounds, we will have to consider as to whether this is an appropriate case for invoking jurisdiction under section 482 of Cr.P.C., or not. It will be relevant to refer to the following observation of the Apex Court in the case of Pepsi Foods Ltd. And

another v. Special Judicial Magistrate and other , [1998 ALL MR (Cri) 144 (S.C.)] (*supra*).

"22. It is settled that the High Court can exercise its power of judicial review in criminal matters. In *State of Haryana v. Bhajan Lal* this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to

invoke the provision of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to."

The Apex Court has held that the powers under Section 482 are to be exercised to prevent abuse of process of any court or otherwise to secure the ends of justice."

In para 13 of the judgment in the case of **Bhupesh Tukaram Meshram vs. State of Maharashtra (supra)**, the Division Bench has also referred the view expressed by the Apex Court in the case of **Surya Dev Rai vs. Ram Chancier Raj and Others**, reported in (2003) 6 SCC 675. Para 13 of the judgment reads thus:-

13. It will also be appropriate to refer to some of the observations of the Apex Court in the case of Surya Dev Rai .vs. Ram Chander Rai and Others reported in (2003) 6 SCC 675. Their Lordships of the Apex Court have laid down certain guidelines for this Court when it exercises powers of Certiorari under Article 226 of the Constitution of India. It will be appropriate to refer to sub-paras 3, 5 and 6 of paragraph no.38 of the said Judgment, which are as under :

"38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder :

(1)

(2)

(3) Certiorari, under Article 226 of the Constitution, is

issued for correcting gross errors of jurisdiction, i.e. when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4)

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent."

22. In the case of ***Pepsi Foods Ltd. and Ors. vs. Special Judicial Magistrate and Ors. (supra)***, relied upon by learned counsel for the petitioner, in para 21 of the judgment, the Supreme court has made following observations:-

“21. It is settled that High Court can exercise its power of judicial review in criminal matters. In *State of Haryana and others vs. Bhajan Lal and others* 1992 Supp (1) SCC 335, this court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guideline is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.”

23. It is well settled that the power of certiorari under Article 226 of the Constitution is available for correcting the gross error

of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

24. In view of the above discussion and in terms of the ratio laid down by the Supreme court and various High Courts, we find that the present case is a fit case wherein we should exercise the powers under Article 226 of the Constitution of India to correct the order passed by the trial court in Sessions Case No. 305 of 2011 thereby convicting the petitioner for the offences punishable under Sections 307 and 333 of I.P.C. and sentencing him to suffer 10 years imprisonment for each of the offences, directing that the above sentences shall run concurrently with the sentence of imprisonment of life passed against the petitioner in Sessions Case No. 100 of 2005 dated 20.6.2006 by the 4th Adhoc Additional Sessions Judge, Jalna.

25. Before proceeding to pass the following order, we would like to record here the able assistance rendered by appointed learned counsel Ms. Neha Kamble, in deciding this writ petition and we appreciate the same.

O R D E R

- I. Criminal writ petition is hereby allowed.
- II. We direct that the substantive sentence of imprisonment imposed on the petitioner by the Additional Sessions Judge, Aurangabad on 8.3.2016 in Sessions Case No. 305 of 2011 arising out of crime No. 26 of 2010 for the offences punishable under Sections 307 and 333 of I.P.C. for a period of 10 years for each of the offences shall run concurrently with the sentence of life imprisonment passed against the petitioner by the 4th Adhoc Additional Sessions Judge, Jalna in Sessions Case No. 100 of 2005 dated 20.6.2006 arising out of crime No. 90 of 2005 for the offences punishable under Section 302 of I.P.C., in terms of provisions of Section 427 (2) of Cr.P.C.
- III. Rule made absolute in the above terms.
- IV. Criminal writ petition is accordingly disposed of.
- V. We quantify an amount of Rs. 10,000/- (Rupees Ten Thousand only) towards the legal fees and expenses of the learned counsel Ms. Neha Kamble appointed to represent the cause of the petitioner, to be paid by the High Court Legal Services Sub Committee, Aurangabad.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

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