



Crl.O.P.No.1347 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :10.06.2024

Pronounced on :13.06.2024

CORAM:

THE HONOURABLE DR JUSTICE G.JAYACHANDRAN

Crl.O.P.No.1347 of 2024

Azhagan @ Prabhu

.. Petitioner

/versus/

1. Director General of Prisons and Correctional Services,
Tamil Nadu Prisons and Correctional Services
Department,
Whannels Road,
Egmore, Chennai 600 008.

2. The Superintendent of Prisons,
Central Prison,
Yercaud Main Road,
Salem 636 008.

3. The Inspector of Police,
All Women Police Station,
Kodalalpatti, Salem 636 010.

4. The Inspector of Police,
Veeranam Police Station,
Veeranam, Salem 636 122.



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5.The Inspector of Police,
Kannakurichi Police Station,
Adivaram Road, Kannankurichi,
Salem 636 008.

.. Respondents

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to set off the sentences for the period already undergone by the petitioner and further direct all the sentences imposed on the petitioner to run concurrently.

For Petitioner :Mr.S.Jeyakumar

For Respondents :Mr.S.Udaya Kumar
Govt.Advocate (Crl.Side)

ORDER

The petitioner herein is a convict in S.C.No.23 of 2015 on the file of the Sessions Judge, Mahila Court, Salem. He was tried for the offences punishable under Sections 363, 366 and 506(ii) of IPC and Section 6 r/w 5 (k) and 5(i)(ii) of POCSO Act, 2012 and he found not guilty for the offence punishable under Sections 363 and 366 of IPC and found guilty for the offence punishable under Sections and sentenced him as below:-



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<i>Sl. No.</i>	<i>Conviction under Section</i>	<i>Period of sentenced imposed on him</i>
1.	506(i) of IPC	To undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default to undergo 3 months Simple Imprisonment.
2.	6 r/w 5(k) and 5(j)(ii) of POCSO Act	To undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.50,000/- in default to undergo 6 months Simple Imprisonment

2. The judgment of the trial Court in S.C.No.23 of 2015 is challenged by the petitioner before the High Court in Crl.A.No.146 of 2022. The appellate Court partly allowed the appeal and found the accused guilty for the offence under Section 376 of IPC instead of Section 6 r/w 5(k) and 5(j)(ii) of POCSO Act, 2012. Consequently, the term of imprisonment modified from 10 years to 7 years Rigorous Imprisonment. The fine of Rs.50,000/- is confirmed. As far as the sentence for the offence under Section 506(i) of IPC is upheld. This order in the appeal came to be passed on 27.07.2022.

3. The present petition is filed under Section 482 of Cr.P.C seeking a relief of set off the sentences for the period already undergone



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by the petitioner herein in connection with three other cases in which he had been convicted for a term of imprisonment for 3 years and 18 months respectively and direct the first and second respondents to consider the sentences imposed in all the other three cases to run concurrently with the period of imprisonment in S.C.No.23 of 2015 on the file of the Sessions Judge, Mahila Court, Salem.

4. For the said purpose, the petitioner would rely upon Section 427(1) of Cr.P.C., and few judgments of this Court, which has extended the benefit of ordering the sentence to run concurrently along with the sentence imposed in the previous conviction.

5. The learned Government Advocate (Crl.Side) appearing for the State submits that a plain reading of Section 427(1) and (2) of Cr.P.C., and State Amendment would clearly indicate that a person, who suffers previous conviction either for a term, the subsequent conviction should run, after expiry of the previous conviction. Only in case the previous conviction is for life imprisonment, the subsequent conviction



shall run concurrently with the previous conviction of the life sentence.

6. Heard both sides and perused the records.

7. The petitioner herein been convicted in four different cases for four different offences occurred on four different place and date. In S.C.No.23 of 2015 convicted to undergo 7 years Rigorous Imprisonment as per the order of the High Court in the appeal as explained supra. In C.C.No.118 of 2013 on the file of the Judicial Magistrate No.IV, Salem, the petitioner is the first accused. He along with the second accused Meganathan on 04.08.2013 committed an act of house breaking and theft. Therefore, they were tried for the offences under Sections 457 and 380 of IPC. The petitioner was convicted and sentenced to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default to undergo 3 months Simple Imprisonment for the offence under Section 457 IPC and to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default to undergo 3 months Simple Imprisonment for the offence under Section 380 of IPC. The period of sentence already



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undergone was ordered to be set off and the period of imprisonment in both the offences ordered to run consecutively. Against the judgment in C.C.No.118 of 2013, the petitioner preferred an appeal in Crl.A.No.107 of 2019 before III Additional District and Sessions Court, Salem. The judgment of the trial Court in C.C.No.118 of 2013 was confirmed. However, the revision in Crl.R.C.No.1820 of 2023 filed before the High Court, the period of sentence was ordered to run concurrently.

8. In C.C.No.191 of 2017, on 14.03.2017, this petitioner along with two other accused committed house trespass and theft. He faced trial for the offences under Sections 454 and 380 of IPC., vide judgment dated 09.07.2018, the petitioner was sentenced to undergo 18 months Simple Imprisonment and to pay a fine of Rs.1000/- in default to undergo 4 months Simple Imprisonment for the offence under Section 454 of IPC and to undergo 18 months Simple Imprisonment and to pay a fine of Rs.1000/- in default, to undergo 4 months Simple Imprisonment for the offence under Section 380 of IPC. The period of sentence already undergone was ordered to be set off and the period of imprisonment in



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both the offences to run concurrently. Similarly in C.C.No.121 of 2017 on identical facts he was sentenced to undergo 18 months Simple Imprisonment and fine of Rs.1000/- in default 4 months Simple Imprisonment.

9. From the records, this Court finds that out of four cases mentioned above, the first conviction was in C.C.No.118 of 2013, dated 13.09.2017, for a period of three years Rigorous Imprisonment. The second conviction was in S.C.No.23 of 2015, on 29.06.2018 for a period of seven years Rigorous Imprisonment (as modified by the High Court in Crl.A.No.146 of 2022). The third conviction and the fourth conviction were on 09.07.2018 in C.C.No.191 of 2017 and C.C.No.121 of 2017 both on the file of the Judicial Magistrate No.IV, Salem for the period of 18 months Simple Imprisonment in each cases.

10. It is pertinent to record at this juncture that in both C.C.Nos.191 and 121 of 2017, though the judgments were passed on the same day by the same Judge, the Court consciously did not order



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sentence in both the cases to run concurrently, though the offences in both the cases are one and the same.

11. Section 427 of Cr.P.C., deals with situation like this and how the period of sentence has taken into consideration, when the previous conviction is already imposed, where the Court awards separate sentences in two different cases on the same day, but does not give any direction in the judgment whether the sentences shall be suffered concurrently and consecutively, then by necessary implication, it shall be meant that the sentences are to run consecutively and not concurrently and even if the trial Court is aware of the fact that the accused suffers the previous conviction and the same is in force, it is not obligatory on the part of the trial Court to direct in all the case that the subsequent sentence shall run concurrently with the previous sentence.

12. The plain reading of Section 427 of Cr.P.C. would clearly show that the intention of the legislature is to make the subsequent sentence to run consecutively on the expiry of the previous sentence. Only



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in appropriate cases, the Court can make the sentence to run concurrently with the sentence imposed earlier. If Section 427(1) of Cr.P.C., applied, the first conviction on 13.09.2017 for a period of three years in C.C.No.118 of 2013 is the previous conviction, insofar as seven years imprisonment (as modified by the High Court) in S.C.No.23 of 2015 in judgment dated 29.06.2018 and the sentences in C.C.No.191 of 2017 and C.C.No.121 of 2017 on 09.07.2018 have to run, after the expiry of the previous conviction, namely, the conviction of three years imprisonment in C.C.No.118 of 2013, then the conviction of seven years in S.C.No.23 of 2015 followed by 18 months conviction each in C.C.No.191 of 2013 and C.C.No.121 of 2013 one after another.

13. As pointed out earlier in the absence of explicit order by the trial Court regarding sentences imposed in C.C.No.191 of 2017 and C.C.No.121 of 2017 for an identical offence and on the same day, i.e. on 09.07.2018, the sentences have to obviously run consecutively one after the other.



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14. This Court called for the particulars regarding the period of imprisonment of the petitioner. The said records indicates that the petitioner was first remanded in C.C.No.118 of 2013 on 15.08.2013 and released on bail on 13.09.2013. He had committed rape and arrested for the offence under Section 6 of POCSO Act, on 20.12.2013. In this case, he was released on bail on 20.03.2014. While on bail, he had committed an offence of house breaking and theft leading to registration of two other First Information Reports. In these two cases, he was secured on 21.02.2017 and later released on bail, pending trial.

15. Thus, it is clear that in all the four cases, he had been under trial prisoner for certain period and the said period overlaps with each other. The said period has been set off by the Court in all four cases and he is expected to undergo imprisonment only for the remaining period.

16. The following judgments relied by the learned counsel appearing for the petitioner would indicate that the High Court is empowered to order the sentences to run concurrently along with the



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period of imprisonment in the previous conviction and the same depends upon the gravity of the offences.

(i)Selvakumar @ Jeyakumar v. The Inspector of Police, Seidhunganallur Police Station and others reported in [2018(2) LW (Crl.)773]; and

(ii)Mani v. State rep.by Sub Inspector of Police, Peerkankaranai Police Station, Chennai and another reported in [2019(1) MWN (Cr.)229]

17. It is beneficial to refer the judgment of the Hon'ble Supreme Court rendered in ***V.K.Bansal v. State of Haryana and ors. reported in Manu/SC/0673/2013*** wherein the Hon'ble Supreme Court had interpreted Section 427 of Cr.P.C, as below:-

“8. Section 427 of the Code of Criminal Procedure deals with situations where an offender who is already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life. It provides that 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



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sentence.

9. That upon a subsequent conviction the imprisonment or imprisonment for life shall commence at the expiration of the imprisonment which has been previously awarded is manifest from a plain reading of the above. The only contingency in which this position will not hold good is where the Court directs otherwise. Proviso to Sub-section (1) to Section 427 is not for the present relevant as the same deals with cases where the person concerned is sentenced to imprisonment by an order under Section 122 in default of furnishing security which is not the position in the case at hand. Similarly Sub-section (2) to Section 427 deals with situations where 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. Sub-section (2) provides that the subsequent sentence shall in such a case run concurrently with such previous sentence.”

18. Further, in this said judgment, the Hon'ble Supreme Court has opined that the nature of the power under Section 427 of Cr.PC as below:

“10.the nature of power available to the Court under Section 427(1) of the Code, which in our opinion stipulates a general rule to be followed except in



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three situations, one falling under the proviso to Sub-section (1) to Section 427, the second falling under Sub-section (2) thereof and the third where the Court directs that the sentences shall run concurrently. It is manifest from Section 427(1) that the Court has the power and the discretion to issue a direction but in the very nature of the power so conferred upon the Court the discretionary power shall have to be exercised along judicial lines and not in a mechanical, wooden or pedantic manner. It is difficult to lay down any strait jacket approach in the matter of exercise of such discretion by the Courts. There is no cut and dried formula for the Court to follow in the matter of issue or refusal of a direction within the contemplation of Section 427(1). Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed, and the fact situation in which the question of concurrent running of the sentences arises. High Courts in this country have, therefore, invoked and exercised their discretion to issue directions for concurrent running of sentence as much as they have declined such benefit to the prisoners”.

19. Out of the four cases in which, the petitioner is convicted in three cases the nature of the offences are against the property and one offence is against the person. Their character and nature are different.



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Further, these offences are committed at different point of time.

Therefore, clubbing the period of sentence imposed in all four cases will be patently contrary to Section 427 of Cr.P.C, that power can be exercised only in exceptional cases to meet the ends of justice.

20. Therefore, considering the facts and circumstances of the case and in the light of the judgments cited above, this Court holds that the conviction in C.C.No.118 of 2013, dated 13.09.2017 is the first conviction and that is the previous conviction for the purpose of applying Section 427 Cr.P.C, the imprisonment imposed in this case is three years of Rigorous Imprisonment. This has to be followed by the second conviction imposed is in S.C.No.23 of 2015. The date of judgment is 29.06.2018 and the period of 10 years Rigorous Imprisonment imposed by the trial Court has been modified to seven years by the High Court. After this conviction, the petitioner has suffered conviction in two more cases i.e. C.C.Nos.191 of 2017 and 121 of 2017. In both cases, the judgment was delivered on 09.07.2018. Sentence for a period of 18 months Simple Imprisonment in both the cases, he was convicted for the



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offences under Sections 454 and 457 and 380 of IPC. Though the trial Court has not ordered sentence in these two cases shall run concurrently, the same may be ordered by an explicit order/direction.

21. Therefore, this Court directs:-

(i) on expiry of the first conviction in C.C.No.118 of 2013, the period of sentence in S.C.No.23 of 2015 has to commence, after giving set off for the period already undergone as under trial prisoner in that case.

(ii) On the expiry of the said period of seven years, giving set off to the period already undergone as under trial prisoner, the sentence imposed in C.C.No.191 of 2017 and C.C.No.121 of 2017, judgment dated 09.07.2018 shall follow and run concurrently with each other. The period of 18 months Simple Imprisonment shall be after giving set off the period already undergone as under trial prisoner in those two cases.

(iii) The first and second respondents shall take note of this direction and pass appropriate orders for release of the petitioner on completion of sentence as directed above.



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22. With the above observations, this Criminal Original Petition is allowed.

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Index:yes

Neutral Citation:yes/no
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To

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2. The Superintendent of Prisons, Central Prison, Yercaud Main Road, Salem 636 008.

3. The Inspector of Police, All Women Police Station, Kodalalmpatti, Salem 636 010.

4. The Inspector of Police, Veeranam Police Station, Veeranam, Salem 636 122.

5. The Inspector of Police, Kannakurichi Police Station, Adivaram Road, Kannankurichi, Salem 636 008.

6. The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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delivery order made in
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