
(2011) 01 MP CK 0062

Madhya Pradesh High Court (Gwalior Bench)

Case No: M. Cr.C. No. 8264 of 2010

Ramcharan

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: Jan. 31, 2011

Acts Referred:

- Arms Act, 1959 - Section 25(1B)
- Criminal Procedure Code, 1973 (CrPC) - Section 427, 427(2), 482
- Penal Code, 1860 (IPC) - Section 302, 34

Citation: (2011) 1 Crimes 641 : (2011) ILR (MP) 1418 : (2011) 2 MPHT 499 : (2011) 8 RCR(Criminal) 2485

Hon'ble Judges: Indrani Datta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Indrani Datta, J.

With the consent of Learned Counsel for the parties, heard finally.

1. Petitioner has filed this petition u/s 482 of Code of Criminal Procedure. praying for a direction that sentence passed against him in Criminal Case No. 337/1993 by JMFC, Sheopurkalan, is to run concurrently with the sentence of life imprisonment awarded to him in Sessions Trial No. 161/ 1997 by Additional Sessions Judge, Sheopurkalan.

2. In Criminal case No. 337/1993, Petitioner was convicted for the offence punishable u/s 25(1B)(a) of the Arms Act and sentenced to undergo R.I. of one year with a fine of Rs. 100/- by judgment dated 28.9.2000 and thereafter the Petitioner was convicted in Sessions Trial No. 161/97 u/s 302 or in the alternative 302/34 of Indian Penal Code and sentenced to life imprisonment with a fine of Rs. 1,000/- vide judgment dated 21.12.2000.

3. Learned Counsel for the Petitioner submits that in view of the provisions of Section 427 of Code of Criminal Procedure. Petitioner, who was convicted u/s 25(1B)(a) of the Arms Act and was sentenced to suffer R.I. of one year, has to undergo that sentence first and subsequent sentence awarded by Additional Sessions Judge u/s 302 of Indian Penal Code on 21.12.2000 would commence after expiry of previous sentence. Therefore, it is essential for securing the ends of justice that the sentences imposed upon him in both the cases be directed to run concurrently.

4. Learned Public Prosecutor for the State opposed the submissions made by Learned Counsel for the Petitioner and prayed for dismissal of the petition.

5. Perused the documents on record.

6. Section 427 of Code of Criminal Procedure. reads as follows:

427: (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 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 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.

From bare perusal of Section 427 of Code of Criminal Procedure. it appears that there are two different situations. As per Section 427(1), when a person already undergoing sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or to imprisonment for life, then his second sentence shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the court directs that subsequent sentence shall run concurrently with such previous sentence. In that condition, the accused has to take permission of the Court that subsequent sentence imposed upon him, shall run concurrently with his previous sentence.

7. Hon"ble Apex Court in par 11 of the case of [M.R. Kudva Vs. State of Andhra Pradesh](#),) has held as under:

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 jurisdiction in a case of this nature as it had not exercised such jurisdiction while passing the judgment 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.

In the light of above legal proposition, it is apparent that in above situation the prayer to the effect that subsequent sentence passed on subsequent conviction is to run concurrently with previous sentence, is to be made before the concerned Court or before the appellate Court as observed by bench of this Court in *Kamat Singh v. State of M.P.* ILR (2007) M.P. 1835.

8. So far as Sub-Section 2 of Section 427 of Code of Criminal Procedure. is concerned, the situation is different here. From bare perusal of Sub-Section 2, it is apparent 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. In that situation, there is no requirement for any direction of the Court as subsequent sentence will automatically run concurrently with previous sentence.

9. Taking into consideration the facts and circumstances of the case, it is apparent that provisions of Section 427(2) of Code of Criminal Procedure. are not applicable in the case at hand. Petitioner was convicted u/s 25(1B)(a) of the Arms Act by judgment dated 28.9.2000 in Criminal Case No. 337/1993 and thereafter he was convicted in another Sessions Trial and sentenced to life imprisonment which was confirmed by this Court in Criminal Appeal No. 110/2001. Neither prayer for making the sentences concurrent was made by Petitioner before Trial Court when he was sentenced in subsequent case, nor this prayer for making the sentences concurrent was made in Criminal Appeal No. 110/2001 before High Court. As such, the inherent powers u/s 482 of Code of Criminal Procedure. can not be exercised in the present situation. Petition is therefore dismissed.