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CrI.O.P.(MD)No.18199 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

CrI.O.P.(MD)No.18199 of 2023

S.Ramesh

... Petitioner

Vs.

1.K.A.Murugesan

2.S.Venkateshwari

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to undergo the sentence imposed on the petitioner in S.T.C.No. 92/2018 on the file of the Learned Judicial Magistrate, Fast Track Court(ML) at Theni dt.4/10/2021 and STC No.1107/2018 on the file of the Learned Judicial Magistrate, Periyakulam.

For petitioner : Mr.B.Alagumani

For Respondents : Mr.C.Saravana Kumar for R1

Mr.V.Bala Subramanian for R2

ORDER

This petition has been filed seeking direction to to undergo the sentence imposed on the petitioner in S.T.C.No.92/2018 on the file of the Learned Judicial Magistrate, Fast Track Court(ML) at Theni dt.4/10/2021



and STC No.1107/2018 on the file of the Learned Judicial Magistrate, Periyakulam.

2.The facts in brief:

The petitioner is an accused facing two criminal prosecution, one in S.T.C.No.1107 of 2018 on the file of the learned Judicial Magistrate, Periyakulam for the offence punishable under Section 138 of the Negotiable Instruments Act, and for similar offence in S.T.C.No.92 of 2018, before the learned Judicial Magistrate, Fast Track Court, Magisterial Level, Theni. The judgment of conviction and sentence was passed in S.T.C.No.1107 of 2018 on 19.10.2020, sentencing the petitioner to undergo simple imprisonment for a period of eight months and compensation amount of Rs.4,00,000/-, in default, two months simple imprisonment. So far S.T.C.No.92 of 2018 is concerned, sentence was passed on 04.10.2021 to undergo 6 months simple imprisonment with compensation amount of Rs.3,00,000/-, in default, two months simple imprisonment. C.A.No.57 of 2020 was preferred against the judgment and conviction rendered in S.T.C.No.1107 of 2018. By the Judgment dated 21.09.2021, it was dismissed confirming the conviction and sentence. Against the Judgment of conviction in S.T.C.No.92 of 2018, no appeal was preferred. In pursuant to the above



said conviction and sentence, he was secured and imprisoned from 29.08.2022. As on date, he is in prison and serving sentence period. The details of the period also available in the form of Custody Certificate, wherein, we find that he was admitted as convicted prisoner on 29.08.2022. As on 15.08.2022, he served 11 months and 16 days.

3.A simple point is raised by the petitioner in this petition seeking order of this Court to order the sentence period to run concurrently.

4.The respondent was served and also heard.

5.At the time of hearing the petition, a clarification was required to be made upon the petitioner as to whether on the subsequent date of judgment namely in S.C.No.92 of 2018, dated 04.10.2021, he was in prison in connection with the conviction and sentence passed in S.T.C.No.1107 of 2018, dated 19.10.2020. The learned counsel for the petitioner submitted that the sentence was suspended and he was released on bail in the above said matter. As noted above, after the disposal of the appeal and S.T.C.No.92 of 2018, he was imprisoned on 29.08.2022. So the question which arises for consideration is whether Section 427 (i) Cr.P.C. will stand attracted to the present factual circumstances.



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6.For better appreciation Section 427 Cr.P.C. is extracted hereunder:

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



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7.Before that the learned counsel for the petitioner submitted that in view of the settlement of law by the Honourable Division of this Court in the case of *K.Arasan and another Vs. The State of Tamil Nadu*, reported in 2012 (6) CTC 510, held that the High Court can exercise the power under Section 482 of Cr.P.C. to pass order of running the sentence concurrently. But, later Co-ordinate Bench of this Court was called upon by the Bar to refer the above said Judgment to Larger Bench, in view of the subsequent Judgement of the Honourable Supreme Court. In Crl.O.P. (MD).No.14056 of 2019, that exercise was not made by the Co-ordinate Bench of this Court, thought it fit to dispose the matter on some other ground. But, the above said judgment is relevant for re-discussion also. The phrase that is used in Section 427 Cr.P.C. that “while undergoing Sentence” came up for consideration. The Co-ordinate Bench has concluded that the convict must be undergo imprisonment physically in the earlier case, then only Section 427(i) Cr.P.C. can be pressed into service.

8.On this specific point, Judgment of the Honourable Division Bench of the Bombay High Court made in the case of *Sadashiv Chookha Sable Vs. State of Maharashtra*, reported in 1993(2) BomCRL, makes the position clear. The reasoning assigned by the Honourable Division



Bench stands to reason and logic. As it has been held by the Honourable Division Bench, literal meaning should not be given to the phraseology and if such course is adopted, then the consequences will be disastrous. Not intended by the Section. So I find that the Judgment is applicable to the present position also.

9.As mentioned above, in the earlier case, he was granted bail by suspending the sentence. But, he failed to pay the compensation amount. In the subsequent judgment also he failed to pay the compensation amount. The learned counsel for the respondent contends that so far as sentence namely the non payment of fine or compensation as the case may be, Section 427(i) of Cr.P.C. will not stand attracted. There can be no quarrel on that proposition of law. On that point in respect of the default sentence, Section will not apply and naturally it has to run consecutively.

9.With regard to the factual circumstances also, the learned counsel for the petitioner would submit that he borrowed money from S.Venkateshwari. On that occasion, he issued blank cheques towards the liability as security. By utilizing the cheques issued in blank, it was filled up by the complainant in S.T.C.No.1107 of 2018 and foisted a false complaint. The learned counsel who appeared for the petitioner did not



cross examine the witnesses properly. Even the recall application filed by the petitioner came to be dismissed. So according to him, the factual circumstances of the case also indicate that both the transaction are one and the same and so the bar may not be applicable.

10. These things cannot be taken into account at this stage. The petitioner failed before the trial Court in properly contesting the prosecution. Now he is paying the penalty. It may not be proper on the part of this Court to go back to the pre trial defence, available to the petitioner. But the fact remains that because of the conviction and sentence, the petitioner was removed from service. He lost his benefits. Now 14 months is already over. In the circumstances of the case, I am of the considered view that ends of justice will be met if the substantial sentence in S.T.C.No.92 of 2018 and S.T.C.No.1107 of 2018 is ordered to run concurrently. If so concluded, then the substantial sentence 8 months + 2 months default sentence in S.T.C.No.92 of 2018 + 2 months default sentence in S.T.C.No.1107 of 2018. Totally he has to undergo 12 months of imprisonment. Now 14 months lapsed. So, I am of the considered view that no more detention is required. On that sole ground without going into other aspects that has been raised by the petitioner, this petition is liable to be allowed.



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11. Accordingly, substantial sentence is ordered to be run concurrently. In the result, this petition is allowed and this petitioner is ordered to be released from the prison immediately, if not required in any other case.

28.11.2023

Index : Yes/No

Internet : Yes/No

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To

1. The Judicial Magistrate, Fast Tract Court (Magisterial Level), Theni.

2. The Judicial Magistrate, Periyakulam.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN. J.

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