



Crl.O.P.No.27695 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 30.06.2023	Orders Pronounced On 07.07.2023
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Crl.O.P.No.27695 of 2022

Kannan

... Petitioner

Vs.

State rep. by:

1.The Superintendent of Prison,
Central Prison, Coimbatore.

2.The Superintendent of Prison,
Central Prison, Salem.

3.The Inspector of Police,
Rasipuram Police Station,
Namakkal.

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to direct the respondent to consider the representation dated 26.10.2022 and further direct the respondents 1 and 2 to order the sentences imposed in C.C.Nos.290/2014, 291/2014 and 339/2014 on the file of the Judicial Magistrate, Rasipuram, to run



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concurrently to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This petition has been filed to consider the representation sent by the petitioner's wife dated 26.10.2022 and to direct the respondents 1 and 2 to order the sentence imposed in C.C.Nos.290/2014, 291/2014 and 339/2014 by the learned Judicial Magistrate, Rasipuram, to run concurrently.

2.The contention of the petitioner is that the petitioner's wife sent a representation on 26.10.2022 to the respondents 1 and 2 stating that her husband was charged for offences under Sections 392 and 393 of IPC, the learned Judicial Magistrate, Rasipuram, convicted the petitioner in C.C.Nos.290/2014, 291/2014 and 339/2014 and sentenced to three years rigorous imprisonment by judgment dated 15.11.2021 separately in each case but on the same day. Further, the representation sent by the petitioner's wife is that within a span of one year i.e. 16.04.2014 to 13.06.2014 the occurrence took place, investigation conducted by the same police, namely, Inspector of Police, Rasipuram, the offences are one and the same under



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Sections 392 and 393 IPC. Thus, one charge sheet ought to have laid following Section 219 Cr.P.C. but the Inspector of Police, Rasipuram, filed separate charge sheet for each of the cases showing as a separate transaction before the learned Judicial Magistrate, Rasipuram, and a single trial ought to have been conducted, but now three judgments were rendered convicting the petitioner and sentencing him to undergo three years rigorous imprisonment consecutively under Section 31(2) of Cr.P.C. The occurrence in all the three cases were within a span of one year, conviction was passed on the same day i.e., 15.11.2021, the petitioner's husband was in prison for over two years and in view of the same, she prayed that it is just and necessary that these sentences to run concurrently.

3.Learned counsel appearing for the petitioner referring to the judgments of all the three cases in C.C.Nos.290/2014, 291/2014 and 339/2014 submitted that it was brought to the notice of the Trial Court about the pendency of three cases against the petitioner and sought benefit under the Probation of Offenders Act. The Trial Court recorded that the petitioner is not entitled to avail the benefit under the Probation of Offenders Act and thereafter convicted the petitioner in all the three cases



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on the same day one after other. He would submit that the Lower Appellate Court dismissed the three appeals filed by the petitioner against the judgment of the Trial Court in C.A.Nos.116/2021, 117/2021 and 118/2021 confirming the conviction and sentence imposed by the Trial Court. The learned counsel further referring to Section 427 Cr.P.C. submitted that unless there is a specific order that the previous sentence to run concurrently, subsequent sentence by the Court cannot be run concurrently and it shall be consecutively, only in case where the previous sentence is imprisonment for life, subsequent sentence shall run concurrently with previous sentence. He further relied on the decision of the Apex Court in the case of *Iqram vs. The State of Uttar Pradesh and others [Crl.Appeal No.2319 of 2022 in SLP[Crl.] No.8238 of 2022]*, wherein it was observed that when there is no specific direction issued by the Trial Court under Section 427(1) Cr.P.C., and the convict compelled to undergo subsequent sentence concurrently, the High Court ought to have noticed serious miscarriage of justice. Thus, in the absence of any specific order under Section 427(1) Cr.P.C., it cannot be straight away construed the sentence to run consecutively more so when the judgments were rendered by the Court



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on the same day. Hence, he prayed this Court to issue appropriate directions.

4.Learned Additional Public Prosecutor submits that the petitioner is a regular offender involved in the offence of Section 392 IPC. He would submit that during investigation it was found that the petitioner involved in three cases, on his arrest, properties were recovered and after investigation, charge sheet filed against the petitioner in C.C.Nos.290/2014, 291/2014 and 339/2014. He would further submit that all the three cases were tried by the learned Judicial Magistrate, Rasipuram, and on completion of trial, the Trial Court found the petitioner guilty, convicted and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- in all the three cases. He further submitted that the judgment in all the three cases were rendered on the same day one after other and it is true that in the judgments, no order under Section 427(1) Cr.P.C. has been passed. In the absence of any specific order that the sentence to run concurrently, then, the sentence to be construed to run consecutively. He further submitted that the petitioner also sought for relief under the Probation of Offenders Act. Further, the petitioner preferred an appeal in C.A.Nos.116/2021, 117/2021



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and 118/2021 and the Lower Appellate Court dismissed the appeals and confirmed the judgment of the Trial Court. Learned Additional Public Prosecutor relied upon the judgment of the Apex Court in the case of ***State of Madhya Pradesh vs. Man Singh*** reported in ***[2019] 10 SCC 161*** and the decision of the Madurai Bench of this Court in the case of ***G.Saravanan vs. J.Sankaranarayanan*** reported in ***2020 [3] CTC 818***.

5.Considering the submissions and on perusal of the materials, it is seen that the petitioner is an accused in three Calender Cases in C.C.No.290/2014, C.C.No.291/2014 and C.C.No,339/2014 and all the three cases were tried by the learned Judicial Magistrate, Rasipuram. On conclusion of trial, the Trial Court found the petitioner guilty, convicted and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- in all the three cases. The judgment in all the three cases were rendered separately one after other on the same day. It is recorded in the judgments that the petitioner had sought benefit under the Probation of Offenders Act which was rejected and in each judgment, the other two cases were recorded. Thus, the Trial Court was very much aware



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about the pendency of the petitioner facing trial in three cases. When the Trial Court convicting and sentencing the accused in three cases, it ought to have followed Section 427(1) of Cr.P.C., in the absence of specific order it cannot be construed the each of the sentence to run consecutively. The Apex Court in a similar situation in the case of ***Iqram*** [cited supra] held that the Trial Court having failed to exercise specifically its discretion within the ambit of Section 427(1) of Cr.P.C. and when the same is questioned and brought to the notice of the High Court, the High Court ought to have intervened in exercise of its jurisdiction and to set aside the wrong notion of the jail authorities in construing the sentence to run consecutively. In the present case, the petitioner has been sentenced to three years rigorous imprisonment in three cases on the same day without any reference to Section 427(1) Cr.P.C. Now the petitioner's apprehension and grievance is that the jail authorities may detain him to undergo the sentence consecutively one after other, i.e. for nine years.

6.Following the judgment of the Apex Court, this Court holds that the conviction and sentence imposed on the petitioner by the Trial Court are to



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run concurrently and not consecutively. The respondents 1 and 2 to release the petitioner after he serves the sentence of three years, unless he is not required in connection with any other case.

7.The Criminal Original Petition is allowed accordingly.

07.07.2023

Index : Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
cse

To

- 1.The Superintendent of Prison,
Central Prison, Coimbatore.
- 2.The Superintendent of Prison,
Central Prison, Salem.
- 3.The Inspector of Police,
Rasipuram Police Station,
Namakkal.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

cse/smn2

Pre-delivery order made in

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