

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM- 40477-2022,
CRM- 40483-2022 in/and
CRA-S-333-2019 (O&M)
Reserved on:- April 11, 2023

Date of Pronouncement:- May 15, 2023

Nachhattar Singh @ Channu ...Appellant
vs.
State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Gurmeet Singh Saini, Advocate
for the applicant-appellant.

Mr. Vinay Kumar Gupta, AAG Punjab.

HARKESH MANUJA, J.

CRA-S-333-2019 & CRM-40483-2022

1. By way of present appeal under Section 382 of Code of Criminal Procedure, 1908, appellant has prayed for setting aside the judgment dated 08.12.2018 passed by the Court of Ld. Sessions Judge, Bathinda in FIR No. 35 dated 12.02.2016 u/s 379-B & 411 read with Section 34 of IPC at P.S. Kotwali, Bathinda whereby appellant has been convicted u/s 379-B & 411 of IPC and sentenced as below:-

Under Section 379-B IPC	R.I. for period of five years and fine of Rs. 10,000/- and in default of payment of fine, to further undergo RI for a period of six months.
Under Section 411 IPC	R.I. for a period of one year and fine or Rs.500/- and in default of payment of fine, to further undergo R.I. for a period of one month.

2. Brief facts of the case are that on the basis of a complaint of snatching of mobile phone and other articles by one Rahul Kumar, FIR No. 35 dated 12.02.2016 u/s 379-B & 411 read with Section 34 of IPC was registered at P.S. Kotwali, Bathinda. During the course of investigation, accused persons were arrested and after the completion of all other necessary formalities, challan against the accused persons was presented in the Court of Chief Judicial Magistrate, Bathinda, who committed it to the Court of Sessions vide order dated 19.05.2017. Session Court vide judgment dated 08.12.2018 held appellant guilty u/s 379-B & 411 of IPC and he was ordered to be sentenced as aforesaid.

3. By way of present appeal, it is judgment dated 08.12.2018 which has been impugned.

4. At this stage, it would be appropriate to note that appellant also faced trial in another F.I.R No.33 dated 19.02.2017 registered at P.S Kotwali, Bathinda under Sections 379-B, 411, 413 IPC. After the culmination of trial in the above said FIR, based on judgment of conviction dated 21.09.2018 appellant was sentenced as under:

Under Section 379-B IPC	R.I. for period of five years and fine of Rs. 10,000/- and in default of payment of fine, to further undergo RI for a period of 04 months
Under Section 411 IPC	R.I. for a period of one year and fine or Rs.500/- and in default of payment of fine, to further undergo R.I. for a period of one month

Though appeal against the aforesaid judgment dated 21.09.2018 is pending before this Court in appeal bearing number

CRA-S-82-2022, since the appellant was in custody w.e.f. 22.09.2018, he completed his entire aforesaid sentence in this case on 09.02.2023.

5. In addition to above 2 FIRs, there have been few other cases as well against the petitioner, brief details of which are as below:

FIR No. 268, Dated 10.10.2015, U/S- 324, 323,34 of IPC, Police Station- Kotwali, Bathinda.	Convicted and order to sentence for R.I. 2 months by learned Additional Session Judge, Bathinda and same has been completed on 04.04.2023.
FIR No. 148, Dated 29.06.2018, U/S-379-B, 411 of IPC, Police Station- Kotwali, Bathinda.	Convicted and ordered to sentence already undergone on dated 10.09.2019 by learned trail Court and no appeal is pending.
FIR No. 170, Dated 29.07.2016, U/S-379-B of IPC, Police Station - Kotwali , Bathinda	Acquitted by learned Additional Sessions Judge, Bathinda vide order dated 29.01.2019
FIR No. 117, Dated 01.06.2017, U/S-379-B, 411 of IPC, Police Station – Kotwali, Bathinda.	Acquitted by learned Additional Sessions Judge, Bathinda vide order dated 13.11.2018

6. As per the custody certificate, sentence in the present case was supposed to commence only after the completion of the sentence in case F.I.R No. 33 dated 19.02.2017 and other cases and till date custody in present case has been very negligible. Meanwhile application bearing No 40483 of 2022 U/s 427 Cr.P.C was filed on behalf of appellant with a prayer to order the concurrent running of sentences passed by way of order dated 08.12.2018 by the Ld. Session Judge, Bathinda (arising out of F.I.R No.35 dated 12.02.2016 registered at P.S Kotwali, Bathinda impugned in criminal appeal CRA-S-333-2019) and the order dated 21.09.2018 by the Ld. Session Judge, Bathinda (arising out of F.I.R No.33 dated 19.02.2017

registered at P.S Kotwali, Bathinda impugned in criminal appeal CRA-S-82-2022).

7. Learned counsel for the appellant rather than pressing the appeal on merit, submits that in the facts and circumstances of the present case, as the appellant has been in custody since 2018, his application for the concurrent running of sentences may be allowed as he is of young age and has been convicted only in petty cases of theft. He further submits that considering his age and circumstances, in view of the reformatory theory, appellant deserve to be given a chance to reform himself. In support of his contentions, he places reliance upon:

- i. **“Muthuramalingam v. State Rep. By Insp. of Police”** (SC) (Constitution Bench) : Law Finder Doc Id # 779467
- ii. **“Vicky @ Vikas v. State (Govt. of NCT of Delhi)”** (SC) : Law Finder Doc Id # 1676525
- iii. **“Jang Singh v. State of Punjab”** , (P&H) (FB) : Law Finder Doc Id # 135962

8. On the other hand, learned State Counsel submits that appellant is a habitual offender and therefore, he does not deserve any leniency and this application as well as appeal needs to be dismissed.

9. I have heard learned counsel for the parties and gone through the paper book of the case. I find substance in the argument raised by the learned counsel for the appellant. In view of the Full Bench judgment of this Court in **Jang Singh's** case (supra), this Court while acting as Appellate Court has the power to order the concurrent running of sentences and this discretion has to be exercised in the facts and circumstances of a particular case. Relevant concluding para is reproduced as under:

“....We are, thus, bound to take this view that this discretion though available with the trial Court, appellate Court or the revisional Court while holding trial or entertaining appeal or revision but would not be so available to be exercised in isolation when application in this regard is moved either under sections 482 or 427 Criminal Procedure Code. What principle and consideration will govern the exercise of this discretion, as already noted above can not be exhaustively enumerated. Certain relevant factors, as can be culled out from different judgments referred to above, may give an indication where such discretion may be exercised. These factors generally would be the nature or character of the offences committed, the prior criminal record of the offender, character his age and sex etc. ghastly nature of the crime. The offender being habitual would also be the factor, which can be relevantly taken into consideration. It may be stated at the cost of repetition that these are not the only reasons for which the Court can exercise this discretion. Discretion always is open to be exercised by any Court dependent upon the facts and circumstances of each case on any relevant or valid consideration as may be considered so by the Court while holding the trial or deciding the case at the stage of appeal or revision. It may require a notice that Section 427 Criminal Procedure Code as observed by Hon'ble Supreme Court is aimed at amelioration and this aspect may also require to be kept in view while exercising the discretion.....”

10. As argued by learned counsel for the State as well, though appellant appears to be a habitual offender as he has been convicted in one other case of similar nature and one case under Section 323 of IPC as well, but at the same time, as observed in **Jang Singh's** case (supra), nature and gravity of the offences would also have to be seen.

I have perused the judgment dated 21.09.2018 as well vide which the

appellant was under similar charges sentenced for 5 years, and perusal of both the cases reveal that charges against the appellant were of petty cases of theft only.

11. In similar circumstances, Rajasthan High Court in “**Taslim Ahmed v. State of Rajasthan**”, reported as 2006 (25) RCR (CrL.) 681 exercising its power under Section 427 of Cr.P.C., while guided by the reformatory approach, ordered the concurrent running of sentences considering the young age of the accused and relevant para therefrom, is reproduced below:-.

"8. Although sub-section (1) at the first blush appears to be of mandatory nature, but the fact that a discretionary power has been given to the Court to direct that subsequent sentences can run concurrently, sub-section (1) is merely directory and not mandatory. While passing sentence of punishment the trial court should be alive to the theories of punishment and to the purpose of punishment. The retributive theory of punishment no longer holds the field. It is the reformatory theory of punishment which is in forefront. The purpose of punishment is no longer to lock up a person and to forget about his human existence. The purpose is no longer to take revenge on the person by reducing him to a mere animal existence. Since the 19th century the purpose of punishment is to reform the offender to the point that he should be brought back into the mainstream of society as a productive and a contributory member. Therefore, long periods of incarceration do not achieve any purpose except to add frustration and pessimism to the life of accused, in an era of Human Rights where the right of the accused is as important as the rights of the free citizen, punishment has to be humane and purposeful rather than being draconian and absolute. Although the occasions, by keeping him incarcerated for long period of sixteen years would not do justice to him. For, petty offence of

theft he would be required to serve the sentence which ordinarily is reserved for sever offences. The courts are established for the purpose of doing justice to the people. By keeping him incarcerated, a grave injustice would be done to the petitioner. In the case of Mohan Lal @ Hanuman Singh (supra) this Court dealt with a case where a poor man had committed three incidents of theft and was sentenced to a total period of 17 years and 6 months. While relying on a Division Bench judgment of a Calcutta High Court and while applying the decision of this Court in the case of Jeevan & Ors. and Bachna Ram & Ors. (supra) this Court was pleased to direct that the sentences should run concurrently and not consecutively. Taking a cue from the said judgment, in the interest of justice, we direct that the sentences awarded to the petitioner in the aforementioned cases should run concurrently and not consecutively....."

As facts of the present case are also similar to the case as discussed above, in my considered opinion, appellant deserve the concession of leniency as he has been in custody since 2018 when he was of very young age i.e. 22 years and his extended incarceration rather might have negative impact on him as he would be in the company of hardened criminals.

12. In view of the discussion held above, application bearing no CRM-40483-2022 is allowed and post 08.12.2018, sentences of conviction passed by way of order dated 08.12.2018 and order dated 21.09.2018 shall run concurrently, however, in case the appellant has completed the sentence of punishment, he should be set at liberty forthwith if not wanted in any other case.

13. It is further clarified that this order is being passed keeping the young age of the appellant in mind, as he has been involved in multiple other cases, it would be appropriate to put some constraints

on him after his release. Therefore, for next 01 year after release, appellant is directed to mark his attendance in P.S. Kotwali, Bathinda once within first 7 days of each month and he shall leave the station only with the prior intimation to the concerned authority at the police station.

14. CRA-S-333-2019 is dismissed as not pressed.

15. Pending miscellaneous application(s), if any, shall also stand disposed of.

May 15, 2023
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No