

231 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-5437-SB-2015
DECIDED ON: 15.07.2024

UDEYVIR SINGH

....APPELLANT

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. J.S. Brar, Advocate
for the appellant.

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J

CRM-42132-2015

Prayer in the present application under Section 427 Cr.P.C. read with Section 482 Cr.P.C. for ordering the sentence to run concurrently in FIR No. 511, dated 22.11.2014, under Section 307 IPC and 25 of Arms Act, FIR No. 248, dated 24.07.2004, Section 302 IPC, registered at Police Station City Kaithal and FIR No. 99, dated 24.05.2001, under Section 302 IPC, registered at Police Station City Dadri, Bhiwani.

It is contended by learned counsel for the applicant/appellant that since the sentence of the applicant/appellant has not been made concurrent, therefore, he is required to undergo sentence of 38 years in total. The sentence should be directed to run concurrently as per Section 427 Cr.P.C.

The respondent/State has opposed the application by raising the preliminary objection that the present application itself is not maintainable, inasmuch as no appeal/revision was filed against any of the convictions and, so

the applicant/appellant cannot approach this Court to get the sentences run concurrently by taking the aid of Section 482 Cr.P.C.

It has been conceded during arguments by learned counsel for the applicant/appellant that no appeal or revision was filed against any of the three convictions recorded by the Courts below.

In the aforesaid facts and circumstances, the question is whether the present application is maintainable?

This aspect was considered by Hon'ble Supreme Court in [M.R. Kudva Vs. State of Andhra Pradesh](#), 2007(1) RCR (Criminal) 868. In that case, conviction of the appellant was recorded in two cases in respect of two distinct and different offences. Separate appeals filed against those convictions were dismissed by the High Court. Special Leave Petitions filed against these, were dismissed by Hon'ble Supreme Court and it is only thereafter that an application under Sections 482/427 Cr.P.C. was filed in the High Court praying for sentences imposed in the two cases to run concurrently. Said application was rejected by the High Court, against which order, appeal was preferred before Hon'ble Supreme Court.

In above cited [M.R. Kudva](#)'s case, appellant had placed reliance on Mohd. Akhtar Hussain alias [Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs \(Prevention\), Ahmedabad 1988\(4\) SCC 3](#) and [Ammavassi Vs. Inspector of Police, Valiyanur, AIR 2000 Supreme Court 3544](#).

In Mohd. Akhtar's case (supra), it had been held by the Apex Court that basic rule of thumb over the years has been the so- called single transaction rule for concurrent sentences. If a given transaction constitutes two different offences under two enactments, generally it is wrong to have consecutive sentences and rather, it is proper and legitimate to have concurrent sentences.

However, this rule has no application, if the transaction relating to the offences is not the same or the facts constituting the two offences are quite different.

In Ammavassi's case (Supra), the appellants were convicted for four different cases and they claimed benefit of Section 427 Cr.P.C. in order to avoid undergoing imprisonment of total period of 28 or 35 years of jail. The Apex Court took the view that 14 years of rigorous imprisonment would meet the ends of justice. It is clear that though the Apex Court had applied provision of Section 427 Cr.P.C., but still made the sentences in two cases to run concurrently.

With the above background, Hon'ble Supreme Court in [M.R. Kudva](#)'s case (Supra), while dismissing the appeal for concurrent sentence, held as under: -

“9. The said decisions, therefore, are not the authorities for the proposition that it is incumbent upon the court to direct in a case of this nature that both the sentences shall run concurrently and not consecutively.

10. However, in this case the provision of Section 427 of the Code was not invoked in the original cases or in the appeals. A separate application was filed before the High Court after the special leave petitions were dismissed. Such an application, in our opinion, was not maintainable. The High Court could not have exercised its inherent jurisdiction in a case of this nature as it had not exercised such jurisdiction while passing the judgments in appeal. Section 482 of the Code was, therefore, not an appropriate remedy having regard to the fact that neither the Trial Judge, nor the High Court while passing the judgments of conviction and sentence indicated that the sentences passed against the appellant in both the cases shall run concurrently or Section 427 would be attracted. The said provision, therefore, could not be applied in a separate and independent proceeding by the High Court. The appeal being

devoid of any merit is dismissed."

Thus, the view taken by the Apex Court in [M.R. Kudva's](#) case (supra) leave no scope of doubt with regard to the invoking of inherent power of Section 482 Cr.P.C. in isolation to entertain application for making the sentences to run concurrently.

The said aspect has also been considered by a Full Bench of this High Court in [Jang Singh Vs. State of Punjab](#), 2008(1) RCR (Criminal) 323, wherein this Court noticed that the said issue with regard to the maintainability of the petition/application under Section 482/427 Cr.P.C. had also been agitated before number of High Courts. Specific reference was made to the decision of Full Bench of Madhya Pradesh High Court in [Sher Singh Vs. State of M.P.](#), 1989(1) RCR (Criminal) 696 (MP), wherein it had been held that High Court in exercise of its inherent power under Section 482 Cr.P.C. can direct running of the previous and subsequent sentences concurrently, even if no order is passed by the sentencing Court in this regard and where the conviction has also become final. The similar view was also taken by Full Bench of Allahabad High Court in [Muliam Singh Vs. State](#) 1974 CriLJ 397. However, contrary view was taken by Full Bench of Delhi High Court in [Gopal Dass Vs. State](#) AIR 1978 Delhi 138.

After referring to the above referred Full Bench authorities of different High Courts and various other authorities taking different views by the different High Courts and the view expressed by Hon'ble Supreme Court in [M.R. Kudva's](#) case (Supra), Full Bench of this Court in [Jang Singh's](#) case (Supra) concluded as under: -

"The consensus of the judicial opinion, as may emerge from different judgments passed by various High Courts and the Hon'ble Supreme Court, seems to be that normal rule, as per Section 427 of

*Criminal Procedure Code, is that, a person who is undergoing a sentence of imprisonment and is sentenced on a subsequent conviction to an imprisonment or an imprisonment for life, then such imprisonment or imprisonment of life shall commence after the expiration of the imprisonment, to which he has been previously sentenced. This, however, would not be so if the Court directs that the subsequent sentence shall run concurrently with the previous sentence. Such direction to make the sentences to run concurrently, as per various decisions noted above, can be exercised by the trial Court or by the appellate Court or a revisional Court at the time of exercising appellate or revisional jurisdiction as well. However, if the trial Court does not pass any such direction for making the sentences to run concurrently and appeal or revision against said decision is also decided, then it may not be open for a person to seek such direction for making the sentences to run concurrently by moving an application under Sections 482/427 of the Criminal Procedure Code. The view taken by of the High Courts that such an application can be entertained while exercising inherent powers under Section 482 Criminal Procedure Code would no more appear to be a good law in view of the decision of the Hon'ble Supreme Court in [M.R. Kudva](#) case (*supra*). 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 of the [Criminal Procedure Code](#)."*

In view of the aforesaid legal position, present application filed under Section 482 read with [Section 427](#) Cr.P.C., seeking concurrency of sentence in three cases, is held to be not maintainable. The legal position is clear that once the judgments of conviction and sentences have attained finality in different cases, separate petition under Section 482 Cr.P.C. for concurrency of sentence is not maintainable, therefore, there can be no hesitation in holding that

present petition is not maintainable.

Consequently, the instant application is hereby dismissed.

CRA-S-5437-SB-2015(O&M)

1. Relief Sought

The instant appeal has been preferred by the appellant-Udeyvir Singh, challenging the judgment of conviction and order of sentence dated 10.10.2006 passed by Additional Sessions Judge, Kaithal whereby he has been convicted for commission of offence under Section 307 IPC and Section 25 of Arms Act, 1959 and has been sentenced to undergo RI for a period of 10 years along with fine of Rs.5,000/- for an offence under Section 307 IPC and in default thereof to further undergo RI for a period of two months: to undergo RI for a period of 2 years for an offence under Section 25 of Arms Act, 1959.

2. Facts

The facts as narrated in the FIR reads as under:-

On 22.11.2004 accused Surender, Umesh and Balwan were brought to District Courts Kaithal from Kurushtera jail to produce them in case no. 203/2004 and case no, 119/2004 by the police and some other accused were also brought to District courts, Kaithal from sub jail, Kaithal to produce them in the above mentioned both cases by the police. At about 12.30 PM all the accused were produced in the court of Smt. Bimlesh Tanwar, learned Additional Chief Judicial Magistrate, Kaithal and at the same time a person who was wearing the dress of an advocate, aged 22-23 years holding some files came in the said court and at that time, three young persons were also accompanied by that person. Later on, the identity of the said three persons were established as Mahavir son of Mahender, resident of Shishaye, Sandeep son of Rohtash, resident of Pabra and the person who was wearing the dress of an Advocate was known as

Udeyvir Singh son of Raj Kumar, resident of Shishaye, District Hissar. The said Udeyvir Singh took out a 315 bore country made pistol from pocket of his coat and fired from the pistol towards Surender son of Ishwar, resident of Geong with the intention to kill him and the same was hit on the chin of said Surender, Joginder son of Ishwar who was also standing there, sustained injuries near his nose due to said fire. Co-accused Sandeep alongwith Mahabir and Surender Kundu succeeded in escaping from the spot in Maruti Car bearing No. HR20H-9705 while accused Udeyvir Singh was apprehended on the spot. Hence, the present FIR.

After completion of investigation challan stands presented against the appellant.

On finding a *prima-facie* case, the accused was charge-sheeted under Section 307 IPC and Section 25 of Arms Act, 1959, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1 HC Ram Singh.

The accused was held guilty for commissioning of offence under Section 307 IPC and Section 25 of Arms Act, 1959, as he himself has confessed his guilt voluntarily without any inducement, threat or coercion.

Being aggrieved and dissatisfied with the impugned judgment of conviction and order of sentence, the present appeal has been filed.

3. **CONTENTIONS**

ON BEHALF OF COUNSEL FOR THE APPELLANT:

Learned counsel for the appellants has contended that the appellant has confessed his guilty due to fear of killed by other gang.

ON BEHALF OF LEARNED STATE COUNSEL

Learned State counsel has contended that the appellant was convicted on account of the fact that he has confessed his guilt without any pressure or inducement. Moreover, he is involved in multiple cases of similar nature, meaning thereby, he is habitual offender.

4. Analysis & Conclusion

In the present case, there is specific allegation against the appellant that he took out his .315 bore country made pistol and fired towards the Surender, which hit on the chin of the victim. The trial Court has held the appellant guilty for commission of offence punishable under Section 307 IPC and 25 of Arms Act considering the confessional statement suffered by the appellant in the Court. Once the appellant has confessed his guilt voluntarily without any inducement, threat or coercion, no ground for interference is made out with regard to the conviction of the appellant is concerned. Furthermore, if the accused person had confessed his guilt before a court and was convicted on such confession he cannot appeal against his conviction but can only challenge the extent or legality of the sentence. Section 375 Cr.P.C. is reproduced, as under:-

375. No appeal in certain cases when accused pleads guilty.

Notwithstanding anything contained in Section 374, where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal,

(a) if the conviction is by a High Court; or

(b) if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence.

Keeping in view the confessional statement suffered by the appellant, the sentence awarded to the appellant cannot be reduced. Moreover, the appellant is also involved in multiple cases of similar nature, which is sufficient for this Court to infer that he is a habitual offender. The appellant does not deserve any leniency being habitual offender.

In view of the discussions made hereinabove, this Court does not find any merit in the present appeal, hence, the same is dismissed being devoid of any merits. The appellant is directed to deposit the fine as imposed by the trial Court vide its judgment of conviction and order of sentence dated 10.10.2006.

Pending criminal miscellaneous application, if any, shall also stands disposed off.

15.07.2024
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(SANDEEP MOUDGIL)
JUDGE

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