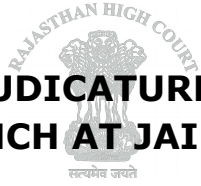




[2024:RJ-JP:15404]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No. 1850/2024

Bhoor Singh Kharwal Son Of Gutthal Kharwal, Resident Of Village Jiyapur, Police Station Gangapur City, District Gangapur City (Raj). ( At Present Confined In Central Jail, Bharatpur).

----Petitioner

Versus

State Of Rajasthan, Through P.p.

----Respondent

For Petitioner(s) : Mr. Sandeep Sharma

For Respondent(s) : Mr. M.K. Sheoran, PP

**HON'BLE MR. JUSTICE ANIL KUMAR UPMAN****Order****02/04/2024**

1. Petitioner has preferred this Criminal Misc. Petition under Section 482 Cr.P.C. with a prayer that the sentences awarded to the petitioner in three cases (Annexure-1 to Annexure-3 of the misc. petition) may be ordered to run concurrently.

2. It is contended by counsel for the petitioner that petitioner stands convicted and sentenced in three cases, the details whereof are produced hereinbelow:-

S. No.	Case Detail	Judgment	Punishment
1.	Criminal Regular Case No.174/2014 (CIS No. 2939/2014)	Judgment dated 05.08.2022, passed by Judicial Magistrate No. 1, Gangapur City, District Sawai Madhopur, Rajasthan	for offence under Section 138 of Negotiable Instruments Act- simple imprisonment for six months and fine of Rs. 4,00,000/-, in default of payment of fine further 15 days additional simple imprisonment



2.	Criminal Regular Case No.175/2014 (CIS No. 2944/2014)	Judgment dated 09.05.2023, passed by Judicial Magistrate No. 1, Gangapur City, District Madhopur, Rajasthan	for offence under Section 138 of Negotiable Instruments Act- simple imprisonment for six months and fine of Rs. 6,32,000/-, in default of payment of fine further 4 months additional simple imprisonment
3.	Criminal Regular Case No.264/2016 (CIS No. 3644/2015)	Judgment dated 20.07.2023, passed by Judicial Magistrate No. 1, Gangapur City, District Madhopur, Rajasthan	for offence under Section 138 of Negotiable Instruments Act- simple imprisonment for six months and fine of Rs. 15,65,000/-, in default of payment of fine further two months additional simple imprisonment

3. Learned counsel submits that the sentences awarded to the petitioner in all three cases are not running concurrently, and in absence of any specific order, regarding sentence to run concurrently, the petitioner has to serve the sentence of first case and on completion of thereof, the sentence of second case. Learned counsel has submitted the jail custody certificate of the petitioner issued by the Superintendent, Central Jail Bharatpur dated 09.03.2024 as per which, the petitioner has already undergone sentence of 4 months and 25 days in connection with the sentence passed in Criminal Case No. 2944/2014. Custody certificate has taken on record. Learned counsel for the petitioner has placed reliance upon the order passed by Coordinate Bench of this Court in the case of **Laxmi Narayan vs. State of Rajasthan and Ors.** rendered in **S.B. Criminal Misc. Petition No.563/2017** and submits that in the said case, the decisions of Hon'ble Supreme Court rendered in **State of Punjab v. Madan Lal, AIR 2009 SC (Supp) 2836, V.K. Bansal v. State of Haryana & Ors., 2013 Cr.L.J. 3986, Shyam Pal v. Dayawati**



**Besoya & Anr., AIR 2016 SC 5021** and in **Ammavasai & Anr. v. Inspector of Police & Ors., AIR 2000 SC 3544**, have been discussed and it has been held as under:

"As per sub-section (1) of Section 427 CrPC when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such imprisonment shall commence at the expiration of the imprisonment to which he has been that the subsequent sentence previously sentenced, unless the court direct shall run concurrently with such previous sentence:

As per second proviso to sub-section (1) of section 427 CrPC 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.

Sub-section (2) of section 427 CrPC provides that 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.

From the above, it can be gathered that the intention of legislature is that even the life convicts have been held entitled to benefit of subsequent sentence, being run concurrently, be it life term or of any lesser term then the different yardstick cannot be applied for those persons, who have been awarded sentence or lesser duration than life unless there are compelling reasons to do so. In this case, I do not see any compelling reason to order that all the sentences awarded to the petitioner in all 14 cases would run consecutively."

4. Learned Public Prosecutor has not disputed the factual aspects of the matter. However, he has opposed the prayer to invoke Section 427 Cr.P.C. in the matter.





5. I have heard and considered the submissions advanced at bar and have gone through the material available on record.

6. Section 427 Cr.P.C. provides for sentence on offender who has already been sentenced for another offence. The same is reproduced hereinbelow for the sake of ready-reference:-

**"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."

7. As per Section 427 Code of Criminal Procedure, in normal course a person already undergoing a sentence of imprisonment, if sentenced on a subsequent conviction to imprisonment, such imprisonment commence at the expiration of the imprisonment to which he has been previously sentenced, but the court in its



discretion based on settled principles may direct that the subsequent sentence shall run concurrently with previous sentence. While exercising such discretion, the trial court, appellate court or revisional court, as the case may be, keep in mind several factors. In the instant case, the learned trial courts did not exercise its discretion with respect to concurrency of sentences and thus, there is absolutely non-consideration of the issue about invoking this discretion which is causing great injustice.

8. The first conviction of the accused petitioner was recorded for offences under Section 138 of Negotiable Instruments Act in the year 2022. Thereafter, he was convicted and sentenced in two cases in the year 2023. The appeals filed by the petitioner against his conviction and sentences vide the aforesaid judgments, are pending. Thus, having regard to the facts and circumstances of the case and the period of detention, the petitioner has undergone till date and in view of the observation made in the above-referred case, this Court is of the opinion that it would not be inconsistent in the administration of justice, if the petitioner is allowed the benefit of discretion contained in Section 427 Cr.P.C. with a view to meet the ends of justice.

9. The Criminal Misc. Petition is allowed. It is directed that the sentence passed in the aforesaid criminal cases (Annexure-1 to Annexure-3) would run concurrently.



10. However, the petitioner will have to serve default sentences, as the provisions of Section 427 Cr.P.C. do not permit a direction for concurrent running of substantive sentences with the sentences awarded in default of payment of fine/compensation.

The sentences, which the petitioner has been directed to undergo in default of payment of fine/compensation shall not be effected by this direction and if the petitioner has not paid the fine/compensation as directed by the trial court, the said sentence would run consecutively. Needless to say, if the petitioner pays the fine/compensation now, he is not required to undergo default sentences. If petitioner has undergone the sentence and sentence in lieu of default of fine, he be released forthwith, if not warranted in any other case.

(ANIL KUMAR UPMAN),J

LALIT MOHAN /55