



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.6/2023

Shri Sagar Ramesh Bhoyar,
aged about 28 Yrs., Occ. Nil,
(C/10160, presently in Central
Prison, Nagpur)

... Petitioner

- Versus -

1. State of Maharashtra,
through its Secretary, Home
Department, Mantralaya,
Mumbai-32.

2. Superintendent of Jail,
Central Prison, Nagpur,
District Nagpur.

... Respondents

Mr. Raju Kadu, Counsel for the Petitioner.
Mr. S.V. Narale, A.P.P. for Respondent Nos.1 and 2.

CORAM: VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
DATED : 22.3.2024.

ORAL JUDGMENT (Per Vinay Joshi, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. The petitioner has been convicted for two separate incidents by two separate Courts. It is petitioner's contention that both Courts below have sentenced him separately for commission of offence punishable under Sections 457 and 380 of Indian Penal Code. According to petitioner, in later order of conviction the Court ought to have directed that both sentences shall run concurrently in terms of Section 427 of the Code. The petitioner would urge that though both instances are separate but already he has undergone the maximum sentence imposed for both the offences. It is petitioner's contention that these are the only two offences registered against him and as he has already undergone seven years of imprisonment both sentences shall be made concurrent.

3. Initially the petitioner was charged for lurking house trespass and theft of cash Rs.3,000/- with cellphone on 8.7.2016. In said case bearing R.C.C. No.10/2017 guilt was held to be proved against the petitioner for the offence punishable under

Sections 457 and 380 of Indian Penal Code. The convicting Court has imposed maximum punishment of seven years for the offence punishable under Section 457 and five years of imprisonment for Section 380 of the Indian Penal Code vide judgment and order dated 7.7.2018.

4. The petitioner was also charged for another instance of committing lurking house trespass and theft of gold ornaments of Rs.1,75,000/- on 25.8.2017 i.e. after one year from earlier incident. In said case also the guilt was proved and the petitioner was similarly punished for seven years imprisonment for the offence punishable under Section 380 and equally seven years of imprisonment for offence punishable under Section 457 along with fine vide judgment and order dated 15.10.2018.

5. Apparently both were the separate incidents of lurking house trespass and theft in which the petitioner was separately tried and convicted. Whilst in second trial though

convicting Court has referred that petitioner was already involved in like offence, however, it was not in the context of use of discretion under Section 427 with reference to proportionality of imposing punishment.

6. The learned Counsel relied on the decision of this Court in case of Akash Rashtrapal Deshpande & Anr. V/s. State of Maharashtra & Anr. decided on 15.2.2019 in Criminal Writ Petition No.1036/2018 wherein this Court has considered in depth the very purport of Section 427 of the Code in the context of sentencing policy, theory of punishment vis-a-vis approach of Court. Ultimately this Court has directed that total eight convictions for the similar offence of Section 392 the punishment shall run concurrently.

7. In case at hand on query learned A.P.P. has submitted that besides these two convicted offences no other offence is registered against the petitioner. The first crime was merely about

the theft of Rs.3,000/- with a cellphone. In both cases punishment of seven years was imposed which according to us is an adequate quantum with respect to the act committed by the petitioner. Since the petitioner has already undergone seven years of imprisonment we do not find any reason to deny our judicial discretion in the context that no other offences are pending or registered against him.

8. In view of the above, writ petition is allowed.

We hereby direct that substantive sentence imposed on petitioner in R.C.C. No.10/2017 and R.C.C. No.141/2017 shall run concurrently. We make it clear that in case the petitioner did not deposit fine amount he shall undergo the default sentence separately for each crime.

The petition stands disposed in above terms.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)