



Crl.O.P.No.16329 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.16329 of 2023

Pandian

... Petitioner

Vs.

1. State represented by its,
The Superintendent of Police,
Central Prison,
Puzhal-I.

2. The Inspector of Police,
B-2, Vishnu Kanji Police Station,
Kancheepuram District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to issue a direction to the respondents to run the sentence of imprisonment imposed in the judgment dated 24.11.2022 in C.C.No.123 of 2022 to run concurrently with the sentences of imprisonment imposed in the judgment dated 24.11.2022 made in C.C.Nos.124, 125 and 126 of 2022.



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For Petitioner : Mr.M.Mohamed Saifulla
For Respondents : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This petition has been filed with a request to order for the sentences imposed against the petitioner to run concurrently in C.C.Nos.123, 124, 125 and 126 of 2022, imposed by the learned Judicial Magistrate No.I, Kancheepuram through judgment dated 24.11.2022 in all the cases.

2. Heard Mr.M.Mohamed Saifulla, learned counsel for petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor for respondents.

3. The petitioner was arrested by the second respondent on 15.12.2021 in connection with four cases in Crime Nos.1757, 1786, 1771, 1744 of 2021 for an offence under Section 379 IPC. On completion of investigation, final reports were also filed in all the cases. The learned Judicial Magistrate No.I, Kancheepuram convicted and sentenced the



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petitioner in the four cases in the following manner:

<i>S.No.</i>	<i>Case Nos.</i>	<i>Crime Nos.</i>	<i>Details of Conviction</i>
1	C.C.No.123/2022 Dated 24.11.2022	Cr.No.1757/21	2 Years Rigorous Imprisonment for U/s.379 IPC
2	C.C.No.124/2022 Dated 24.11.2022	Cr.No.1786/21	2 Years Rigorous Imprisonment for U/s.379 IPC
3	C.C.No.125/2022 Dated 24.11.2022	Cr.No.1771/21	2 Years Rigorous Imprisonment for U/s.379 IPC
4	C.C.No.126/2022 Dated 24.11.2022	Cr.No.1744/21	2 Years Rigorous Imprisonment for U/s.379 IPC

4. The petitioner has approached this Court with a request that all the above sentences must be ordered to run concurrently.

5. The issue that is involved in the present case is squarely covered by the earlier judgment of this Court in the case of ***Mani vs. State, Represented by the Sub Inspector of Police and another*** reported in **2019 SCC Online Mad 6396**. The relevant portions are extracted hereunder:

"6.It will be relevant to extract the portion of the judgment relied upon by the learned counsel for the petitioner in Selvakumar @



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Jeyakumar Vs. Inspector of Police referred supra.

?9. Section 427 CrPC fixes the time from which the sentence passed on offender, who is already undergoing another sentence should run. The general rule is that the sentence commences to run from the time of it being passed, but Section 427 creates an exception in the case of a person already undergoing imprisonment and postpones the operation of the subsequent sentence until after the expiry of the previous sentence. The power conferred on the Court under Section 427 of CrPC to order concurrent sentence is discretionary. The salutary principle adopted by the Court is the totality of the sentence. The policy of the legislature is that the sentences should be run normally consecutively. Only in an appropriate case, considering the facts of the case, the Court can make the sentence concurrently with an earlier sentence imposed.

10. Where the Court does not specify, whether the sentences awarded shall run concurrently or consecutively, the presumption is that the Court intended that sentences shall run consecutively and only the High Court in exercise of its inherent powers under Section 482 of CrPC may direct that the sentence shall run concurrently.

11. The scope of Section 427(2) of CrPC is that in respect of the convict undergoing imprisonment for life, the sentence of imprisonment passed on subsequent conviction shall run concurrently. The reason being that the sentence for life must be understood to mean as the sentence to serve remainder of life in prison unless commuted or remitted by the appropriate authority and the person having only one life span, the sentence on the subsequent conviction of imprisonment



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for a term of imprisonment for life can only be superimposed the earlier life sentence and certainly not added to it.

12.A Division Bench of this Court had an occasion to consider a case of similar nature in K.Arasan and others Vs. The State of Tamil Nadu, reported in 2012 (6) CTC 510. The relevant portion of the judgment is extracted hereunder.

"2.The crux of the question involved in this matter is that whether this Court can invoke the inherent powers under Section 482 of the Code of Criminal Procedure [hereinafter referred to as "Cr.P.C."] for Granting the relief under Section 427, Cr.P.C., for ordering the sentence imposed in the former case to run concurrently along with the sentence of imprisonment awarded in the latter case.

3.It is seen that two conflicting views expressed by two learned Single Judges in respect of invoking the jurisdiction under Section 482, Cr.P.C. for granting the relief of ordering the subsequent sentence to run concurrently with the previous sentence awarded against a person in an earlier case which necessitated the learned referring Single Judge to refer the matter to a Division Bench to resolve the said conflict between two decisions. It is seen that a learned Single Judge in A. Palanisamy @ Kaithan v. Inspector of Police, B1 Police Station, Kadaiveethi, Coimbatore and others, 2011 (3) MWN (Cr.) 555 : 2011 (4) MLJ (Crl.) 813, after referring to various judgments of the Hon'ble Apex Court, has held in paragraph 27, as hereunder-

27. In the instant case on hand also, the provision of Section 427, Cr.P.C. was not invoked either in the original cases or in the Appeals. Under the above said circumstances, Section 427, Cr.P.C.



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cannot be applied in a separate and independent proceedings by this Court in exercising the inherent jurisdiction under Section 482, Cr.P.C.

4. Another learned Single Judge in A. Paulraj v. Maria Chellammal and others, 2011 (4) MLJ (Crl.) 798, has taken a contrary view by placing reliance on the decision of the Larger Bench of the Hon'ble Apex Court and held as hereunder:

26. Since the Larger Bench of the Supreme Court in State of Punjab v. Madhan Lal [supra] had considered on Application filed, under Section 482, Cr.P.C. the decision rendered in M.S. Kudva v. State of Andhra Pradesh [supra] may not be applicable and invoking jurisdiction under Section 482, Cr.P.C. is indeed available to the Petitioner.

5. We have gone through the above two conflicting decisions rendered by the two learned Single Judges.

13.0. It is pertinent to refer the following decisions rendered by the other High Courts in respect of the issue involved in this matter.

13.1. A Division Bench of the Andhra Pradesh High Court in V. Venkateswarlu v. State of A.P., MANU/AP/0024/1987 : 1987 Cri.L.J. 1621, has held as here under:

10. The High Court, while exercising its Revisional jurisdiction suo motu or in exercise of its inherent power under Section 482, can direct the sentences to run concurrently as provided under Section 427, Cr.P.C., even though the convictions and sentences that have been passed by the Additional Sessions Judges of different Sessions Divisions have become final."



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13.2. A Full Bench of Madhya Pradesh High Court in Shersingh v. State of M.P., 1989 Cri.LJ. 632 [1], has held as here under:

"Inherent powers of the High Court can be invoked under Section 482 even if the Trial Court or the appellate or Revisional Court has not exercised its discretion under Section 427(1) of the Code in directing running of previous and subsequent sentences concurrently. The inherent powers of the High Court is not in any way fettered by the provisions of Section 427(1) and it can be invoked at any stage even if there is no such order passed under Section 427(1) by the Trial Court or Appellate or Revisional Court and even though the conviction has become final."

13.3. The view taken by the Division Bench of the Andhra Pradesh High Court and the Full Bench of the Madhya Pradesh High Court are in line with the view taken by the Larger Bench of the Hon'ble Apex Court in State of Punjab v. Madhan Lal, 2009 (5) SCC 238. As a matter of fact, as already pointed out, the learned Single Judge of this Court in A. Paulraj v. Maria Chellammal and others, 2011 (4) MLJ (Crl.) 798, also referred the decision of the Hon'ble Apex Court in M.R. Kudva v. State of Andhra Pradesh, 2007 (2) SCC 772 (Two-Judge Bench) and preferred to place reliance on the decision rendered by the Larger Bench consisting of Three Judges of the Hon'ble Apex Court.

14.0. At this juncture, it is relevant to refer the following decisions of the Hon'ble Apex Court:



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14.1. *In Union of India v. K.S. Subramanian, AIR 1976 SC 2433, the Hon'ble Apex Court has held as follows:*

"The proper course for a High Court is to try to find out and follow the opinions expressed by Larger Benches of the Supreme Court in preference to those expressed by smaller Benches of the Court. That is the practice followed by the Supreme Court itself. The practice has not crystallized into a rule of law declared by the Supreme Court. If however, the High Court is of the opinion that the views expressed by Larger Benches of the Supreme Court are not applicable to the facts of the case it should say so giving reasons supporting its point of view."

14.2. *The Hon'ble Apex Court in State of Uttar Pradesh v. Ram Chandra, AIR 1976 SC 2547, has held as follows:*

?Constitutional position as regards the powers of Court to go behind the orders of termination to find out motive of Government is clear. Even in cases where a High Court finds any conflict between the views expressed by larger and smaller Benches of this Court, it cannot be disregard or skirt the views expressed by the Larger Benches. The proper course for a High Court in such a case is to try to find out and follow the opinion expressed by Larger Benches of the Supreme Court in preference to those expressed by smaller benches of the Court which practice, hardened as it has into a rule of law, is followed by the Supreme Court itself.

The above decisions rendered by the Hon'ble Apex Court make it crystal clear that the High Court has to follow the opinion expressed by the Larger Benches of the Hon'ble Apex Court in preference to those expressed by smaller Benches.



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15. *As far as the issue involved in this matter, we are of the considered view that the learned Single Judge in A. Paulraj v. Maria Chellammal and others, 2011 (4) MLJ (Crl.) 798, has rightly placed reliance on the decision of the Larger Bench consisting of Three Judges of the Hon'ble Apex Court in State of Punjab v. Madhan Lal, 2009 (5) SCC 238, which is binding on this Court and taken a correct view.*

16. *It is to be stated that invoking the jurisdiction under Section 482, Cr.P.C. in order to grant the relief under Section 427, Cr.P.C. would not amount to altering, varying or modifying the findings of the Trial Court or Appellate Court. On the other hand, it is always open to this Court to exercise power under Section 482, Cr.P.C. to secure the ends of justice. It is needless to say that this Court has to exercise its judicial discretion for invoking the power under Section 482, Cr.P.C. for granting the relief under Section 427, Cr.P.C., on the basis of the facts and circumstances and gravity of the charge levelled against the Accused in each case.*

17. *In the result, we are answering the reference to the effect that the inherent power of the High Court under Section 482, Cr.P.C., can very well be extended to issue a direction ordering the sentence imposed in a latter case on conviction to run concurrently with the sentence imposed in a former case as provided under Section 427, Cr.P.C.*

13. *From a reading of the above judgment it is clear that this Court can exercise its jurisdiction under Section 482 of CrPC and issue direction ordering the sentences imposed in the later case to run concurrently with the sentence imposed in the former case. Of course,*



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the Court has to take into consideration the gravity of the charges levelled against the accused in each of the cases.?

7.It is clear from the above judgment that this Court has jurisdiction to issue directions to order the sentences to run concurrently. Of course, this Court has to take into consideration the gravity of the offences. In the instant case, it is seen that the petitioner was convicted by the Court below for a similar offence under Sections 457 and 380 IPC. In both the judgments, the conviction and sentence were imposed on the ground that the petitioner himself has pleaded guilty. Therefore, this Court is of the considered view that the petitioner must be given an opportunity to reform himself in his life. This Court does not find the offence committed by the petitioner to be grave in nature."

6. In the present case, the petitioner pleaded guilty in all the four cases and he was convicted and sentenced by the same Court on the same day for the offence under Section 379 IPC. In the above judgment, this Court has dealt with a case, where there was a similar offence against the petitioner therein and the petitioner had also pleaded guilty. Therefore, this Court came to a conclusion that opportunity must be given to the petitioner therein to reform himself in his life. In the instant case, considering the nature of allegations made against the petitioner, it is seen that the petitioner



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has not involved himself in any grave offences. All the four cases were registered on the same day and all those cases ended in a final report and in those cases, the petitioner pleaded guilty. This factor becomes very pertinent while deciding this case.

7. In the light of the above discussions, this Court is inclined to allow this petition as prayed for by the petitioner. The sentence of imprisonment imposed in CC.No.123 of 2022, dated 24.11.2022 will run concurrently with the sentence imposed against the petitioner in C.C.Nos.124, 125 and 126 of 2022.

8. This Criminal Original Petition is allowed accordingly.

17.08.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

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To

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Puzhal-I.
2. The Inspector of Police,
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Kancheepuram District.
3. The Public Prosecutor,
High Court,
Madras.



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N.ANAND VENKATESH, J.

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