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*Before Mehtab S. Gill, Ranjit Singh and  
Arvind Kumar, JJ.*

JANG SINGH,—Appellant

*versus*

STATE OF PUNJAB,—Respondents

CRIMINAL MISC. NO. 48079 OF 2006  
IN CRIMINAL APPEAL NO. 601/DB OF 2005

18th October, 2007

*Code of Criminal Procedure, 1973—Ss. 427 and 482—Conviction of appellant in two different FIRs—Court awarding different sentences—S. 427(1) provides that a person who is already undergoing a sentence of imprisonment and is sentenced on a subsequent conviction to imprisonment or imprisonment for life then such imprisonment or imprisonment for life is to commence at the expiration of the imprisonment, to which he is previously sentenced unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence—Different sentences for more than one offences—Court has discretion to issue appropriate direction to make sentences run concurrently—If there is no direction in this regard passed the sentences have to run one after the other—Whether High Court has jurisdiction u/s 427 or 482 ordering to make sentences to run concurrently—Held, no—Such discretion can be exercised by trial Court, Appellate Court or by Revisional Court at the time of exercising appellate or revisional jurisdiction—Discretion always is open to be exercised by any Court depending upon facts and circumstances of each case on any relevant or valid consideration.*

Held that, discretion to make the sentences to run consecutively or concurrently would be governed by different consideration, like facts of each case, nature and character of the offences, criminal history sheet and record of the offender, his age, sex. These considerations would appear relevant for the exercise of discretion by the Courts under Section 427(1) Cr. P.C. It is not possible to exhaustively lay down all the factors that may be relevant to be taken into consideration and basically it would depend upon facts of each case to be so noted by the Court while exercising its discretion in this regard.

(Para 16)

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*Further held*, that 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 Cr. P.C. 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 sentences. Such direction to make the sentences to run concurrently 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 sentence 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 Section 482/427 Cr. P.C. 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 Section 482 or 427 Cr. P.C.

(Para 21)

N. S. Sodhi, Advocate, for the applicant-appellant.

S. S. Bhinder, Addl. A.G. Punjab with D. K. Mittal, DAG Punjab,  
for the State.

### **JUDGMENT**

**RANJIT SINGH, J.**

(1) The applicant-appellant is sentenced to suffer RI in two different FIRs i.e. FIR No. 103, dated 2nd July, 1997 and FIR No. 216, dated 21st July, 1997. He has filed this petition for direction to make the sentences awarded in these two different FIR's run concurrently.

(2) The appeals against the conviction of the applicant-appellant in these two different FIRs as criminal Appeal No. 601 DB of 2005

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and Criminal Appeal No. 1485 SB of 2003 respectively are pending before this Court for adjudication. The present application is filed by the applicant-appellant in Criminal Appeal No. 601 DB of 2005. When the application came up for consideration before a Division Bench of this Court, it, after noticing different judgments, viewed that though the discretion to convert consecutive sentences into concurrent in two different offences is available but principles, method and manner of exercise of this discretion, is not clearly made out from the different judgments that were cited before the Court. Accordingly, reference was made to Hon'ble the Chief Justice for constituting a Larger Bench to answer the above referred question. That is how, the present application has been listed for being heard by Full Bench of this Court.

(3) The facts needing notice to get the hang of the issues requiring decision, in brief, are that the applicant-appellant was accused in a FIR No. 104, dated 2nd July, 1997 at Police Station Dharmkot under Sections 302, 201 IPC. Another FIR No. 216, dated 21st July, 1997, under Sections 399, 402, 379, 411 467, 468 IPC and Section 25 of the Arms Act, was registered against the applicant-appellant at Police Station Sadar, Jalandhar. Yet another FIR No. 103, dated 2nd July, 1997 under Sections 302, 201, 34 IPC came to be registered against him at Police Station Shahkot. The applicant-appellant, however, was acquitted in FIR No. 104, dated 2nd July, 1997 of Police Station Dharmkot on 1st October, 2005, but is convicted in FIR No. 216, dated 21st July, 1997 and is sentenced to suffer 10 year RI coupled with fine of Rs. 1,000 under Section 399 IPC. In default of payment of fine, he is to undergo RI for one year. The applicant-appellant is also sentenced to suffer RI 7 years with fine of Rs. 5,000 under Section 403 IPC in this case. In default of payment of fine, he is directed to undergo RI for six months. These sentences were ordered to run concurrently. This conviction and award of sentence is subject matter of challenge in Criminal Appeal No. 1485 SB of 2003. In addition, the applicant-appellant has also been convicted in FIR No. 103, dated 2nd July, 1997 and sentenced to undergo life imprisonment in addition to a fine of Rs. 1,000. He has to undergo RI for one month in default of payment of this fine. The applicant-appellant is also sentenced to suffer 3 years RI under Section 411 IPC. This conviction and sentence is dated 23rd March, 2004. This is subject matter of appeal, in which the present application is filed. The prayer is that appropriate order be made directing the sentences awarded in the

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above-noted two different judgments to run concurrently to meet the ends of justice.

(4) The Division Bench, before which this application came up for hearing, observed as under while asking for constituting a Larger Bench to consider this question raised in the application :—

“It is clear from these judgments (*supra*), that though the Court has discretion to covert consecutive sentences into concurrent when two different offences have been committed, but the principles, method and in what manner this judicial discretion is to be exercised, has not been laid down.”

(5) Thus, the Full Bench, now constituted, is required to decide about the principles, method and the manner in which this judicial discretion is to be exercised while issuing direction with regard to the execution of the sentences i.e. whether these should run consecutively or concurrently.

(6) To determine this question, the Court is basically required to interpret the provisions of Section 427 Cr. P.C. Section 427 regulates the mode of execution of sentence in those cases where the offender is already undergoing a sentence for another offence. It reads as under :

**“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.

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(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."

(7) The general principle is that the sentence should take effect immediately on conviction and the same cannot be postponed. Section 427 appears to be carving out an exception to general principle governing execution of sentences when awarded by a Court of law. Sub-section (1) of Section 427, reproduced above, provides that a person who is already undergoing a sentence of imprisonment and is sentenced on a subsequent conviction to imprisonment or imprisonment for life, then such imprisonment or imprisonment for life is to commence at the expiration of the imprisonment, to which he is previously sentenced. This principle, however, is subject to the exceptions carved out in the Section itself and it is to the effect that **"unless the Court directs that subsequent sentence shall run concurrently with such previous sentence"** (emphasis supplied). The scheme of the Section, thus, is that a person already undergoing a sentence if sentenced to suffer subsequent imprisonment, then that subsequent imprisonment is to commence only on the expiry of the previous sentence, unless both the sentences are ordered to run concurrently. Section 31 of the Code of Criminal Procedure also enacts the rules that sentences are to run consecutively unless the Court directs that these should run concurrently. This Section, however, relates to those cases where a person is convicted at one trial of several offences and different/several sentences are awarded to him. Section 427 Cr.P.C., on the other hand, enacts a rule where a person already undergoing the sentence is sentenced to imprisonment in a different trial. It would be of advantage to note Section 31 Cr.P.C., which is as under :—

**"31. Sentence in cases of conviction of several offences at one trial.—**(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of Section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of

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the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

- (2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court :

Provided that—

- (a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years ;
- (b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.
- (3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.”

(8) Though Section 31 would also talk of a general principle of sentences to commence after expiration of the other but still, the Court awarding the same, has the discretion to direct that such punishments shall run concurrently. Sub-sections (2) and (3) of Section 31 may seem to be laying down some guidelines in regard to the principle that may govern the consideration for directing the sentences to run concurrently or consecutively. Otherwise, Sections 31 and 427 Cr. P.C. have made enabling provisions empowering the Courts to direct the manner of execution of the sentences but principles, method and manner of exercise of this judicial discretion can not be discerned from the Sections as such. Since the powers have been left to the Court to direct the punishment to run concurrently under Section 31, there may not be much difficulty in such cases where the same Court is required to award several punishments at one trial of two or more offences. Obviously, the Court while making different sentences for more than one offences tried by it, can issue appropriate direction to make the sentences run concurrently and in the absence of such direction, the sentences of course would run consecutively as is clear from the wording of Section. There may not be much difficulty

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encountered in those cases where the trial of more than one case is held by the same Court and different imprisonments are awarded. A difficulty, however, may arise when person is sentenced to undergo an imprisonment and is subsequently convicted and is imprisoned either to a term or imprisonment for life. The Court still may have power to make the subsequent sentences to run concurrently with the previous sentence but no indication in regard to principle governing the same or in regard to manner and method is available from the Section. As per sub-section (2) of Section 427 Cr.P.C., the person undergoing sentence of imprisonment for life when is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for a life, the subsequent sentence shall run concurrently with such previous sentence. If such is the situation, then this would operate as law without any further direction being made by the Court in regard to its manner of execution. This aspect was considered by the Hon'ble Supreme Court in case of **State of Maharashtra versus Najakat Alia Mubarak Ali (1)**. In this case, the Hon'ble Supreme Court was basically concerned with the interpretation of Section 428 Cr. P.C. regarding the principle of set off in case where person is convicted of two different offences by two different Courts and when he has remained in pre-trial custody in both the cases. The Hon'ble Supreme Court co-related the provisions of Section 428 and 427 Cr.P.C. by observing that Section 428 is placed just below Section 427, which tempted the Hon'ble Court to peep into this Section i.e. 427 as well. Noticing the provisions of sub-section (2) of Section 427 Cr.P.C., the the Supreme Court observed that the subsequent sentence is to run concurrently with the previous sentence in an eventuality visulised under this sub-section. In this background, it is held in the case of **Najakat Alia Mubarak Ali** (supra) that :—

“Thus, the sentence of life imprisonment imposed on the same person in two different convictions would converge into one and thereafter it would flow through one stream alone. Even if the sentence in one of those two cases is not imprisonment life but only a lesser term the convergence will take place and the post-convergence flow would be through the same channel. In all other cases, it is left to the Court to decide whether the sentence in two different convictions should merge into one period or not. If no order is passed by the Court the two sentences would run one

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(1) AIR 2001 (S.C.) 2255

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after the other. No doubt Section 427 is intended to provide amelioration to the prisoner. When such amelioration is a statutory operation in cases falling under the second Sub-section it is a matter of choice for the Court when the cases fall within the first sub-section. Nonetheless, the entire section is aimed at providing amelioration to a prisoner. Thus a penumbra of the succeeding section can be glimpsed through the former provision.”

(9) The decision, thus, seems to be clear so far as sub-section (2) of the Section is concerned. From the observations as reproduced above, it would also appear that in other cases, it is left to the Court to decide whether sentence in two different conviction should merge into one or not. Of course, if there is no order passed in this regard, the two sentences, as per sub-section (1) have to run one after the other. It may also need a notice that this Section, as observed by the Hon'ble Supreme Court, is meant to provide amelioration to the prisoners. That being purpose of the Section, the aim of the Court generally should be to so act unless of course the case is such where the Court, in its discretion, does not consider the case fit to show the consideration of amelioration.

(10) The case of **Mohd. Akhtar Hussain *alias* Ibrahim Ahmed Bhatti versus Assistant Collector of Customs (Prevention), Ahmedabad and another (2)** which was relied upon by the counsel for the applicant-appellant and was noticed by the Division Bench at the time of making reference would seem to be more apt so far as sub-section (1) of the Section is concerned. In this case, the Hon'ble Supreme Court has held that where second offence is distinct and different from the first one, the subsequent sentence should normally run consecutively to the first one. The relevant observation in this regard is as under :—

“10. 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 offences are quite different.”



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(11) The ratio that may emerge from the above observation, is that the basic thumb rule is that concurrent sentences are to be awarded in case of single transaction. Generally, this thumb rule may not apply if the transaction relating to offenses is not the same or the facts constituting two offences are different. The Hon'ble Supreme court in this case apparently has not laid down any binding principle in this regard but has made a reference to thumb rule, which may act as a guide. Obviously, the Hon'ble Supreme Court was conscious of the fact that discretion in this regard has been left to the Court in terms of sub-section (1) of Section 427 Cr.P.C. This Section relates to administration of justice and provides a procedure for sentencing. Accordingly, it is the sentencing Court, which is required to apply its mind and consider what would be an appropriate sentence in a given case or in other words, if the sentences should be concurrent or consecutive.

(12) The Hon'ble Supreme Court has again gone into this aspect in the case of **Ranjit Singh versus Union Territory of Chandigarh and another (3)**. In this case, Ranjit Singh was convicted for an offence under Section 302 IPC on 6th March, 1979 and sentenced to life imprisonment, which had been confirmed by the High Court. He committed another murder while on parole and was convicted under Section 303 IPC, which was, however, altered to one under Section 302 IPC. Ranjit Singh, however, was sentenced to life imprisonment in the second case, which was ordered **not to run** concurrently with the earlier sentence of life imprisonment. Ranjit Singh impugned this order by filing a writ petition under Article 32 of the Constitution of India for issuance of a suitable direction to correct the above mode of execution mainly praying that it be brought in consonance with Section 427(2) Cr.P.C. The Hon'ble Supreme Court in this, after making detailed reference to sub-sections (1) and (2) of Section 427 Cr.P.C. held as under :—

“8. Sub-section (1) of Section 427 Cr. P.C. provides for the situation when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or life imprisonment. In other words, sub-section(1) of Section 427 Cr.P.C. deals with an offender who while undergoing sentence for a fixed term is subsequently convicted to imprisonment for a fixed term

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or for life. In such a situation, the first sentence, being for the fixed term, expires on a definite date which is known when the subsequent conviction is made. Sub-section (1) says that in such a situation, the date of expiry of the first sentence which the offender is undergoing being known, ordinarily to subsequent sentence would commence at the expiration of the first term of imprisonment unless the court directs the subsequent sentence to run concurrently with the previous sentence. Obviously, in cases covered by sub-section (1) where the sentence is for a fixed term, the subsequent sentence can be consecutive unless directed to run concurrently. Sub-section (2), on the other hand, provides for an offender "already undergoing sentence of imprisonment for life" who is sentenced on a subsequent conviction to imprisonment for a term or for life. It is well settled since the decision of this Court in Gopal Vinayak Godse and reiterated in Maru Ram that imprisonment for life is a sentence for the remainder of the life of the offender unless the remaining sentence is computed or remitted by the appropriate authority. This being so at the stage of sentencing by the Court on a subsequent conviction, the earlier sentence of imprisonment for life must be understood in this manner and therefore, there can be no question of a subsequent sentence of imprisonment for a term or for life running consecutively which is the general rule laid down in sub-section (1) of Section 427. As rightly contended by Shri Garg, and not disputed by Shri Lalit, the earlier sentence of imprisonment for life being understood to mean as a sentence to serve the remainder of life in prison unless commuted or remitted by the appropriate authority and a person having only one life span, the sentence on a subsequent conviction of imprisonment for a term or imprisonment for life can only be superimposed to the earlier life sentence and certainly not added to it since extending the life span of the offender or for that matter anyone is beyond human might. It is this obvious situation which is stated in sub-section (2) of Section 427 since the general rule enunciated in sub-section (1) thereof is that without the court direction the subsequent sentence will not run concurrently but

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consecutively. The only situation in which no direction of the court is needed to make the subsequent sentence run concurrently with the previous sentence is provided for in sub-section (2) which has been enacted to avoid any possible controversy based on sub-section (1) if there be no express direction of the Court to this effect. Sub-section (2) is in the nature of an exception to the general rule enacted in sub-section (1) of Section 427 that a sentence on subsequent conviction commences on expiry of the first sentence unless the court directs it to run concurrently. The meaning and purpose of sub-sections (1) and (2) of Section 427 and the object of enacting sub-section (2) is, therefore, clear.”

(13) This case basically related to the interpretation of sub-section (2) of Section 427 Cr.P.C. and it was held, as noticed above, that imprisonment for a term or an imprisonment for a life can only be super imposed to the earlier life sentence and certainly not added to it, since extending the life span of the offender or for that matter anyone is beyond human might. Referring, about sub-section (1) of the Section, it is stated that the same deals with an offender, who while undergoing sentence for a fixed term is subsequently convicted to an imprisonment for a fixed term or for a life. It is further held that in such a situation, the first sentence, being for a fixed term, expires on a definite date which is known when the subsequent conviction is made. In this background, it is further observed that ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the court directs the subsequent sentence to run concurrently with the previous sentence. Here again the Supreme Court would not provide any guidelines or directions governing the mode, method or principle where direction for consecutive or concurrent execution of sentences are to be made. In fact, in **K. Prabhakaran versus P. Jayarajan (4)**, the Hon'ble Supreme Court has clearly observed that there are no guidelines or specific provision to suggest under what circumstances various sentences of imprisonment shall be directed to run concurrently or consecutively in the Code of Criminal Procedure and further that there are no judicial decisions laying down guidelines as to what should be the criteria in this regard. These observations, however, were made in a

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slightly different context as the Hon'ble Supreme Court in this case was mainly concerned to see the aspect of dis-qualification of a person in terms of Section 8(3) of the Representation of People Act upon his conviction for an offence and the sentence so awarded.

(14) Direction for sentence to run concurrently or consecutively is held to be a direction as to the mode in which the sentence is to be executed and as such, it does not effect the nature of these sentences. Some indication, however, in regard to the principle that may be kept in view can be noticed from the observation of the Hon'ble Supreme Court in the case of **K. Prabhakaran** (supra). It is observed that in certain cases if the accused is habitual offender and is found guilty on various counts and it is suspected that he would be a menace to the society if let loose, then the term of consecutive sentences should be given. In **Mani and another versus State of Kerala (5)** the Division Bench of the High Court was to observe that it cannot be positively directed as to the circumstances under which a Court should normally exercise the discretion to award the sentences concurrently since it is dependent on the facts of each case, the nature or character of the offences committed, the prior criminal record of the offender, his age and sex etc.

(15) These considerations may provide some relevant and valid grounds to order execution of sentence one way or the other. Of course, such consideration can be illustrative only and cannot be exhaustively enumerated. Each case is to be decided depending upon its facts. The nature and gravity of the offence would certainly be a relevant factor and so too the record of the offender, including his age, sex etc. Some of the Courts declined to make the sentences to run concurrently with the previous sentence on the ground that the accused had barbarically taken away the eye sight of several persons to swindle money, which was considered to be a crime against the society as a whole. In a case, where the accused was poverty stricken young boy of 20 years and was prosecuted for number of criminal cases and sentenced imprisonment for over 17 years and were to run consecutively, the high Court made these sentences to run concurrently by considering that the circumstances and the fact that thefts were to petty in nature involving small amounts.

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(16) It may, thus, emerge that discretion to make the sentences to run consecutively or concurrently would be governed by different consideration, like facts of each case, nature and character of the offences, criminal history sheet and record of the offender, his age, sex. In our view, these considerations would appear relevant for the exercise of discretion by the courts under Section 427 (1) Cr. P.C. It is not possible to exhaustively lay down all the factors that may be relevant to be taken into consideration and basically it would depend upon facts of each case to be so noted by the Court while exercising its discretion in this regard. It may, however, need to be noted that normal rule under Section 427 Cr. P.C. appears to be consecutive sentences. It is thereafter discretion is given to the sentencing Court to direct concurrence. It may also have to be kept in view that if principle of concurrency is applied in case where the offender is habitual, it may repel the very basic and the normal rules as laid down in Section 427 Cr. P.C. If such principles are universally applied unmindful to such consideration of the offender being habitual, then it may lead to hostile discrimination negatively because then it would amount to giving similar treatment to a normal as well as a habitual offender. Accordingly, segregation of the habitual offender by making them to undergo sentences consecutively can also be accepted as principle.

(17) We may notice here that this Court in some of the cases have allowed the prayers made before it for making the sentences to run concurrently where the petitioners in such cases were tried separately for different offences in different courts. In this regard, reference may be made to the case of **Mehal Singh versus State of Haryana (6)**. This course was even adopted by this Court in the case of **Balbir Singh versus State of Punjab (7)**. This judgment was subsequently followed by this Court in the case of **Baljinder Singh versus State of Haryana and another (8)** and Criminal Misc. No. 80965 M of 2006 (**Sri Kant Gore versus State of U.T., Chandigarh**), decided on 3rd April, 2007. In none of these cases, plea in regard to maintainability of the petition under Section 482 or 427 Cr. P.C., as such, was raised. This issue may also arise in such cases. In fact, this has been so agitated before number of High Courts. Full Bench of

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(6) 1987 (2) R.C.R. (Criminal) 240

(7) 1986 (2) R.C.R. (Criminal) 566

(8) 2007 (2) Law Heral (P&H) 921

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Madhya Pradesh High Court in the case of **Sher Singh versus State of M.P. (9)**, held that High Court in exercise of its inherent powers 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. View taken is that the inherent power of the High Court is not in any way fettered by Section 427(1) Cr. P.C. While so holding, the Full Bench in the case of **Sher Singh** (supra) referred to different decisions of number of other High Courts. As held by the Full Bench, consensus of judicial opinion of different High Court seems to be that inherent powers of the High Court can be invoked under Section 482 even if the trial Court or the appellate Court or the revisional Court has not exercised its discretion under Section 427(1) of the Cr. P.C. Reference in this regard is made to Division Bench judgment of Calcutta High Court in the case of **Jainta Kumar Benerjee versus The State (10)**. In this case, it was held that sentences passed on different dates in respect of different convictions by Court other than High Court, then the High Court would have power under Section 561-A (now 482 Cr. P.C.) to order that these may run concurrently. Decisions of Patna High Court in **Baijnath versus State (11)**, Andhra Pradesh High Court in **Venkanna versus State of Andhra Pradesh, (12)** and Full Bench decision of Allahabad High Court in **Mulaim Singh versus State (13)** are referred to in support of this proposition. The contrary view taken by the Full Bench of Delhi High Court in **Gopal Dass versus State (14)**, was not approved by holding that the High Court has the power in an appropriate case to entertain an application under Section 482 Cr. P.C. by invoking its inherent powers at any time subsequent to the decision in a given case even if the trial Court or the appellate or the revisional Court has failed to exercise its discretion under Section 427(1) Cr. P.C. The Full Bench of Delhi High Court in **Gopal Dass's case** (supra) had differed with ruled a Division Bench decision of Madhya Pradesh High Court reported as **A.S. Naidu versus State of M.P. (15)**. In **A.S. Naidu's case** (supra), it

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(9) 1989 (1) R.C.R. (Criminal) 696

(10) AIR 1955 Calcutta 632

(11) AIR 1961 Pat. 138

(12) AIR 1964 A.P. 449

(13) 1974 CrL. L.J. 397

(14) AIR 1978 Delhi 138

(15) 1975 CrL. L.J. 498

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is held that power to make two sentences to run concurrently under Section 397 (1) of the old Code (Section 427 of the present Code) could be exercised at any time, when the matter was brought to the notice of the Court by an application or otherwise since no modification of the judgment itself was involved in the exercise of such powers. The Division Bench has further held that question of exercising the power under inherent jurisdiction in such a case would not arise, thereby conveying that power under Section 427(1) could be exercised at any time and not necessarily while deciding the case on merits as the Court does not become functus officio. The Full Bench of Delhi High Court differed with the ratio of law laid down by Madhya Pradesh High Court in the case of **A.S. Naidu** (supra), by relying upon a judgment of Hon'ble Supreme Court in Criminal Appeal No. 2/64 decided on 20th October, 1964. The Full Bench of Madhya Pradesh High Court in the case of **Sher Singh** (supra) concurred with this part of the judgment of Full Bench of Delhi High Court in **Gopal Dass's case** (supra), by observing that the Criminal Court becomes functus officio after delivering its judgment or order and cannot review its order and accordingly held that **A. S. Naidu's case** (supra) to this an extent had taken incorrect view. The Full Bench of Madhya Pradesh High Court, however, up-held the view of the Division Bench in the case of **A.S. Naidu** (supra) to the extent that powers could be invoked by the High Court under its inherent jurisdiction. Even the Division Bench of Kerala High Court in the case of **Mani** (supra) has taken a similar view in regard to the exercise of inherent powers under Section 482 Cr.P.C. by saying that direction to make the sentences to run concurrently can be so issued while exercising jurisdiction under Section 482 Cr. P.C. While so holding, the Division Bench of Kerala High Court over-ruled the view expressed by the same Court in **Bhaskaran versus State of Kerala, (16)**. The reasoning given by the Court in **Bhaskaran's case** (supra) is that a direction that the sentences for offences tried during a single trial may run concurrently is an integral part of the judgment. The Court further observed that if that be so, a similar direction that the sentences in a later case may run concurrently with the sentence in an earlier case is also a part of the judgment. In this background, the Court held that a direction how the sentences in the two cases should run, issued

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subsequent to the disposal of the cases would amount to alteration of the judgment which is barred under Section 362 Cr.P.C. The Court in this case went on the hold :—

“If a direction under Section 31(1) cannot be issued after the judgment is pronounced on a motion made by the accused, I fail to see how the power under Section 427 (1) can be issued after the pronouncement of the subsequent judgment. I am, therefore, unable to adopt the reasoning in **A. S. Naidu versus State of Madhya Pradesh** (1975 Cri.L.J. 498) and I hold that the direction referred to should be given at the latest when the subsequent judgment is pronounced.”

(18) This view, of course is over-ruled by a Division Bench in **Mani's case** (*supra*).

(19) In **Chacko versus State of Kerala**, (17) the Division Bench of the Court held that Section 427 is positive that when a person undergoing a sentence for life is sentenced subsequently for life imprisonment, subsequent sentence shall run concurrently and no separate order is necessary. The Court in **Chacko's case** (*supra*) also went into the question whether direction in regard to execution of sentence could subsequently be passed while exercising jurisdiction under Section 482 Cr.P.C. By referring to the provisions of Section 362, the Court held that this Section will also support the view that even if the Court taken an erroneous view, it can not be corrected by a petition under Section 482 Cr.P.C. In this regard the case reported as **Sooraj Devi versus Pyara Lal**, (18) may also be relevant in which it is held that inherent powers under Section 482 Cr.P.C. can not be invoked for reviewing the earlier order as it is specifically prohibited under Section 362. Reference can also be made to **State of Orissa versus Ram Chander**, (19), **Hari Singh Mann versus Harbhajan Singh Bajwa**, (20) and **State of Kerala versus M. M. Manikandan Nair**, (21). This view taken by the Division Bench apparently is in some conflict with the case of **Mani** (*supra*). That was also a decision

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(17) 2003 (4) R.C.R. (Criminal) 841

(18) AIR 1981 S.C. 736

(19) AIR 1979 S.C. 87

(20) 2000 (4) R.C.R. (Crl.) 650 (S.C.)

(21) 2001 (2) R.C.R. (Crl.) 657



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rendered by a Division Bench of Kerala High Court. Now not much further discussion may be needed on this aspect. The Hon'ble Supreme Court in the case of **M. R. Kudva versus State of Andhra Pradesh**, (22) appears to have taken a view that where provisions of Section 427 Cr.P.C. are never invoked and the appeals to High Court and S.L.P. etc. are dismissed, then an application under Section 482 Cr.P.C. and 427 Cr.P.C., praying for imposing these sentences concurrently is not maintainable. In this case, application under Section 427 Cr.P.C. was filed before the High Court of Andhra Pradesh in a case where the appeals preferred against order of conviction and sentence before the High Court and the Special Leave Petition against the said judgment were already dismissed. Application before the High Court under Section 482/427 Cr.P.C., praying for making the sentence to run concurrently was filed. The said application was rejected by the High Court, leading to filing of the Special Leave Petition before the Hon'ble Supreme Court. Reliance was placed on the case of **Mohd. Akhtar Hussain** (*supra*) and another case titled **Ammavassi and another versus Inspector of Police, Valliyanur and others**, (23). In this later case, the appellants were convicted for four different cases and they claimed the benefit of Section 427 Cr.P.C. in order to avoid undergoing imprisonment of total period of 28 or 35 years in jail. The Hon'ble Supreme Court took the view that 14 years RI would meet the ends of justice. From this, it is seen that the Hon'ble Supreme Court though may have applied the provisions of Section 427 Cr.P.C. but still made the sentences in two cases to run consecutively. In this background, the Hon'ble Supreme Court held as under :—

“10. 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.

11. 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

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(22) 2007 (1) AICLR 819

(23) AIR 2000 S.C. 3544

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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."

(20) The view, as taken by the Hon'ble Supreme Court in the case of **M.R. Kudva** (*supra*) apparently would not leave any scope of further discussion with regard to invoking of inherent powers under Section 482 Cr. P.C. in isolation to entertain the application for making the sentences to run concurrently.

(21) 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 Cr. P.C., is that a person who is under going 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 Section 482/427 Cr. P.C. The view taken by one set of the High Courts that such an application can be entertained while exercising inherent powers under Section 482 Cr. P.C. would no more appear to be a good

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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 Section 482 or 427 Cr. P.C. What principle and consideration will govern the exercise of this discretion, as already noted above, cannot be exhaustively enumerated. Certain relevant factors, as can be culled out from different judgments referred to above, may give an indication where such discretion may be exercised. These factors generally would be the nature or character of the offences committed, the prior criminal record of the offender, character, his age and sex etc. ghastly nature of the crime. The offender being habitual would also be the factor, which can be relevantly taken into consideration. It may be stated at the cost of repetition that these are not the only reasons for which the Court can exercise this discretion. Discretion always is open to be exercised by any Court dependent up on the facts and circumstances of each case on any relevant or valid consideration as may be considered so by the Court while holding the trial or deciding the case at the stage of appeal or revision. It may require a notice that Section 427 Cr. P.C., as observed by Hon'ble Supreme Court, is aimed at amelioration and this aspect may also require to be kept in view while exercising the discretion.

(22) There are, thus, no set guidelines, principles available which would govern the exercise of discretion under Section 427(1) Cr. P.C. Section leaves a judicial discretion with the courts to exercise such discretion depending on the facts and circumstances of each case. Some indication of such consideration is available from judicial pronouncements as enumerated above, which we would approve to be relevant and valid for taking into account while exercising discretion.

(23) We would answer the question of law accordingly. The case would go back before the Division Bench to pass appropriate directions on the application filed by the applicant-appellant.