

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-9179-2020
Date of Decision: 15.04.2024

BRIJ MOHAN @ BRIJESH

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. V.S. Rana, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. read with Section 427(1) Cr.P.C. is for the issuance of directions that the sentence awarded vide judgment and order dated 24.07.2006 in FIR No.422 dated 24.11.1999 registered under Sections 307, 341, 34 IPC at Police Station Sadar Palwal, District Faridabad be ordered to concurrently with the conviction and sentence in the Trial emanating out of FIR No.376 dated 22.09.2000 registered under Sections 302, 34 IPC at Police Station Sadar Palwal, District Palwal.

2. The petitioner was convicted and sentenced in the following cases:-

Sr. No.	FIR No. dated	U/s	P.S.	Sentence	Date of sentence	Name of Court
1.	FIR No.422 dt. 24.11.99	307, 341, 34 IPC	Sadar Palwal	6 years	24.7.06	ASJ Faridabad
2.	FIR No.376 dt. 22.9.2000	302, 34 IPC	Sadar Palwal	Life imprisonment	1.11.06	ASJ Faridabad

3.	FIR No.374 dt. 1.10.01	14, 149, 302, 307, 120-B IPC and 25 Arms Act	Sadar Palwal	Life imprisonment	30.1.07	ASJ Faridabad
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3. The petitioner filed an appeal No.1816-SB-2006 in FIR No.422 dated 24.11.1999 which is still pending adjudication. As against the convictions in FIR No.376 dated 22.09.2000 and FIR No.374 dated 01.10.2001, he filed CRA-D-182-DB-2007 and CRA-D-398-DB-2007 respectively which were dismissed by this Court.
4. The sentence awarded in the Trial emanating out of FIR No.374 dated 01.10.2001 U/s 148, 149, 302 IPC, P.S. Sadar Palwal was ordered to run concurrently with the sentence awarded in the Trial emanating out of FIR No.376 dated 22.09.2000 U/s 302/34 IPC, P.S. Sadar Palwal, District Palwal vide judgment dated 12.02.2017 passed by this Court in CRWP No.1310 of 2015.
5. Now the instant petition has been filed seeking the concurrent running of sentences in the conviction recorded in the Trial emanating out of FIR No.422 dated 24.11.1999 and that recorded in FIR No.374 dated 01.10.2001.
6. The learned counsel for the petitioner contends that in terms of Section 427(1) Cr.P.C. this Court could direct that the subsequent sentence would run concurrently with the previous sentence. In case, the discretion was not exercised by this Court, the petitioner would suffer irreparable loss and injustice. Reliance is placed on the judgments in the cases of **Sher Singh Versus State of M.P., 1989(1) R.C.R. (Criminal) 696** and **Joginder Singh Versus State of Punjab, 1996(3) R.C.R. (Criminal) 74.**

7. On the other hand, the learned State counsel contends that while exercising powers under Sections 427(2) Cr.P.C. this Court had already directed the concurrent running of sentences in Trials emanating out of FIR No.376 dated 22.09.2000 and FIR No.374 dated 01.10.2001. Section 427(2) Cr.P.C. was in the nature of a positive mandate where this Court had no discretion but to order concurrent running of sentences in each case of life imprisonment. On the contrary, as regards Section 427(1) Cr.P.C., the discretion lay with the Court as to whether thought it fit to order the subsequent sentence to run concurrently with previous sentence. As convictions had been recorded for different offences by different Courts on different dates and the offences in question being under Sections 307 IPC and 302 IPC respectively which were of a heinous nature this Court ought not to exercise its discretion under Section 427(1) Cr.P.C. to order the sentences to run concurrently. Reliance is placed on the judgments in the case of **Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti Versus Assistant Collector of Customs (Prevention), Ahmedabad & others, 1988(4) SCC 183.**

8. The learned counsel for the State further contends that it was the duty of the Court to impose such punishment that would have the effect of deterring other potential criminals and must also be appropriate befitting the crime which in the present case is attempt to murder. Reliance is placed on the judgments in the cases of **Akram Khan Versus State of West Bengal, 2012(1) R.C.R. (Criminal) 168, Mulla & Another Versus State of U.P., 2010 AIR (Supreme Court) 342, State of Rajasthan Versus Gajendra Singh, 2008(3) R.C.R. (Criminal) 943 and State of Karnataka Versus Sharanappa Basnagouda Aregoudar, 2002(2) R.C.R. (Criminal) 271.**

9. I have heard the learned counsel for the parties.
10. Before proceeding further in the matter, it would be apposite to examine Section 427 of the Code of Criminal Procedure, 1973 and the same is reproduced hereinebelow:-

Section 427 of the Code of Criminal Procedure, 1973

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.”

11. Section 427(2) Cr.P.C. is in the nature of a positive mandate to the Court that it shall in all cases order sentences to run concurrently in a case where the first sentence is of life and the second sentence is for a fixed term or for life. As regards Section 427(1) Cr.P.C. the discretion lies with the Court to order the sentences in two cases to run concurrently in those cases

where the first conviction is for a sentence other than life as in the present case.

12. As regards the judgments referred to by the petitioner, in **Joginder Singh** (supra), the petitioner/accused therein was tried separately in five cases before the same Court under Section 409 IPC and was convicted in each of the five cases by a separate judgment on the same date and awarded a substantive sentence of one year in each case. It was in that scenario that the Court held that the sentences in each case were to run concurrently. In the case of **Sher Singh** (supra), a Full Bench of the Madhya Pradesh High Court held that the High Court in exercise of its power under Section 482 Cr.P.C. read with Section 427(1) Cr.P.C. could at any stage order sentences to run concurrently.

13. As against these judgments, the Hon'ble Supreme Court in the case of **Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti** (supra), held as under:-

"9. Section 427 Criminal Procedure Code, 1973 incorporates the principle of sentencing an offender who is already undergoing a sentence of imprisonment. The relevant portion of the Section reads:

"427.(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. xx xx xx"

10. The Section relates to administration of criminal justice and provides procedure for sentencing. The sentencing court

is, therefore, required to consider and make an appropriate order as to how the sentence passed in the subsequent case is to run Whether it should be concurrent or consecutive?

11. The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.

12. In this appeal, the primary challenge to the sentence is based on assumption that the two cases against the appellant, under the Gold (Control) Act, and the Customs Act pertain to the same subject matter. It is alleged that the appellant was prosecuted under the two enactments in respect of seizure of 7000 tolas of gold. On this basis, reference is also made to Section 428 Criminal Procedure Code, 1973 claiming set off in regard to the period of imprisonment already undergone by the appellant.

13. The submission, in our opinion, appears to be misconceived. The material produced by the State unmistakably indicates that the two offences for which the appellant was prosecuted are quite distinct and different. The case under the Customs Act may, to some extent, overlap the case under the Gold (Control) Act, but it is evidently on different transactions. The complaint under the Gold (Control) Act relates to possession of 7000 tolas of primary gold prohibited under Section 8 of the said Act. The complaint under the Customs Act is with regard to smuggling of Gold worth Rs. 12.5 crores and export of silver worth Rs. 11.5 crores. On these facts, the Courts are not unjustified in directing that the sentences should be consecutive and not concurrent.

(emphasis supplied)

14. As regards imposition of sentence the Hon'ble Supreme Court has held as under:-

In **Akram Khan** (supra) it was held as under:-

"20. Now, we have to see whether the sentence imposed by the trial Court and confirmed by the High Court is appropriate or not? We have already extracted Section 364A in the earlier paras which stipulates that if the prosecution establishes beyond doubt that the kidnapping was for ransom, the sentence provided in this Section is death or imprisonment for life and also be liable to fine.

21. In Mulla and Another v. State of Uttar Pradesh 2010(2) RCR (Criminal) 176 : 2010(2) RAJ (R.A.J.) 54 : (2010) 3 SCC 508, after considering various earlier decisions, this Court held as under:-

"67. It is settled legal position that the punishment must fit the crime. It is the duty of the court to impose proper punishment depending upon the degree of criminality and desirability to impose such punishment. As a measure of social necessity and also as a means of deterring other potential offenders, the sentence should be appropriate befitting the crime."

We fully endorse the above view once again.

(emphasis supplied)

In **Mulla & Another** (supra) it was held as under:-

"42. It is settled legal position that the punishment must fit the crime. It is the duty of the Court to impose proper punishment depending upon the decree of criminality and desirability to impose such punishment. As a measure of social necessity and also as a means of deterring other potential offenders, the sentence should be appropriate befitting the crime.

(emphasis supplied)

In *State of Rajasthan* (supra) it was held as under:-

13. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. This position was illuminatingly stated by this Court in Sevaka Perumal etc. v. State of Tamil Nadu, 1991(2) RCR (Criminal) 427 .

14. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.

15. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite

apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

16. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Counce Mc Gautha v. State of California, 402 US 183 : 28 L.D. 2d 711 that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

17. The object should be to protect the society and to deter the criminal in achieving the avowed object to law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

18. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency

which have great impact on social order, and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

(emphasis supplied)

In **State of Karnataka** (supra) it was held as under:-

6. We are of the view that having regard to the serious nature of the accident, which resulted in the death of four persons, the learned Single Judge should not have interfered with the sentence imposed by the court below. It may create and set an unhealthy precedent and send wrong signals to the courts which have to deal with several such accident cases. If the accused are found guilty of rash and negligent driving, courts have to be on guard to ensure that they do not escape the clutches of law very lightly. The sentence imposed by the courts should have deterrent effect on potential wrong-doers and it should commensurate with the seriousness of the offence. Of course, the Courts are given discretion in the matter of sentence to take stock of the wide and varying range of facts that might be relevant for fixing the quantum of sentence, but the discretion shall be exercised with due regard to larger interest of the society and it is needless to add that passing of sentence on the offender is probably the most public face of the criminal justice system.

(emphasis supplied)

15. Coming back to the facts of the instant case, it is apparent that the petitioner was initially convicted in FIR No.422 dated 24.11.1999 under Sections 307, 341, 34 IPC Police Station Sadar Palwal, District Faridabad for

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a period of six years by the Court of Addl. Sessions Judge, Faridabad. Thereafter, he was convicted in FIR No.376 dated 22.09.2000 U/s 302/34 IPC, P.S. Sadar Palwal, District Palwal. Subsequently, he was convicted in FIR No.374 dated 01.10.2001 U/s 148, 149, 302 IPC, P.S. Sadar Palwal. As FIR Nos.376 and 374 were cases in which he was sentenced to imprisonment for life this Court had exercised its powers in terms of Section 427(2) Cr.P.C. and had ordered that the sentences would run concurrently. However, in the instant case, the petitioner seeks the concurrent running of sentences in terms of Section 427(1) Cr.P.C. The exercise of powers under Section 427(1) Cr.P.C. are the subjective satisfaction of the Court based on certain parameters. In the case of **Joginder Singh** (supra), the power was exercised as the accused therein had been convicted for the same offence in five different cases by separate judgments on the same day and by the same Court. It was in that situation that the power had been exercised to order the concurrent running of sentences. However, the instant case is distinguishable on facts and the judgment in **Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti** (supra) would apply on all fours as each case is totally distinct and the offences do not arise out of the same transaction. Apparently, in FIR No.422 dated 24.11.1999 the conviction was recorded on 19.07.2006/24.07.2006 by the Court of Addl. Sessions Judge, Faridabad. The subsequent FIR Nos.376 and 374 were both under Section 302 IPC and lead to separate convictions by separate Courts of Addl. Sessions Judge, Faridabad. There is absolutely no justifiable reason for this Court to exercise its discretionary power under Section 427(1) Cr.P.C. as the offences in question in each case are completely different do not arise out of the same transaction and are otherwise heinous

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offences. In fact, if the argument was to be accepted that in every case the Court ought to exercise its powers under Section 427(1) Cr.P.C. then there would be multiple convictions for varying periods of time by different Courts for different offences and the Courts would be obligated to order concurrent running of sentences which defeats the very purpose of imposition of a sentence which must be not only deterrent in nature but must be befitting the crime. A sentencing policy which is unusually mild and sympathetic in its operation would have a disastrous effect on society and would do more harm than good to public confidence in the efficacy of law. It is therefore, the duty of every Court to award appropriate sentence having regard to the nature of the offence. Therefore, in cases where a person is a serial offender and that too for committing heinous crimes, the Courts would do well in not wanting to exercise their powers under Section 427(1) Cr.P.C. to order concurrent running of sentences.

16. In view of the above discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

15.04.2024

JITESH

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