
(2000) 12 MAD CK 0001

Madras High Court

Case No: Criminal O.P. No. 18507 of 1998

K. Arunachalam

APPELLANT

Vs

State by Inspector of
Police, Mambalam
Police Station, Chennai
and Others

RESPONDENT

Date of Decision: Dec. 27, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 427(1)
- Penal Code, 1860 (IPC) - Section 302, 395, 400

Citation: (2001) 1 LW(Cri) 439

Hon'ble Judges: Malai Subramnian, J

Bench: Single Bench

Advocate: S. Shanmugavelayutham, for the Appellant; N.R. Elango, Government Advocate (Crl. Side) on behalf of the State, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Malai Subramnian, J.

This petition has been filed by the Petitioner who stands convicted for two distinct and different offences that took

place at different points of time. He was initially convicted for an offence u/s 400 r/w 395 I.P.C. and sentenced to undergo rigorous imprisonment

for five years by the learned VI Additional Sessions Judge, Chennai, by his judgment dated 22.9.1986 in Sessions Case No. 37/86. The Petitioner

also was convicted for an offence u/s 302 I.P.C. in Sessions Case No. 56/98 by the learned VIII Additional Sessions Judge Chennai by his

judgment dated 23.8.1988. He went on appeal against both the convictions. His appeal in C.A. No. 983/86 was disposed of by this Court against

the conviction u/s 400 r/w 395 I.P.C. on 16.9.97 while his another appeal in C.A. No. 462/98 against his conviction u/s 302 was disposed of by

this Court on 17.9.97. When the latter appeal was disposed of on the very next day, the fact that in the earlier appeal, the same Petitioner was the

accused and was ordered to serve imprisonment for five years, was not brought to the notice of this Court while hearing the appeal in C.A. No.

462/98. Therefore the Petitioner who is accused in both the Cases, prays this Court to invoke the provisions of Section 482 Code of Criminal

Procedure to order the sentence to run concurrently.

2. Section 427 Clause (1) of Code of Criminal Procedure stipulates that 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. Section 427 Clause (1) of Code of Criminal Procedure can be exercised by the sentencing Court

provided both the offence were tried by the same Court and judgments were pronounced by that court itself, so that there is every opportunity for

that court to say that both the sentences shall run concurrently. But the Case on hand is a Case where the Petitioner was convicted for two

different offences said to have been committed by him as separate transactions. However, both the Cases were tried by different Courts.

Therefore, there could not have been any opportunity for the Courts sentencing the Petitioner to decide whether the latter sentence can be ordered

to run concurrently with the earlier sentence. Only under such a difficult circumstance, the powers under 482 Code of Criminal Procedure are

sought to be invoked by me Petitioner. This Court by me judgment rendered by Shivappa, J. in the case of Lakshmi alias Mookayee alias

Marudayee v. The Inspector General of Prisons, Madras and Ors. reported in 1996 40 MLJ 153, has held that the consensus of the judicial

opinion of different High Courts seems to be that inherent powers of the High Court can be invoked u/s 482 Code of Criminal Procedure even if

the trial Court or appellate or revisional court has not exercised its discretion u/s 427(i) of Code of Criminal Procedure. Further it is said that the

inherent power of the high Court is not in any way fettered by the provisions of Section 427(i) of the Code and it can be invoked at any stage even

if there is no such order passed u/s 427(1) by the trial Court or appellate or revisional court and even though the conviction has become final.

Therefore this Court on the reasonings given by the learned Judge can invoke Section 482 Code of Criminal Procedure provided the facts and

circumstances warrant the same.

3. The Petitioner was convicted for an offence u/s 409 r/w 395 I.P.C. and later on a subsequent conviction was sentenced to undergo rigorous

imprisonment for an offence u/s 302 I.P.C. by two different Courts, as stated supra, this fact was also brought to the notice of the appellate court

while hearing the appeals in both the matters. The Petitioner only prays for ordering the sentence to run concurrently. The judgment in the latter Case

was pronounced on 23.8.1988 and was confirmed by this Court on 17.9.1997. The latter conviction was to undergo imprisonment for life.

Learned Additional Public Prosecutor contends that according to Section 427(i) in the absence of any order passed by the sentencing courts,

ordering the sentence to run concurrently, the latter sentence should commence only at the expiration of the imprisonment to which the Petitioner

was previously sentenced. In this Case, the Petitioner was previously sentenced to undergo imprisonment for five years. While undergoing such

imprisonment, he was also sentenced to undergo imprisonment for life for an offence of murder. In so far as the imprisonment for life is concerned

the moment sentence is passed, the sentence starts running. The starting of life imprisonment cannot be postponed after the expiry of the first term

of imprisonment to which the Petitioner was sentenced for a different offence. Therefore, the earlier sentence has to necessarily merge with the

latter sentence. In Case, both the Cases should have been tried by one and the same Court, there is every possibility of the trial Court to have

invoked the last limb of Section 427(i) to order the sentence to run concurrently. It is an unfortunate Case where both the Cases were tried by

different courts and judgments were delivered by this Court at different points of time. Therefore, there was no opportunity for the courts to

decide, as to whether concurrent sentence can be ordered.

4. When Section 482 can be invoked in such circumstances, this Case cannot be said to be exceptional Case where such an inherent power

cannot be invoked. Learned Addl. Public Prosecutor submits that the earlier sentence is for an offence of dacoity and the latter offence is heinous

offence of murder; therefore, the discretion of this Court u/s 482 Code of Criminal Procedure may not be exercised. This Court in this decision

cited supra, finds similar facts in that Case also where the Assistant Sessions Judge at Virudhachalara convicted the offender for an offence u/s 395

I.P.C. for a period of three years and the learned District and Sessions Judge, Tiruchirapalli in a different Case ordered the offender to undergo

imprisonment for life for an offence of murder u/s 302 I.P.C. The precedents if they are well founded should be followed by the successive courts

unless and until the earlier decision can be overruled on reasonable and just grounds. I do not find any difference between the facts in the earlier

Case and the facts of this Case except that the offender in that Case was a lady while in this Case is a male person. Except that difference, there is

absolutely nothing on facts to differ from the judgment of the learned Judge. The learned Judge has also observed that the Court is given discretion

to make subsequent sentence run concurrently with previous sentence but that discretion given to the Court can only be a judicial discretion to be

exercised reasonably, justly and not arbitrarily or whimsically. According to the learned Judge, at the stage of exercise of discretion, it should serve

any of the three purposes mentioned in the section namely, to give effect to order under the code or to prevent the abuse of the Court or otherwise

to secure the ends of justice. Since the facts on hand are similar to the facts as found in the relied judgment, I do not find any reason to differentiate

the facts from that of the earlier ruling. Therefore, I hold that with a view to secure ends of justice, it would be just and reasonable to order both

the sentences to run concurrently.

In the result, the petition is allowed and the sentences passed in both the Cases are ordered to run concurrently as prayed for.