



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22445-2024
DECIDED ON: 06.05.2024

NAND KUMAR

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. M.S.Kathuria, Advocate
for the petitioner.

Mr. B.S.Virk, Sr. DAG, Haryana

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this court has been invoked under Section 482 Cr.P.C.r/w section 427 Cr.P.C. with a prayer that sentence of imprisonment of R.I for one year vide judgment dated 03.09.2022 and order of sentence dated 05.09.2022 awarded to the petitioner in NACT Complaint No. 572 of 2017 titled as “Babu Lal Vs. Nand Kumar” be ordered to run concurrently with sentence awarded by court in NACT Complaint No. 65 of 2017 titled as “Sachin Trading Co. Vs Pooja Cotton Udyog” wherein sentence of one year imprisonment has been granted to the petitioner and correct the custody certificate accordingly.

2. Briefly put forth, the petitioner was facing four trial(s) in different courts, all under Negotiable Instruments Act and out of four cases,

in three cases the petitioner has been convicted and sentenced to undergo one year imprisonment:-

Case No. 572/2017 – Narnaul

One Year Sentence awarded on 03.09.2022 alongwith fine and in case of default 02 months imprisonment

Case No. 573/2017- Narnaul

Trial Pending-On Bail vide order dated 21.03.2024

Case No. 18/2017 – Hodal

One Year sentence awarded on 15.10.2022

Case No. 65/2017 – Hathin

One Year sentence awarded on 04.09.2023

Copy of Custody Certificate is annexed herewith as Annexure P-1

3. Counsel for the petitioner contends that the petitioner himself surrendered on 23.01.2023 before the ld. Court at Hodal in case no.18/2017 and was sent to the custody on 24.01.2023 and since then he is behind the bar. Spending almost 15 months behind the bars, he was released on bail in case no. 573/2017 pending trial and on receiving the custody certificate it came to his knowledge that his custody has not been counted either in case no. 572/2017 at Narnaul nor in case no.65/2017 at Hathin, District Palwal despite the fact that in case no. 65/2017, an application was made for correction in the zimni order which was allowed vide order dated 29.02.2024(Annexure P-2) wherein it was ordered to count the custody after 04.09.2023 which makes the sentence completed but the same has not been taken into consideration in the custody certificate.

4. He vehemently contends that the custody of the petitioner in

case no. 572/2017 is only showing 2 months and 24 days starting from

24.01.2024 i.e after completion of sentence in case no. 18/2018 on 23.01.2024, whereas the petitioner had already undergone 13 months after production warrant in this case and therefore this sentence would have been completed if the benefit of section 427 Cr.P.C is given to the petitioner.

5. Per contra, learned state counsel accepts notice on behalf of the respondent state and herein vehemently contends that in catena of judgments it has been held by the Hon'ble Apex Court when the complaints are different, the same cannot be termed as single transaction. When such being the case, there cannot be an order for concurrent and particular sentences and it should be consecutive only. He further contends that the court should exercise its discretion judicially and not mechanically in each case, having regard to nature of offence and particular fact situation, no straitjacket approach can be laid down.

6. Heard learned counsel for the respective parties and gone through the record.

7. Before delving into the merits of the case, it is relevant to discuss the scope of section 427(2) Cr.P.C which is reproduced herein below:-

“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.”

8. Though it is manifest from section 427(1) of Cr.P.C., that the court has the power and discretion to issue a direction that a subsequent sentence shall run concurrently with the previous sentences, the very nature of the power so conferred, predicates that the discretion would have to be exercised along judicial lines.

9. In plethora of judgments, the Apex Court has hold this view that in cases under section 138 of Negotiable Instruments Act 1881, where the cheques are issued in respect of different transactions, it would constitute a separate and independent transaction and the sentence awarded to the accused cannot run concurrently while the same has been elaborately discussed by the Apex Court in “ **V.K.Bansal vs State of Haryana and another (2013) 7 SCC 211**” has held that:-

“18. Applying the principle of single transaction referred to above to the above fact situations we are of the view that each one of the loan transactions/financial arrangements was a separate and distinct transaction between the complainant on the one hand and the borrowing company/appellant on the other. If different

cheques which are subsequently dishonoured on presentation, are issued by the borrowing company acting through the appellant, the same could be said to be arising out of a single loan transaction so as to justify direction for concurrent running of the sentences awarded in relation to dishonour of cheques relevant to each such transaction. That being so, the substantive sentence awarded to the appellant in each case relevant to the transactions with each company referred to above, ought to run concurrently. We, however, see no reason to extend that concession to transactions in which the borrowing company is different no matter the appellant before us is the promoter/Director of the said other companies also. Similarly, we see no reason to direct running of the sentence concurrently in the case filed by State Bank of Patiala against M/s Sabhyata Plastics and M/s Rahul Plastics which transaction is also independent of any loan or financial assistance between the State Financial Corporation and the borrowing companies. We make it clear that the direction regarding concurrent running of sentence shall be limited to the substantive sentence only. The sentence which the appellant has been directed to undergo in default of payment of fine/compensation shall not be affected by this direction. We do so because the provisions of Section 427 CrPC do not, in our opinion, permit a direction for the concurrent running of the substantive sentences with sentences awarded in default of payment of fine/compensation.”

10. Taking into consideration the facts of the instance case as well as the judgment of the Apex court in V.K. Bansal's case (supra), the court is of the strong view that the court while applying its discretionary power under section 427 Cr.P.C has to borne in mind the totality of the facts

involved as well as the gravity of offence wherein the instant case pertains to different complaints of different transactions which does not convince this court to grant relief to the petitioner since by no stretch of imagination, an accused involved in multiple transactions under section 138 of Negotiable Instruments Act 1881 can be allowed to undergo his sentence concurrently when the imprisonment involves default sentence also.

11. The court thus finding this petition being devoid of merits, dismiss the same without any costs.

06.05.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No