



WEB COPY



Crl.O.P.No.31371 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 23.01.2025

Orders Pronounced on : 12.02.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.O.P.No.31371 of 2024

--

Asiya Begam

.. Petitioner

Vs.

1.Pon.Sukumaan

2.P.A.Raju

.. Respondents

(R2 impleaded as per order dated 20.12.2024

in Crl.M.P.No.18284 of 2024 in Crl.O.P.No.31371 of 2024)

Criminal Original Petition filed under Sections 482 r/w 427 Cr.P.C./ under Sections 528 r/w 467 of BNSS, 2023, praying to order the sentence imposed by the judgment dated 16.03.2023 made in Crl.R.C.No.1383 of 2016 against the judgment dated 29.02.2016 made in C.A.No.120 of 2015 on the file of the II Additional Sessions Court, Erode, confirming the judgment dated 17.06.2015 made in S.T.C.No.296 of 2012 on the file of the Judicial Magistrate, Fast Track Court II, Erode, to run concurrently with the sentence imposed in the judgment dated 16.03.2023 made in Crl.R.C.No.1458 of 2016 against the judgment dated 24.11.2015 made in C.A.No.61 of 2015 on the file of the I Additional Sessions Court, Erode, confirming the judgment dated 05.02.2015 made in S.T.C.No.317 of 2012 on the file of the Judicial

Page No.1/13



Crl.O.P.No.31371 of 2024

Magistrate, Fast Track Court II, Erode, by allowing this Criminal Original Petition.

For Petitioner : Mr.N.Manokaran

For Respondents : No appearance for R1

Not ready in notice for R2

ORDER

This Criminal Original Petition is filed praying to issue a direction to order the sentence imposed by this Court *vide* judgment dated 16.03.2023 made in Crl.R.C.No.1383 of 2016 against the judgment dated 29.02.2016 made in C.A.No.120 of 2015 on the file of the II Additional Sessions Court, Erode, confirming the judgment dated 17.06.2015 made in S.T.C.No.296 of 2012 on the file of the Judicial Magistrate, Fast Track Court II, Erode, to run concurrently with the sentence imposed in the judgment of this Court dated 16.03.2023 made in Crl.R.C.No.1458 of 2016 against the judgment dated 24.11.2015 made in C.A.No.61 of 2015 on the file of the I Additional Sessions Court, Erode, confirming the judgment dated 05.02.2015 made in S.T.C.No.317 of 2012 on the file of the Judicial Magistrate, Fast Track Court II, Erode, by allowing this Criminal Original Petition.

Page No.2/13



CrI.O.P.No.31371 of 2024

WEB COPY

2. Respondents 1 and 2 herein separately filed private complaint against the petitioner under Section 138 of Negotiable Instruments Act in S.T.C.No.296 of 2012 and S.T.C.No.317 of 2012 on the file of the Judicial Magistrate, Fast Track Court - II, Erode, respectively. The trial Court, on considering the facts and circumstances of the cases and on appreciation of oral and documentary evidence, came to conclusion that the legal presumption under Section 139 of Negotiable Instruments Act must lean in favour of the respondents and that the petitioner failed to rebut the presumption and accordingly, convicted and sentenced the petitioner under Section 138 of Negotiable Instruments Act, as detailed in the following tabular column :

<i>Sl. No.</i>	<i>Complainant</i>	<i>S.T.C.Nos.</i>	<i>Conviction and sentence</i>
1.	Pon.Sukumaran	S.T.C.No.296 of 2012 (Judicial Magistrate, Fast Track Court-II, Erode)	Under Section 138 of Negotiable Instruments Act - 1 year SI and fine of Rs.5,000/-, in default, one month SI.
2.	P.A.Raju	S.T.C.No.317 of 2012 (Judicial Magistrate, Fast Track Court-II, Erode)	Under Section 138 of Negotiable Instruments Act - 1 year SI and fine of Rs.5,000/-, in default, one month SI.



Crl.O.P.No.31371 of 2024

WEB COPY

3. The above conviction and sentences were confirmed *vide* judgment dated 29.02.2016 in C.A.No.120 of 2015 on the file of the II Additional Sessions Court, Erode and judgment dated 24.11.2015 in C.A.No.61 of 2015 on the file of the I Additional Sessions Court, Erode. Aggrieved by the same, the petitioner filed Crl.R.C.Nos.1383 and 1458 of 2016. This Court *vide* separate order dated 16.03.2023 dismissed the revision in Crl.R.C.No.1383 of 2016 and directed the petitioner to deposit a sum of Rs.20,00,000/- (Rupees Twenty Lakhs) before the trial Court on or before 12.05.2023 and also dismissed the revision in Crl.R.C.No.1458 of 2016 and directed the petitioner to deposit a sum of Rs.5,50,000/- (Rupees Five Lakhs Fifty Thousand) before the trial Court on or before 12.05.2023, to compound the said offence, if the petitioner fails to comply with the said condition, she was directed to surrender before the trial Court on 15.05.2023. Since the petitioner could not pay the cheque amount as directed by this Court, she surrendered before the Judicial Magistrate, Fast Track Court No.1, Erode on 22.09.2023. Now the petitioner is confined in Special Prison for Women, Coimbatore from 22.09.2023.

Page No.4/13



Crl.O.P.No.31371 of 2024

WEB COPY

4. Learned counsel for the petitioner contended that the petitioner is aged about 56 years and she was living separately with her son and daughter. The petitioner is suffering from breast cancer and facing the wrath of criminal prosecution for the past 12 years and now she is living in penury. Due to her poverty and health ailments, she could not approach the Hon'ble Supreme Court for filing SLP and left with no other alternative option she had surrendered before the Court below. If the petitioner runs two sentences consecutively, she would suffer grave injustice. He further submitted that the petitioner has already undergone the sentences for more than one year. Therefore, she has filed the present petition for considering the same on humanitarian grounds directing the sentences imposed on her to run concurrently.

5. Learned counsel for the petitioner further submitted that this Court may exercise its discretionary power under Section 427 Cr.P.C/427 BNSS and issue direction that the subsequent sentence shall be run concurrently with the previous sentence.

Page No.5/13



WEB COPY

6. In support of this contentions, the learned counsel for the petitioner relied on the following judgments:

- i) ***V.K.Bansal Vs. State of Haryana and Another*** reported in **2013 (7) SCC 211**, the Supreme Court has held that there is no straitjacket formula for exercising the discretion under Section 427(1) Cr.P.C. and the Court has to look into the nature of the offence, facts and circumstances of each case.
- ii) ***Vicky @ Vikas Vs. State (Govt. of NCT of Delhi) 2020 (11) SCC 540***, the Supreme Court has held that while ordering sentences to run concurrently in two different cases of different nature and transaction, the Court may consider the family background of the accused, illness to his family members, report of the Probation officer during her period of incarceration.
- (iii) ***Shyam Pal Vs. Dayawati Besoya and Another*** reported in **(2016) 10 SCC 761**; and
- (iv) ***Gurunathan Vs. The Inspector of Police*** reported in



Crl.O.P.No.31371 of 2024

2012(6) CTC 510.

WEB COPY

In the case on hand, the petitioner's family is subjected to unforeseen penury after her surrender on 22.09.2023. Therefore, this Court may allow this petition.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. Despite service of notice on the first respondent and his name has been printed in the cause list, none appeared on the side of the first respondent either in person or through counsel.

9. Though the offences in the two cases are similar, the Court below conducted separate trial and passed separate judgments. At the time of passing of the judgment of conviction and sentence, the petitioner kept quiet and did not make any claim before the trial Court to undergo the sentences concurrently. Now the petitioner is convicted and undergoing sentence in

Page No.7/13



CrI.O.P.No.31371 of 2024

respect of the said offence, and at this stage, this petition is filed under

Section 467 of BNSS, 2023 praying to run the sentences concurrently.

10. In the above context, it is useful to extract Sections 467 of BNSS, as follows:

"Section 467: 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 141 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



Crl.O.P.No.31371 of 2024

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. In the case on hand, it is not a single transaction constituting offence, but in each complaint, the transactions between the complainant and petitioner are different and based on the complaint given by the different complainant involving dishonor of cheques, the petitioner was convicted in different S.T.C Cases for the offence under Section 138 of N.I.Act by the same Trial Court by separate judgments. Further, both cases are not tried simultaneously.

12. Further, the petitioner had already undergone the sentence of imprisonment for more than one year and she is in prison from 22.09.2023 and after undergoing the sentence of imprisonment, she cannot invoke Section 467(1) of BNSS.

13. Section 467(1) of BNSS makes it clear that when a person is undergoing a sentence of imprisonment and if he/she is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such



Crl.O.P.No.31371 of 2024

imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he/she has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.

14. This Court can very well exercise its discretionary power to order the sentence run concurrently, if the prosecution arises out of a single transaction or both the transactions are akin to each other. However, in the case on hand, the petitioner is involved in similar nature of offence in two cases, and she was tried separately and was convicted and sentenced as tabulated supra. The judgments rendered in both the cases are on different dates. This shows that the petitioner is involved in two cases and same sentence of imprisonment is imposed on her in respect of the two cases. Thus, it is clear that the petitioner is a habitual offender. In these circumstances, the decisions referred by the petitioner indicated above are not applicable to the present case on hand

15. On a reading of Section 467 of BNSS, it is evident that the



Crl.O.P.No.31371 of 2024

petitioner is not entitled to seek for running the sentences imposed on her to concurrently in the two cases. The petitioner has to undergo the sentences of imprisonment only consecutively.

16. With the above observations, this Criminal Original Petition is dismissed.

12.02.2025

Index : Yes/No
Neutral Citation Case : Yes/No
Speaking Order : Yes/No
ms



WEB COPY



Crl.O.P.No.31371 of 2024

To

1. The II Additional Sessions Judge,
Erode.
2. The I Additional Sessions Judge,
Erode.
3. The Judicial Magistrate,
Fast Track Court-II, Erode.
4. The Superintendent of Prison,
Central Prison, Coimbatore.
5. The Public Prosecutor,
High Court, Madras.

Page No.12/13



WEB COPY



Crl.O.P.No.31371 of 2024

P.VELMURUGAN, J

ms

Crl.O.P.No.31371 of 2024

12.02.2025

Page No.13/13