

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 85/2023.

Saikrupa Associates and Developers,
through its Partner Dharmendra
B. Reddy, Aged 50 years, Office at
Near Bharat Gas, Nari Road, Teka Naka
Nagpur, Maharashtra.

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PETITIONER.

VERSUS

1.Additional District Consumer Commission,
Civil Lines, Nagpur,
Maharashtra – 440001.

2.Nagpur Central Jail,
Through its Superintendent,
Nagpur.

3.Smt.Rajeshbai Ramprakash Yadav,
Aged about 60 years, Occupation -
Housework, Navin Futala Talav,
Amravati Road, Nagpur.

4.Smt. Usha Indrajit Yadav,
Aged about 32 years, Occupation
Housework, Navin Futala Talav,
Amravati Road, Nagpur.

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RESPONDENTS.

Mr. G.I. Dipwani, Advocate for the Petitioner.
Mrs.N. Tripathi, A.P.P. for Respondent Nos. 1 and 2.
None for Respondent Nos. 3 and 4 - Served.

**CORAM : VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.**
DATE : MARCH 20, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel present for parties.

2. This petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, in substance seeking directions to make two sentences concurrent. The petitioner is a developer who has entered into agreement to sale in respect of open plots with different buyers. Since the petitioner has not executed sale deed, two buyers namely Smt.Rajeshbai Yadav and Smt. Usha Yadav (Respondent nos. 3 and 4), have filed consumer complaints against him before the District Consumer Redressal Forum. Both complaints were allowed, directing the

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petitioner to execute respective sale deeds or in the alternative refund the entire consideration along with interest.

3. The petitioner failed to comply with the directions of the Consumer Forum in two complaints namely CC/15/98 and CC/15/99. Since the orders of the Consumer Forum have not been complied with, both consumers invoked the penalty clause in terms of Section 27 of the Consumer Protection Act, by filing two applications bearing EA/16/49 and EA/16/50. In both proceedings it has been held that the petitioner has committed default in complying with the orders of the Consumer Forum, and accordingly vide even dated orders of 28.11.2018 imposed a punishment of imprisonment of one year along with fine of Rs.10,000/-, in each application.

4. Being aggrieved, the petitioner has filed two appeals before the State Consumer Disputes Redressal Commission, however, both appeals were dismissed. The petitioner was already taken in custody on 04.02.2022, and till date he is in jail.

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5. It is the contention of petitioner that he has been convicted in two proceedings on the same date i.e. 28.11.2018 in which by separate orders punishment was imposed to undergo simple imprisonment in each proceedings, as stated. According to the petitioner till date he has undergone the imprisonment of more than one year and therefore, he is liable to set free.

6. The jail authorities made communication dated 01.12.2022 with the District Consumer Redressal Forum seeking guidance as to whether both sentences shall be treated to run concurrently or one after other, so as to take appropriate action. In response, the District Consumer Redressal Forum vide its communication dated 13.12.2022 informed that the petitioner was convicted in two separate cases by separate orders. Moreover, there are no orders that the sentence shall run concurrently, and therefore, it shall be treated that sentences shall run one after another. Being aggrieved by the said communication, the petitioner has filed an appeal to the State Commission, however, the appeal was not entertained for the reason that there is no order of the District Consumer Forum, thus appeal would not lie against the letter or

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communication. In the wake of said position, the petitioner has invoked writ jurisdiction for ventilating his grievance.

7. The learned Counsel appearing for the petitioner would submit that the petitioner has already undergone sentence for imprisonment for more than one year, therefore, he is entitled for release. It is submitted that the conviction is for non-compliance of the orders passed by the District Consumer Forum, which cannot be termed as antisocial or heinous offence so as to deprive him for getting discretion of the Court. It is submitted that the same District Consumer Forum while deciding both applications filed under Sections 27 of the Act has not considered the provisions of Section 427 of the Code of Criminal Procedure about the discretion of the Authority to make the sentence concurrent. It is pointed out that both orders of conviction does not bear reasons as to why the sentence shall run one after another. The learned Counsel appearing for the petitioner would submit that there is no reason to deny the discretionary relief in making the sentence concurrent. In this regard the petitioner has relied on the decision of Supreme Court in case of **Shyam Pal .vrs. Dayawati Besoya and another –**

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[2016] 10 SCC 761, wherein the Supreme Court has made two sentences passed for the offence punishable under Section 138 of the Negotiable Instruments Act to run concurrently. Reliance is also placed on the decision of this Court in case of **Akash Rashtrapal Deshpande and others .vrs. State of Maharashtra and others – 2019 All MR (Cri) 3298**, wherein the then accused was convicted for the offence of robbery in 7 different cases. This Court has observed that though there is a general rule to run the sentence consecutively, but, the Court has discretion to direct the sentences to run concurrently. This Court has observed that the trial Court was not aware about its own discretion as the orders of conviction does not reflect any discussion on the point. In the circumstances, this Court has directed to run the substantive sentence concurrently. On the same lines, reliance is also placed on the decision of this Court in case of **Krishna Venkatesh s/o late N.Vishwanath and others .vrs. Balbhim Malvankar s/o Tukaram Malvankar and others - Criminal Writ Petition No.169/2019 dated 11.09.2019 (Goa Bench)**, wherein under writ jurisdiction the conviction imposed in 4 separate cases have been made concurrently.

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8. The learned A.P.P. would submit that the petitioner was convicted in two different cases. Though both orders of conviction are passed on the same date, but, the trial Court has not made the sentence concurrent. Having regard to the nature of accusation, the sentence are to run consecutively.

9. Reverting to the facts, basically the conviction is for non-compliance of the orders passed by the District Consumer Forum. Both original complainants are related to each other. They have filed two consumer complaints making same allegations that though agreement of sale about a particular plot was executed, sale was not completed. True, non-compliance of the orders of District Consumer Forum attracts penal consequence in terms of Section 27 of the Consumer Protection Act. However, by no stretch of imagination non-compliance of the order of the District Consumer Forum can be construed as an serious or heinous offence. Section 427 of the Code vests a discretion with the convicting Court to direct that the sentence shall run concurrently with the previous sentence. In case at hand, the District Consumer Forum was well aware about both convictions, since the same forum has passed the even dated orders

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of conviction imposing sentence of one year simple imprisonment along with fine in each case. Though sentences are simultaneously passed, however, in technical sense, after pronouncement of first judgment it is to be construed that at the time of pronouncement of second judgment, the petitioner was undergoing sentence imposed in first case. Therefore, on technicalities, applicability of Section 427 [1] of the Code cannot be taken away. The Consumer Forum has not assigned any reason as to why the sentences are to run one after another. Though it is a general rule that the sentence should run consecutively, however, as a matter of course, always they are directed to be run concurrently. There is no reason to justify the running of sentence consecutively. The matter relates to the aspect of curtailing liberty, therefore the action shall be justified by reasons.

10. This Court in case of **Abidkhan @ Salman Mukhtar Khan Pathan .vrs. State of Maharashtra and another – 2014 All MR (Cri) 1719**, took a view that though the accused is convicted in three distinct cases on the same date, it cannot be said that there was no previous or subsequent conviction. Having regard to the cases pertaining to offences under Sections 379, 465, 466, 467, 468, 471

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and 420 this Court observed that the trial Court has not considered the relevant aspect of sentence and failed to exercise the discretion under Section 427 of the Code, therefore, ordered all the sentences to run concurrently.

11. In another decision of Supreme Court in case of **V.K. Bansal .vrs. State of Haryana and another – [2013] 7 SCC 211**, it is emphasized that there is no straight jacket formula, but, the Court shall exercise its discretion judiciously while exercising the powers under Section 427 of the Code.

12. This is not a case of a hardened criminal or a person who has committed offence under the Indian Penal Code or under any Special Act, making the commission of the act itself punishable. The petitioner was indulging into sale of plots. He has executed agreement, however, the transaction could not materialize, therefore, the District Consumer Forum passed a judgment directing him to complete the transaction, but, since there was non-compliance of the order, penalty clause under Section 27 of the Act was invoked by two consumers, which resulted into passing the

aforesaid sentence. The petitioner is neither history sheeter nor offence is of antisocial nature. We see no reason to deprive the petitioner from according discretion in making the sentence to run concurrently. Having regard to the above facts, and especially the background in which the orders of penalty were passed, we are inclined to exercise the discretion in favour of the petitioner.

13. In view of above, Writ Petition is allowed. We direct that both the sentences imposed by the District Consumer Redressal Forum, Nagpur in EA/16/49 and EA/16/50 dated 28.11.2018 shall run concurrently. We make it clear that if fine is not paid by the petitioner, the sentence in default of payment of fine shall run one after another. The Jail authorities are directed to act accordingly.

14. Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE

JUDGE