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Crl.O.P.Nos.16606 and 16609 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM :

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.16606 and 16609 of 2023

In Crl.O.P.No.16606 of 2023 :

A.Sadhiq Batcha .. Petitioner

Versus

R.Senthil Kumar .. Respondent

In Crl.O.P.No.16609 of 2023 :

A.Sadhiq Batcha .. Petitioner

Versus

K.Nachimuthu .. Respondent

Prayer in Crl.O.P.No.16606 of 2023: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to order the sentence imposed by the judgment dated 07.01.2015 made in S.T.C.No.305 of 2012 on the file of learned Judicial Magistrate, Fast Track Court No.1, Erode to run concurrently with the sentence imposed in the judgment dated 30.09.2014 made in S.T.C.No.217 of 2012 on the file of learned Judicial



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Magistrate, Fast Track Court No.2, Erode under Section 427 Cr.P.C., by allowing this Criminal Original Petition.

Prayer in Crl.O.P.No.16609 of 2023: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to order the sentence imposed by the judgment dated 06.02.2017 made in S.T.C.No.329 of 2012 on the file of learned Judicial Magistrate, Fast Track Court No.1, Erode to run concurrently with the sentence imposed in the judgment dated 30.09.2014 made in S.T.C.No.217 of 2012 on the file of learned Judicial Magistrate, Fast Track Court No.2, Erode under Section 427 Cr.P.C., by allowing this Criminal Original Petition.

For Petitioner : Mr.N.Manoharan
(in both Crl.O.Ps)

COMMON ORDER

These petitions have been filed seeking for the sentences to run concurrently in line with Section 427 of Cr.P.C.

2. The petitioner was convicted for offence under Section 138 of the Negotiable Instruments Act, 1881 in three different complaints and was sentenced and the particulars of the same is tabulated hereunder:-

S.No	Complainant	Trial case	Appeal	Revision
1.	S.Rajendran	S.T.C.No.217 of 2012 (Ld. JM, FTC-2, Erode)	Crl.A.No.80 of 2014 (Ld. II Addl. Sessions Court,	Crl.R.C.No. 1633 of 2016. <i>Dismissed.</i>



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		<i>1 year RI + Rs.5000 i/d. 1 month SI</i>	Erode) <i>Dismissed. Sentence Confirmed</i>	<i>Deposit Rs.7,00,000/- Before 12.05.2023 or undergo sentence.</i>
2.	R.Senthil Kumar (Subject case)	S.T.C.No. 305 of 2012 (Ld. JM, FTC-1, Erode) <i>6 month SI + Rs.5000 i/d. 1 month SI</i>	Crl.A.No. 78 of 2015 (Ld. I Addl. Sessions Court, Erode) <i>Dismissed. Sentence Confirmed</i>	Crl.R.C.No. 1381 of 2016. <i>Dismissed. Deposit Rs.2,00,000/- Before 12.05.2023 undergo sentence.</i>
3.	K.Nachimuthu	S.T.C.No. 329 of 2012 (Ld. JM, FTC-1, Erode) <i>6 month SI + Rs.6,00,000/- i/d. 1 month SI</i>	Crl.A.No. 58 of 2017 (Ld. II Addl. District & Sessions Court, Erode) <i>Dismissed. Sentence Confirmed</i>	Crl.R.C.No. 1052 of 2017. <i>Dismissed. Deposit Rs.6,00,000/- Before 12.05.2023 or undergo sentence.</i>

3. The petitioner has filed these petitions with a prayer that the sentence imposed against him in the above cases must run concurrently in line with Section 427 of Cr.P.C.

4. Heard Mr.N.Manoharan, learned Counsel for the petitioner and considered the materials available on record.



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5. It is pleaded by the petitioner that he has suffered heavy loss in his business and he has also been declared as an insolvent in I.P.No.5 of 2012. That apart, the petitioner has also pleaded that he does not have the financial wherewithal to take the case to the Hon'ble Apex Court. Considering the fact that the petitioner will undergo the sentence imposed in S.T.C.No.217 of 2012 which was confirmed by this Court in Crl.R.C.No.1633 of 2016, the petitioner wants the other two sentences imposed in S.T.C.No.305 of 2012 and S.T.C.No.329 of 2012 which culminated in Crl.R.C.No.1381 of 2016 and Crl.R.C.No.1052 of 2017 respectively, to run concurrently.

6. The issue that is involved in this petition is no longer *res integra* and useful reference can be made to the judgment of this Court in **G.Saravanan Vs. J.Sankaranarayanan**¹. For proper appreciation, the relevant portion is extracted hereunder:-

" 11. The question is whenever the sentencing court failed to pass any direction in terms of Section 427 of Cr.P.C, will the effect of consecutiveness kick in automatically ? A closer reading of the provision would indicate that the condition precedent for the application of Section 427 of Cr.P.C. is that the person must be already undergoing a sentence of imprisonment when he is convicted on a subsequent occasion and

¹ 2020 (3) CTC 218



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sentenced. The whole issue turns on the expression "already undergoing a sentence of imprisonment". "Already" means "before a particular time in the past or before now". "Undergoing" means "experiencing something" (Oxford Advanced Learner's Dictionary, New 9th Edition). One cannot be said to be undergoing a sentence of imprisonment unless warrant for its execution had been issued under Section 425 of Cr.P.C. and it had taken effect. Only if the convict had been physically detained pursuant to such warrant, he can be said to be undergoing a sentence of imprisonment and not otherwise.

12. Thus, for Section 427 (1) of Cr.P.C. to apply, the condition precedent must be that the person convicted and sentenced on the subsequent occasion was already undergoing a sentence of imprisonment in the previous case. If he was not so undergoing a sentence in the previous case, Section 427 (1) will not apply at all. I must emphasize that Section 427 of Cr.P.C. does not talk of a person already sentenced to a term of imprisonment being sentenced on a subsequent conviction to a term of imprisonment. The legislature has carefully added the words "already undergoing". This is significant. No word occurring in a statutory provision can be ignored. Each expression has to be given its full effect.

13. The expression "undergoing" is also found in Section 426 of Cr.P.C dealing with sentence on escaped convict. Only a person undergoing sentence in a prison can escape and that would be an independent offence by itself. Section 428 of Cr.P.C. is about setting off the



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period of detention already undergone by the accused against the sentence of imprisonment.

14. Suppose on a single day, an accused is found guilty in more than one case and sentenced. It is for the court concerned to clarify as to when the sentence in the subsequent case will take effect. If the court is silent on this aspect, the sentences will start running from the date when they were given effect to. Section 427 (1) has prescribed the manner in which the sentence will run. It states that if the court is silent and had not given any direction that the sentence given in the subsequent case will run concurrently, it will run only consecutively. Such an adverse consequence emanating from the silence of the court has a serious implication for personal liberty. The Constitution attaches a very high value to personal liberty. Therefore, such a provision must be construed in a manner that is at once fair, just and reasonable. Only by giving full effect to the expression "already undergoing" such a result can be obtained.

15. In case on hand both the judgments of conviction and sentence were handed out on the same day. When the second judgment of conviction and sentence was pronounced, the petitioner had only been sentenced to a term of imprisonment and he was not undergoing a sentence of imprisonment. Therefore, this Court has to necessarily hold the effect of consecutiveness provided for Section 427(1) of Cr.P.C. will not kick in, because the petitioner was not undergoing any sentence of imprisonment when he was found guilty in the second case.



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16. Thus, as a result of the silence on the part of the appellate court or the revisional court in the case on hand, the petitioner cannot be made to undergo the two sentences consecutively. I make it clear that I am not for a moment giving a direction that the sentences will run concurrently. Even without a specific direction that would be the result. Thus, by giving relief to the petitioner I am in no way transgressing the mandate set out in Section 362 of Cr.P.C."

7. This Court can also take note of the judgment of the Hon'ble Apex Court in *Vicky Alias Vikas Vs. State (NCT of Delhi)*². The relevant portions are extracted hereunder:-

" 9. Section 427 CrPC deals with the situations where an offender who is already undergoing a sentence of imprisonment is sentenced to imprisonment on a subsequent conviction or imprisonment for life. Section 427 CrPC provides that 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. Section 427 CrPC 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

² (2020) 11 SCC 540



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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 of imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.”

10. *We may refer to the decision of the Supreme Court in **Mohd. Akhtar Hussain v. Collector of Customs** [**Mohd. Akhtar Hussain v. Collector of Customs**, (1988) 4 SCC 183 : 1988 SCC (Cri) 921] , wherein the Supreme Court recognised the basic rule of convictions arising out of a single transaction justifying concurrent running of the sentences. In **Mohd. Akhtar Hussain** [**Mohd. Akhtar Hussain v. Collector of Customs**, (1988) 4 SCC 183 : 1988 SCC (Cri) 921] , it was held as under: (SCC p. 187, paras 10 & 12)*

“10. The basic rule of thumb over the years has been the so-called single



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transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.

12. The submission, in our opinion, appears to be misconceived. The material produced by the State unmistakably indicates that the two offences for which the appellant was prosecuted are quite distinct and different. The case under the Customs Act may, to some extent, overlap the case under the Gold (Control) Act, but it is evidently on different transactions. The complaint under the Gold (Control) Act relates to possession of 7000 tolas of primary gold prohibited under Section 8 of the said Act. The complaint under the Customs Act is with regard to smuggling of gold worth Rs 12.5 crores and export of silver worth Rs 11.5 crores. On these facts, the courts are not unjustified in directing that the sentences should be consecutive and not concurrent.”

11. After referring to Mohd. Akhtar Hussain [Mohd. Akhtar Hussain v. Collector of Customs, (1988) 4 SCC 183 : 1988 SCC (Cri) 921] and other cases, in V.K. Bansal v. State of



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Haryana [V.K. Bansal v. State of Haryana, (2013) 7 SCC 211 : (2013) 3 SCC (Civ) 498 : (2013) 3 SCC (Cri) 282] , the Supreme Court held that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints may have been filed. In ***V.K. Bansal [V.K. Bansal v. State of Haryana, (2013) 7 SCC 211 : (2013) 3 SCC (Civ) 498 : (2013) 3 SCC (Cri) 282]*** , it was held as under: (***V.K. Bansal case [V.K. Bansal v. State of Haryana, (2013) 7 SCC 211 : (2013) 3 SCC (Civ) 498 : (2013) 3 SCC (Cri) 282]*** , SCC p. 217, paras 14-16)

“14. We may at this stage refer to the decision of this Court in ***Mohd. Akhtar Hussain v. Collector of Customs [Mohd. Akhtar Hussain v. Collector of Customs, (1988) 4 SCC 183 : 1988 SCC (Cri) 921]*** in which this Court recognised the basic rule of convictions arising out of a single transaction justifying concurrent running of the sentences. ...

15. In ***Madan Lal case [State of Punjab v. Madan Lal, (2009) 5 SCC 238 : (2009) 2 SCC (Cri) 650]*** this Court relied upon the decision in ***Akhtar Hussain case [Mohd. Akhtar Hussain v. Collector of Customs, (1988) 4 SCC 183 : 1988 SCC (Cri) 921]*** and affirmed the direction of the High Court for the sentences to run concurrently. That too was a case under Section 138 of the Negotiable Instruments Act. The State was aggrieved of the direction that the



sentences shall run concurrently and had appealed to this Court against the same. This Court, however, declined interference with the order passed by the High Court and upheld the direction issued by the High Court.

16. In conclusion, we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor.”

12. In V.K. Bansal [V.K. Bansal v. State of Haryana, (2013) 7 SCC 211 : (2013) 3 SCC (Civ) 498 : (2013) 3 SCC (Cri) 282] , the appellant-accused was facing fifteen cases and the Supreme Court has grouped fifteen cases into three different groups:

(i) the first having twelve cases relating to advancement of loan/banking facility to M/s Arawali Tubes Ltd. acting through the appellant thereon as Director;

(ii) the second having two cases relating to advancement of loan to the appellant M/s Arawali Alloys Ltd. acting through the appellant as its Director; and

(iii) the third having a single case qua the criminal complaint by State Bank of Patiala.



The Court directed that the substantive sentences within first two groups would run inter se concurrently. The Supreme Court directed that the substantive sentences in first two groups and that in respect of the case in the third group would run consecutively.

*13. Following the decision in **V.K. Bansal** [**V.K. Bansal v. State of Haryana, (2013) 7 SCC 211 : (2013) 3 SCC (Civ) 498 : (2013) 3 SCC (Cri) 282**] , in **Benson v. State of Kerala** [**Benson v. State of Kerala, (2016) 10 SCC 307 : (2017) 1 SCC (Cri) 108**] , the Supreme Court directed that the sentences imposed in each of the cases shall run concurrently with the sentence imposed in Crime No. 8 which was then currently operative. However, the Court held that the benefit of “concurrent running of sentences” is granted only with respect of substantive sentences; but the sentences of fine and default sentences shall not be affected by the direction. The Supreme Court observed that the provisions of Section 427 CrPC do not permit a direction for the concurrent running of the default sentence for non-payment of fine.*

*14. Further, in **Anil Kumar v. State of Punjab** [**Anil Kumar v. State of Punjab, (2017) 5 SCC 53 : (2017) 2 SCC (Cri) 502**] , it was held by this Court that: (**SCC p. 55, para 5**)*

“5. 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. Only in



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appropriate cases, considering the facts of the case, the court can make the sentence run concurrently with an earlier sentence imposed. The investiture of such discretion, presupposes that such discretion be exercised by the court on sound judicial principles and not in a mechanical manner. Whether or not the discretion is to be exercised in directing sentences to run concurrently would depend upon the nature of the offence/offences and the facts and circumstances of each case."

15. The point falling for consideration is whether the case of the appellant is a fit case for exercising the discretion in directing the sentence of imprisonment to run concurrently with the sentence of imprisonment imposed in the earlier case in FIR No. 64/2011. Of course, FIR No. 64/2011, FIR No. 67/2011 and FIR No. 263/2009 relate to different transactions. Since the appellant was already undergoing imprisonment in FIR No. 64/2011, in terms of Section 427 CrPC, subsequent sentences shall run consecutively until and unless the court specifically directs that they shall run concurrently."

8. It is clear from the above judgments that if the accused person is found guilty in more than one case and he is sentenced and the order of the Court is silent with respect to the period from which the subsequent



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sentence will take effect, the sentences will start running from the date when they were given effect to. In other words, it will run concurrently.

9. In the instant case, the petitioner has been convicted and sentenced for offence under Section 138 of the Negotiable Instruments Act, 1881 and all the three sentences were confirmed by this Court in the Criminal Revision Petitions on 12.05.2023. This Court did not specifically state that the sentences in each case will run consecutively. In view of the same, the effect of Section 427(1) of Cr.P.C., will apply and when the petitioner is undergoing the sentence in S.T.C.No.217 of 2012, the sentences in the other two cases in S.T.C.No.305 of 2012 and S.T.C.No.329 of 2012 will also merge with the period of sentence of one year Rigorous Imprisonment that is suffered in S.T.C.No.217 of 2012. This is in view of the discretion that is vested in the Court under Section 427 of Cr.P.C.

10. In the light of the above discussion, the sentences imposed in S.T.C.No.305 of 2012 and S.T.C.No.329 of 2012 shall run concurrently with the sentence imposed in S.T.C.No.217 of 2012. These Criminal Original Petitions are disposed off accordingly.



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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

To

1. The Judicial Magistrate,
Fast Track Court No.1, Erode.
2. The Judicial Magistrate,
Fast Track Court No.2, Erode.



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N.ANAND VENKATESH, J.
grs

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