

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 CRIMINAL WRIT PETITION NO.1173 OF 2023

Rajkumar @ Sadhu Kadu Daude
Age 25 years, Occ. Labour
R/o. Rahul Nagar, Nepangar
Dist. Burhanpur
Madhya Pradesh

...Petitioner

Versus

The State of Maharashtra
Through its
Police Inspector
Railway Police Thane,
Bhusawal, District Jalgaon

...Respondent

...
Advocate for Petitioner : Ms. Priyanka P. Shinde with Mr. Prashant
B. Jadhav and Mr. Rupesh A. Jaiswal, (Mr. Jaiswal is appointed as
an amicus curiae to assist the Court)
APP for Respondent : Mrs. V.N. Patil-Jadhav

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**CORAM : R. G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 17th OCTOBER, 2023.**

ORAL JUDGMENT (PER SANJAY A. DESHMUKH , J.):

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally at admission stage.

2. This writ petition is filed under Article 226 of the Constitution of India, for issuing direction to run the substantive sentences of imprisonment concurrently in the following criminal cases, decided by the learned Judicial Magistrate, First Class

(Railway), Bhusawal, district Jalgaon:-

- i) R.C.C. No. 34 of 2020 decided on 19.03.2022,
- ii) R.C.C. No. 40 of 2020 decided on 02.03.2022 and
- iii) R.C.C. No. 33 of 2021 decided on 22.03.2022

3. The petitioner contended that he is convicted in the aforesaid cases under Section 122 of the Maharashtra Police Act and Section 380 of Indian Penal Code for one year, two years and two years, with fine of Rs.5000/- in default to undergo simple imprisonment for two months. However, the mandate of Section 427(1) of Cr.P.C. is not followed while delivering those judgments and directing to run those sentences concurrently. It is further contended that all the cases were decided by one and the same Judicial Magistrate, First Class, (Railway). Therefore, the petitioner prayed for issuing direction that substantive sentences of imprisonment awarded in all the aforesaid three cases shall run concurrently.

4. Learned counsel for the petitioner submitted that considering the reformatory theory as contemplated by the Indian Penal Code, an opportunity be given to the petitioner to reform as per Section 427(1) of Cr.P.C.. The learned advocate for the petitioner is relying upon the judgment of this Court in the case of **Satnam Singh Puransing Gill vs. State of Maharashtra**, 2009, ALL MR (Cri.) 1351,

5. Learned A.P.P. strongly opposed the petition by contending that, no appeal is filed by the petitioner against those three judgments of the conviction, the remedy under Article 226 of the Constitution of India cannot be invoked in such cases and it will be an interference in the impugned judgments in the form of alteration for which there is no scope like the appellate court. Learned A.P.P. further submitted that the trial court was aware of the provisions of Section 427(1) of the Cr.P.C. however, no discretion was exercised by it. Considering the nature of these crimes, the trial court has rightly refused to exercise the powers under Section 427(1) of the Cr.P.C. It is lastly prayed to dismiss the writ petition.

6. Learned A.P.P. relied on the judgment of the Hon'ble Court in the case of **Bension vs. State of Kerala, (2016) 10 SCC 307** in which, in paragraph No.6, the Hon'ble Supreme Court held as under:-

"6. In terms of sub-section (1) of Section 427, if a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced. Going by this normal principle, the sentence chart indicated in the communication dated 27.5.2016 is quite correct. However, this normal rule is subject to a qualification and it is within

the powers of the Court to direct that the subsequent sentence shall run concurrently with the previous sentence.”

7. Nobody will dispute the ratio in the above judgment. But it is clarified in para 9 of the said judgment, which is reproduced as under:-

“9. Having considered the matters, we deem it appropriate to direct that the sentences imposed in each of the cases i.e. (i) CC No. 158 of 2004, (ii) CC No 1039 of 2003, (iii) CC No. 390 of 2004 and (iv) CC No. 1168 of 2006, namely those at Sl. Nos. 9 to 12 respectively as indicated in the sentence chart in the communication dated 27.5.2016 shall run concurrently with the sentence imposed in Crime No.8 which is currently operative. We grant this benefit in respect of substantive sentences to the appellant but maintain the sentence of fine and the default sentences. If the fine as imposed is not deposited the default sentence or sentences will run consecutively and not concurrently.”

8. Mr. Jaiswal, the learned advocate appointed to assist this court as an amicus curiae on behalf of the petitioner placed reliance on the judgment in the case of **Akash Rashtrapal Deshpande and another vs. State of Maharashtra and another** (criminal writ petition No 1036 of 2018 decided on 15.02.2019). This Court in paragraph Nos. 7 and 8 of the said judgment held as under:-

“[07] Three issues are involved. One is the type of sentence that is to say only sentence of imprisonment or

fine or both. Second is quantum of sentence and third is the manner of undergoing of sentence. As we know that there is no codified sentencing policy in India. We have got a maximum sentence laid down in some of the sections of the Indian Penal Code and some of the sections laid down the minimum sentence. However, there are no criteria how much will be the sentence and which will suit the ends of justice. There are various debates and reports suggesting codification of sentencing policy. Even "Committee on Reforms of Criminal Justice System" under the Chairmanship of Justice Malimath has recommended for codification of law on sentencing policy. Be that as it may, the quantum of sentence is not the issue before us. Ultimately, this is not the appeal/revision against the conviction filed by the petitioners.

[08] So, issue before us is restricted to the manner of undergoing sentence. There is maximum imprisonment of 10 years and fine amount prescribed under Section 392 of I.P.C. Section 30 of Cr.P.C. and Section 64 of I.P.C. empowers the Court to lay default sentence if fine is not paid. Section 64 of I.P.C. clarifies further such default sentence is always in excess of other imprisonment. Whereas, Section 31 of Cr.P.C. deals with a contingency where a person is tried in the case involving different offences. There 'rule of consecutive sentence' is applicable. However, the Court may order concurrent running of sentence. We are dealing with a contingency about running of sentences imposed in different cases. That is how Section 427 of Cr.P.C. is relevant." (Emphasis supplied).

9. In the case of **Abidkhan @ Salman Mukthar Khan Pathan vs. State of Maharashtra and another (2014 ALL MR (Cri) 1719)**, this court in paragraph No.16, held as under:-

“16. Having considered the impact of the orders passed by both the Courts below, we cannot but hold ourselves from observing, to say the least, that the impugned orders disclose ignorance of basic law on the part of the learned Magistrate as well as the learned Additional Sessions Judge. Both are senior judicial officers and, therefore, it is not expected that they would not even take a look at the statutory provisions in the Code of Criminal Procedure and fail to give effect to them in appropriate cases. These lapses on their part, in our opinion, are required to be considered appropriately. We therefore, expect the learned Registrar General of this Court to take a note of these observations for taking appropriate steps.”

10. The directions were given to the Courts of Magistrate and the Sessions Court to follow the mandate of Section 427 (1) of Cr.P.C. for giving direction to run the sentences concurrently though the accused are held liable in different cases separately.

11. The learned Magistrate did not give reasons about the Section 427(1) of the Cr.P.C.. Therefore, in the interest of justice and in the facts and circumstances of the present case, by exercising the powers under Article 226 of the Constitution, the writ petition deserves to be allowed in the interest of justice. The argument of learned A.P.P. for the State is not acceptable. In this regard, the judgment in the case of **Bension vs. State of Kerala, (supra)** cited by learned A.P.P. is not relied upon.

12. We direct, that substantive sentences of imprisonment, awarded to the petitioner by the learned Magistrate in the aforesaid three cases shall run concurrently as per Section 427(1) of the Cr.P.C..

13. Writ petition is allowed in the above terms.

14. Rule is made absolute in the above terms.

15. We quantify the legal fees of Ms. Priyanka P. Shinde, learned advocate appointed to represent the petitioner, at Rs.10,000/- (Rupees Ten thousand only) to be paid by the High Court Legal Services Sub Committee, Aurangabad.

16. We appreciate the instant and potential assistance rendered by advocate Mr. Rupesh Jaiswal, as an amicus curie, in this petition.

(SANJAY A. DESHMUKH, J.)

(R. G. AVACHAT, J.)

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