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Crl.O.P. Nos.7227, 7240 & 7248 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2025

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THE HONOURABLE MR. JUSTICE G.K. ILANTHIRAIYAN

Crl.O.P. Nos.7227, 7240 & 7248 of 2024

Crl.O.P.No.7227/2024

S.Ganesh

.. Petitioner

Vs.

M.Thamimul Ansari

.. Respondent

Criminal Original Petition under Section 482 Cr.P.C. r/w. 427 Cr.P.C. to order the sentence of simple imprisonment of 3 months imposed in the judgment dated 04.12.2023 made in S.T.C.No.535 of 2018 on the file of the learned Judicial Magistrate, FTC No.II, Erode to run concurrently along with the sentence of 6 months simple imprisonment imposed in the judgment dated 11.10.2021 made in S.T.C.No.254 of 2018 on the file of the learned Judicial Magistrate, FTC No.II, Erode under Section 427 Cr.P.C. by allowing this Criminal Original Petition.

Crl.O.P.No.7240/2024

S.Ganesh

.. Petitioner

Vs.

M.Ashraf Ali

.. Respondent



Crl.O.P. Nos.7227, 7240 & 7248 of 2024

Criminal Original Petition under Section 482 Cr.P.C. r/w. 427 Cr.P.C. to order the sentence of simple imprisonment of 1 year imposed in the judgment dated 09.10.2023 made in C.A.No.83 of 2020 on the file of the learned Principal Sessions Judge, Erode, confirming the judgment dated 19.02.2020 made in S.T.C.No.399 of 2018 on the file of the learned Judicial Magistrate (FTC No.II), Erode, to run concurrently along with the sentence of 6 months simple imprisonment imposed in the judgment dated 11.10.2021 made in S.T.C.No.254 of 2018 on the file of the learned Judicial Magistrate (FTC No.III), Erode under Section 427 Cr.P.C. by allowing this Criminal Original Petition.

Crl.O.P.No.7248/2024

S.Ganesh

.. Petitioner

Vs.

L.Gopal

.. Respondent

Criminal Original Petition under Section 482 Cr.P.C. r/w. 427 Cr.P.C. to order the sentence of simple imprisonment of 1 year imposed in the judgment dated 16.03.2020 made in C.A.No.102 of 2019 on the file of the learned II Additional District and Sessions Judge, Erode, confirming the judgment dated 01.03.2019 made in S.T.C.No.44 of 2018 on the file of the learned Judicial Magistrate (FTC No.I), Erode, to run concurrently along with the sentence of 6 months simple imprisonment imposed in the judgment dated 11.10.2021 made in S.T.C.No.254 of 2018 on the file of the learned Judicial Magistrate (FTC No.III), Erode under Section 427 Cr.P.C. by allowing this Criminal Original Petition.



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For Petitioner :: Mr.M. Guruprasad
in all Crl.O.P.s

For Respondent :: No appearance
in all Crl.O.P.s

COMMON ORDER

These Criminal Original Petitions have been filed by the petitioner/accused to order the sentence of simple imprisonment imposed by the learned Judicial Magistrate (FTC-II), Erode, in S.T.C.Nos.535 of 2018, 399 of 2018 and the sentence of simple imprisonment imposed by the learned Judicial Magistrate (FTC-I), Erode, in S.T.C.No.44 of 2018, to run concurrently along with the sentence of simple imprisonment imposed by the learned Judicial Magistrate (FTC-II), Erode, in S.T.C.Nos.254 of 2018.

2. The petitioner faced prosecution in the aforeasid cases for the offence under Section 138 of the Negotiable Instruments Act, 1881 and the details of conviction imposed on the petitioner by the trial Court and the decision of the appellate Court on the findings of the trial Court are as under :



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<i>Sl.No.</i>	<i>Name of the Complainant</i>	<i>Sentence imposed by the trial Court</i>	<i>Appeal No., date of judgment & disposition</i>
1.	S.Gopal	STC.No.44/2018 (judgment dt.1.3.2019) 1 year SI + Rs.7,32,418/- compensation payable within 3 months i/d 2 months SI	Crl.A.No.102/2019 (judgment dt.16.3.2020) Dismissed - sentence confirmed
2.	M.Ashraf Ali	STC.No.399/2018 (judgment dt.19.2.2020) 1 year SI	Crl.A.No.83/2020 (judgment dt.9.10.2020) Dismissed - sentence confirmed
3.	H.Issack Ali	STC.No.254/2018 (judgment dt.11.10.2021) 6 months SI + Rs.3,00,000/- compensation payable within 3 months i/d 1 month SI	No appeal
4.	H.Issack Ali	STC.No.278/2018 (judgment dt.4.12.2023) 3 months SI + Rs.2,00,000/- compensation payable within 3 months i/d 1 month SI	No appeal
5.	M.Thamimul Ansari	STC.No.535/2018 (judgment dt.4.12.2023) 3 months SI + Rs.2,05,475/- compensation payable within 3 months i/d 1 month SI	Plead guilty

3. Pursuant to the conviction and sentence imposed on the petitioner, the petitioner surrendered before the trial Court and he was remanded to judicial custody on 20.11.2023 in S.T.C.No.254/2018 by judgment dated 11.10.2021. Admittedly, all the conviction and sentence imposed by the same Court simultaneously in all cases.



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4. It is relevant to extract Section 427 Cr.P.C. :

"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."

5. Thus, it is clear that if the Court imposes substantive sentence and not specifically stated about the concurrency of sentence, it would be treated as consecutively. But, the condition precedent for application of Section 427 Cr.P.C.



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is that the person must be already undergoing the sentence of imprisonment.

Therefore, the effect of consecutive sentence on second conviction provided under Section 427 Cr.P.C., would not be applicable to a convict who has been sentenced to undergo, but not specifically undergoing a sentence of imprisonment, at the time of second conviction. Therefore, the effect of consecutiveness as provided under Section 427(2) Cr.P.C. will not be applicable to the petitioner and as such, the petitioner cannot be subjected to consecutive sentence.

6. Further, it is also repeatedly held that in relation to the sentence to run concurrently, there is no straight-jacket formula for exercising the discretion under Section 427(2) Cr.P.C. and the Court can look into nature of the offences, facts and circumstances of each case, can order to run the sentence concurrently. In the case on hand, the petitioner was convicted and sentenced in all cases, in respect of the offence under Section 138 of the NI Act. That apart, the petitioner was already remanded to judicial custody on 20.11.2023 and he is under incarceration, till date.

7. In view of the above, it is ordered that the conviction and sentence imposed on the petitioner by the trial Courts in S.T.C.Nos.535 of 2018, 399 of



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2018 and S.T.C.No.44 of 2018, to run concurrently along with the sentence imposed by the learned Judicial Magistrate (FTC-II), Erode, in S.T.C.Nos.254 of 2018.

In the result, all these Criminal Original Petitions are allowed.

07.02.2025

gya

To

1. The III Additional District Court
Puducherry.
2. II Additional District and Sessions Court
Erode
3. Judicial Magistrate Court (FTC No.III)
Erode
4. Judicial Magistrate Court (FTC No.II)
Erode
5. The Superintendent
Central Prison, Coimbatore

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G.K. ILANTHIRAIYAN, J.

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