

Pritam singh Vs State of Punjab

Criminal Appeal No. 491-DB of 2002 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 14, 2007

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) " Section 18

Citation: (2007) 22 CriminalCC 943

Hon'ble Judges: Mehtab S. Gill, J; A.N. Jindal, J

Bench: Division Bench

Advocate: S.S. Rana, for the Appellant; S.S. Bhinder, Addl. A.G. Punjab, for the Respondent

Final Decision: Dismissed

Judgement

A.N. Jindal, J.

Accused-appellant Pritam Singh (hereinafter referred to as "the Accused") has assailed his conviction and sentence of 15

years and a fine of Rs. 1,50,000/- recorded on 20.09.2001 by the learned Special Court, Ludhiana u/s 18 of the Narcotic Drugs & Psychotropic

Substances Act, 1985 (for short the Act), for keeping in his possession four kilograms of opium.

2. In nutshell, the facts as unfolded by the prosecution are that on 30th August, 1999 at about 5.45 PM, Inspector Manjit Singh (now DSP).

Police Station Sahnewal along with other police officials including SI Dogar Ram PW7 was going towards village Dharaur via embankment of the

canal minor towards village Bilga. What, they were at some distance from the culvert near village Dharaur, they spotted the accused along with a

Jhola; apprehended him on the embankment of the canal. When suspected of carrying some contraband, the Investigating Officer offered him to

get himself searched in the presence of a Gazetted Officer or a Magistrate, vide consent memo Ex.PD. On his offer to be searched in the presence

of the Gazetted Officer, the Investigating Officer called DSP Harmohan Singh PW4 at the spot, who while arriving there gave his identity, at which

the accused reposed confidence in him and consented to be searched vide statement Ex.PB, then on the directions of the DSP Harmohan Singh,

on search of the bag opium was recovered. After drawing two samples of 10 gms each, the remaining opium as well as the samples were

converted into two different parcels and were sealed at the spot by the Investigating Officer with his seal bearing impression ""MS"" and the seal of

the DSP bearing impression ""HS"" and along with the chit bearing specimen impressions of the seals Ex.P1 were taken into possession vide memo

EX-PC. The Investigating Officer handed over the seal, after use. to SI Dogar Ram. However, DSP Harmohan Singh retained his seal with him.

Ruqa Ex.PE sent by the Investigating Officer became basis of FIR Ex.PE/1 recorded by ASI Dilawar Singh PW5. The Investigating Officer

prepared the rough site plan of the place of recovery Ex.PF, effected personal search of the accused took the currency notes of Rs.75/- into

possession; arrested the accused vide arrest memo Ex.PH; recorded statements of the witnesses and on reaching the police station, he produced

the case property along with the accused before SI Dilawar Singh PW5, who after verifying the facts of the case deposited the parcels and the

chits with AMHC Manjit Singh PW2. On the next day HC Kashmira Singh PW1 procured the parcels and the chits from AMHC" Manjit Singh

and produced them before the Judicial Magistrate vide application Ex.PA on which Judicial Magistrate passed the order Ex.PA/1. One of the

sample parcels was got analyzed from the Forensic Science Laboratory, Chandigarh. The report Ex.PJ was positive for presence of morphine

contents. The completion of the investigation was followed by report u/s 173 Cr.P.C.

3. Charge u/s 18 of the Act. framed against the accused was denied by him.

4. In support of the charge, the prosecution examined as many as 7 witnesses. Inspector Manjit Singh PW3 is the Investigating Officer. SI Dogar

Ram PW7 is an official witness to the recovery. DSP Harmohan Singh PW4 was called by the Investigating Officer at the spot in whose presence,

recovery of 4 kgs of opium was effected. ASI Dilawar Singh PW5 stated that Investigating Officer produced before him the parcels and the chit

along with the accused and he after verifying the facts of the case had deposited the same with AMHC Manjit Singh. He also proved the Jhola

Ex.P4 from where the opium was recovered. The remaining are the formal witnesses.

5. When examined u/s 313 Cr.P.C, the accused denied all the incriminating circumstances appearing against him and pleaded his false implication

in the case. In defence, he examined Darshan Singh DW1 and Rajinder Paswan DW2. Both of them tried to prove the innocence of the accused.

The trial ended in conviction. Hence this appeal.

6. We have heard Mr.S.S.Rana, learned counsel for the appellant, Mr.S.S.Bhinder, learned Additional Advocate General, Punjab and perused the

records with their able assistance.

7. Mr.S.S.Rana, has not joined the issues on the merits of the case. The main stake of his argument is merely on the point that the sentence is very

much exhaustive and is disproportionate to the gravity of the offence. He has further contended that the sentence so awarded against him be made

concurrent with the sentence already awarded against him vide judgment dated 02.03.2001 passed by the learned Special Court, Ludhiana.

8. The prayer has been opposed by the learned State counsel. Although, the findings returned by the trial Court recording conviction of the

accused have not been assailed, yet being alive of the fact that we are sitting over the judgment as First Appellate Court, have examined the same

very minutely. Though the case is based on the testimony of the official witnesses i.e. Inspector Manjit Singh PW3, DSP Harmohan Singh PW4

and SI Dogar Ram PW7, yet their statements are quite consistent in all material particulars i.e. with regard to time, place and the manner in which

the accused was apprehended and the recovery of 4 kgs of opium was effected from him. Their testimonies stand corroborated by the report of

the Public Analyst and the Jhola Ex.P4 which was recovered from the accused. The witnesses are not in any way inimical or hostile against the

accused for implicating him in a false case. No such imputations were made by the accused against them for falsely implicating him in the case.

Despite the scorching cross-examination upon them they have withstood the test. No plausible explanation has been put forward by the accused to

prove his innocence.

9. As regards the quantum of sentence, it may be observed that the trial Court has categorically mentioned in the order of sentence that from the

fine register, disposal register and institution register of the Court, the accused was convicted earlier also by the Court on 02.03.2001 in Sessions

Case No.5/02.04.1998/RBTNo.265/01.07.2000, FIR No.367 dated 22.10.1997, under Section 15 of the Act. It has also been brought to our

notice that the Criminal Appeal No.656-SB of 2001 preferred by him was dismissed by this Court. In this view of the matter, Section 31 of the

Act comes into play, which reads as under:

31. Enhanced punishment for offences after previous conviction - (1) If any person who has been convicted of the commission of, or attempt to

commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under this Act is subsequently convicted of the

commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence punishable under this Act with the same amount

of punishment shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which may extend to one-half

of the maximum term of imprisonment and also be liable to fine which shall extend to one-half of the maximum amount of fine.

(2) Where the person referred to in sub-section (1) is liable to be punished with a minimum term of imprisonment and to a minimum amount of fine,

the minimum punishment for such person shall be one-half of the minimum term of imprisonment and one-half of the minimum amount of fine.

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding the fine for which a person is liable.

(3) Where any person is convicted by a competent court of criminal jurisdiction outside India under any corresponding law, such person, in respect

of such conviction, shall be dealt with for the purposes of sub-sections (1) and (2) as if he had been convicted by a court of India.

10. Since the accused already stood convicted for the offence under the Act, therefore, certainly the provisions of Section 31 of the Act came into

play. Consequently, the trial Court was justified in sentencing the accused with rigorous imprisonment for the term which may extend to one half of

the minimum imprisonment and one half of the minimum amount of fine. No laxity regarding the quantum of sentence could be extended to him.

11. The other argument advanced by the learned counsel for the appellant is that the accused was earlier sentenced to undergo rigorous

imprisonment for 10 years for keeping in his possession only three bags of poppy husk. If the subsequent sentence passed against him is not made

concurrent, then he will have to undergo at least 25 years of sentence. The provisions of Section 427 Cr.P.C. being a beneficial legislation has

been added to help those confined in long incarceration on account of repeated offences may be of petty matter. Thus, in order to avoid the harsh

and excessive sentence in a particular circumstances, the discretion has been left with the court to extend benefit of this provisions. Here it would

be appropriate to refer to Section 427 Cr.P.C. which 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 u/s 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 later 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.

From the bare reading of Section 427 Cr.P.C. it transpires that sub-section (1) contemplates a sentence anterior in time to the one which a person

is undergoing and also a subsequent sentence on a subsequent conviction. It does not say that sentence of imprisonment, which the accused is

already undergoing, should have been awarded on a different date and not on the same day. The court is competent to exercise its discretion in

directing subsequent sentence to run concurrently with the earlier sentence, even when the convict is sentenced on the same day, in two cases, one

after the other. The normal rule under Section 427 of Cr.P.C. is that when a convict already undergoing a sentence of imprisonment is sentenced

again, the imprisonment should commence at the expiration of the imprisonment to which he has been previously sentenced. The Court can,

however, direct that the subsequent sentence shall run concurrently with the previous sentence. The convict has to make out a special ground for

availing the benefit of concurrent sentence. As a matter of fact, prior to 1923, the principle was to award only consecutive sentence, but after 1923

by way of amendment in the Code of Criminal Procedure, the provisions of concurrent sentence has been added obviously in order to avoid harsh

and excessive sentence and such sentence not synchronizing with the gravity of the offence which may have been awarded for any of the following

reasons:-

1. The accused remained un-defended;

2. The accused in ignorance of the law made the confession without knowing consequences of the same. He has been awarded sentence which

ought to have been awarded to him in view of the minimum as provided by the Act but otherwise the same did not commensurate with the offence.

The Court may also take into consideration the following factors:

- (i) the age, sex, family conditions of the convict, gravity of the offence and its impact on public.

- (ii) If the Court has exercised its discretion arbitrarily or capriciously while passing the order of sentence.

- (iii) The matter having been patched up or the aggrieved feels satisfied.

- (iv) If the sentence is unduly harsh and do not really advance the ends of justice.

12. The interpretation of Section 427 of Cr.P.C. became the subject of controversy before the Apex Court in case Mohd. Akhtar Hussain alias

Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs (Prevention), Ahmedabad and another, wherein the Apex Court made the following

observations:-

The Section relates to administration of criminal justice and provides procedure for sentencing. The sentencing Court is, therefore, required to

consider and make an appropriate order as to how the sentence passed in the subsequent case is to run. Whether it should be concurrent or

consecutive ?

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.

13. No doubt the Apex Court in Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti's case (supra), observed that provisions of Section 427

Cr.P.C., are not applicable if the transaction relating to offences is not the same or the facts constituting the offence are quite different. But, at the

time of passing of the said judgment, un-reasonability of the sentence to be imposed upon the accused was in their mind and it was of the view that

the Court should keep in mind the totality of the circumstances at the time of passing the order if the sentence should be consecutive or concurrent.

In para No. 17 of the aforesaid judgment, the Apex Court observed as under:-

It is no doubt true that the enormity of the crime committed by the accused is relevant for measuring the sentence. But the maximum sentence

awarded in one case against the same accused is not irrelevant for consideration while giving the consecutive sentence in the second case although

it is grave. The Court has to consider the totality of the sentences which the accused has to undergo if the sentences are to be consecutive. The

totality principle has been accepted as correct principle for guidance. In R. v. Edward Charles French, (1982) Cri.A.R. 1, (at 6), Lord Lane, C.J.,

observed:

We would emphasize that in the end, whether the sentences are made consecutive or concurrent the sentencing judge should try to ensure that the

totality of the sentences is correct in the light of all the circumstances of the case.

14. The Apex Court further remarked that "no single consideration can definitively determine the proper sentence. In arriving at an appropriate

sentence, the court must consider, and some times reject, many factors. The court must "recognize, learn to control and exclude" many diverse

data. It is a balancing act and tortuous process to ensure reasoned sentence. In consecutive sentences, in particular, the Court cannot afford to be

blind in imprisonment which the accused is already undergoing.

15. Thus, on appreciation of the Apex Court judgment, it could be safely viewed that Their Lordships laid much stress to keeping in view the

totality of the circumstances while passing the order of sentence and they emphasized the principle of "reasonableness and balance" while looking

to the "enormity of the crime" and "total sentence for the offence".

16. While following the aforesaid judgment this Court in case Jai Kishan Vs. State of Haryana, observed as under:-

Under Section 427 Cr.P.C.. 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 previously sentenced, unless the

Court directs that the subsequent sentence shall run concurrently with such previous sentence. In the present case, the accused petitioner was

sentence in two cases on the same day, one after the other. Under such circumstances, the Court was competent to exercise its discretion in

directing the subsequent sentence (in case decided subsequently) that the sentence shall run concurrently with the earlier sentence in the case earlier

decided. In the present case, the learned Magistrate had not exercised its discretion. Neither it was specifically mentioned that the sentences in

both the cases shall run consecutively nor it was mentioned that no case for the sentences in the two cases to run concurrently, was made out. It is

quite possible that this fact had escaped the notice of the learned Magistrate.

17. Further, Kerala High Court in case *Anty Vs. State of Kerala*, observed as under:-

5. u/s 427 when a person already undergoing a sentence of imprisonment is sentenced, on a subsequent conviction, to imprisonment, such

imprisonment should commence at the expiration of the imprisonment to which he has been previously sentenced. This is subject to the conditions

that the Court can direct that the subsequent sentence shall run concurrently with such previous sentence. A reading of the said provisions itself

would make it clear that consecutive running of sentences imposed in different cases is the normal rule though the Court has the special power to

direct that they shall be concurrent.

6. In order that the special benefit as above can be granted the petitioner has to make out some special grounds.....

18. The provisions of Section 427 were interpreted from time to time while keeping in view the right of the accused to live, the chances of his

reformation and to curb unduly harsh sentence and did not prohibit the courts to pass an order of concurrent sentence in particular circumstances

prevailing over that case. The words "unless the Court directs that such punishment shall run concurrently", would indicate that the punishment can

be directed to run concurrently in an appropriate case. The High Court while examining the matter, if reaches the conclusion that the sentence

awarded against the accused was harsh and did not commensurate with the offence, or for any other reasonable cause as shown by the convict, it

may direct the sentence to run concurrently. For this purpose, the Court would deal with the merits of each case independently and no hard and

fast rule could be struck vide which the Court could direct it to run concurrently.

19. Now examining the facts and circumstances of the present case on the parameters as laid down by the Apex Court in *Mohd. Akhtar Hussain*

alias Ibrahim Ahmed Bliatti's case (supra) and the aforesaid principles laid down by us, it is observed that the circumstances which compel us to

make a view in favour of the accused are that the accused has already been undergoing sentence of 10 years for keeping three bags of poppy husk

in his possession. Now he has been sentenced for 15 years for keeping in his possession 4 kgs of opium. The recovery of 2-1/2 kgs of 1 opium

has been held to be non-commercial quantity and the present recovery is little higher to bring it into the definition of commercial quantity and 1-1/2

times punishment was awarded on account of repetition of the offence committed by him. Thus, if the accused undergoes consecutive sentence,

then he will have to spend 25 years in jail besides he would have to undergo further sentence in default of payment of fine of Rs.2.50 lacs which we

consider significantly harsh so as to impel us to direct both the sentences to run concurrently.

20. In the wake of the aforesaid discussions, we hereby dismiss the appeal with further directions that both the sentences shall run concurrently.

We also reduce the sentence in lieu of default clause regarding non-payment of fine from 2 years to one year.