

(2001) 06 AP CK 0025

Andhra Pradesh High Court

Case No: W.P.M.P. No. 14740 of 2001 in Writ Petition No. 11904 of 2001

Rajani Chit Fund Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI), Ministry of
Home Affairs and Others

RESPONDENT

Date of Decision: June 22, 2001

Acts Referred:

- Consumer Protection Act, 1986 - Section 27
- Criminal Procedure Code, 1973 (CrPC) - Section 122, 4(2), 427, 427(1), 428
- Gold (Control) Act, 1968 - Section 8
- Penal Code, 1860 (IPC) - Section 411

Citation: (2001) 4 ALT 483

Hon'ble Judges: S.B. Sinha, C.J; V.V.S. Rao, J

Bench: Division Bench

Advocate: V. Viswanatham, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

S.B. Sinha, C.J.

One of the questions raised in the writ petition was as to whether the petitioner, having been convicted in several cases, the sentences imposed upon him shall run consecutively or concurrently.

2. In C.D.No. 21 of 2000 wherein the petitioner was convicted and sentenced to undergo one month's imprisonment under the provisions of Section 27 of; the Consumer Protection Act, 1986, the sentence expired on 1-6-2001. He filed an application before the 2nd respondent that as he has already undergone imprisonment for one month in the said proceeding, the orders of conviction and sentence passed against him in other case may be directed to run concurrently. By reason of an order dated 4th May 2001, the said prayer was rejected having regard

to the fact that the sentence imposed in the earlier Consumer Dispute was not directed to run concurrently.

3. Although the provisions of Code of Criminal Procedure, 1974 are not expressly made applicable to the proceedings under the Consumer Protection Act, 1986, having regard to the provisions contained in subsection (2) of Section 4 of the Code of Criminal Procedure, the procedural provisions therein shall be attracted. Section 427(1) of the Code reads thus:

"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 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."

4. A bare perusal of the aforementioned provision would clearly go to show that unless it is directed to run concurrently when an offender undergoing imprisonment is convicted and sentenced again, the same shall commence from the date of expiry of the sentence passed against him in the earlier case. In this view of the matter, the 2nd respondent cannot be said to have erred in passing the said order. This aspect of the matter has been considered by the Apex Court in [Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs \(Prevention\), Ahmedabad and another](#), wherein it is held thus:

"8. Section 427 Cr.P.C. incorporates the principle of sentencing an offender who is already undergoing a sentence of imprisonment.

The relevant portion of the Section reads:

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.

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9. 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?

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 two offences are quite different.

11. In this appeal, the primary challenge to the sentence is based on assumption that the two cases against the appellant, under the Gold (Control) Act, and the Customs Act pertain to the same subject matter. It is alleged that the appellant was prosecuted under two enactments in respect of seizure of 7000 tolas of gold. On this basis, reference is also made to Section 428 Cr.P.C. claiming set-off in regard to the period of imprisonment already undergone by the appellant

12. The submission, in our opinion, appears to be misconceived. The material produced by the State unmistakably indicates that the two offences for which the appellant was prosecuted are quite distinct and different. The case under the Customs Act may, to some extent, overlap the case under the Gold (Control) Act, but it is evidently on different transactions. The complaint under the Gold (Control) Act relates to possession of 7000 tolas of primary Gold prohibited u/s 8 of the said Act. The complaint under the Customs Act is with regard to smuggling of Gold worth Rs. 12.5 crores and export of Silver worth Rs. 11.5 crores. On these facts, the Courts are not unjustified in directing that the sentences should be consecutive and not concurrent."

5. In the aforementioned decision, it has categorically been held that unless and otherwise directed, the sentence would run consecutively and not concurrently. The aforementioned decision of the apex Court has been considered by a Division Bench of this Court in [Amarnath Umakanth Vs. State of A.P.](#), wherein it was held that:

"5. The principle which emerges from the above decisions, in our view, is that in a given case, without regard to the place of transaction and the nature of punishment, the High Court while exercising the inherent powers u/s 482 Cr.P.C. is competent to direct the subsequent sentence to run concurrently with the earlier sentence even if the Courts below have ordered the sentences to run consecutively without regard to the provisions u/s 427(1) of Cr.P.C. The Supreme Court in the decision Mohd. Akhtar Hussain v. Asst. Collector Customs (Prevention) Ahmedabad (1 supra) at para 17, has observed thus.

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) Cr. App R. (S)P.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".

6. The above observation of the Supreme Court gives clear indication that whether the sentences are made consecutive or concurrent, it should be ensured that the totality of the sentence is correct in the light of the circumstances of the case. The Full Bench decision of the Madhya Pradesh High Court cited Sher Singh's case (supra) [[Sher Singh Vs. State of M.P.](#), which is rendered subsequent to the decision of the Supreme Court cited Mohd. Akhtar Hussain's case (1 supra), while dealing with the power of the High Courts u/s 482 Cr.P.C. and the implication of the provisions u/s 427(1) of Cr.P.C, has held that the power of the High Court u/s 482 Cr.P.C. can be invoked to make the subsequent sentence to run concurrently with the earlier sentence. The same view has been expressed by a Division Bench of this Court in the decision cited V. Venkateswarlu's case (supra) [V. Venkateswarlu v. State of Andhra Pradesh 1987 Cri.L.J. 1621.

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13. In this case, as indicated above, the petitioner was convicted for an offence punishable u/s 411 IPC by the Judicial First Class Magistrate in CC No. 251 of 1996 and sentenced to undergo R.1. for two years by judgment dated 6-5-1997. No record is placed before us to show that this sentence was suspended during pendency of the Criminal Appeal No. 69 of 1997 filed by the petitioner before the II Additional Sessions Judge, Kurnool, challenging the said conviction and sentence. The present petition has fallen for consideration before us and on the date of rendering this decision i.e., 11-6-1999, the petitioner invariably has served the sentence of two years imposed on him on 6-5-1997 in CC No. 251 of 1996 by the Judicial First Class Magistrate, Yemmiganur. Therefore, the sentence imposed on the petitioner in CC No. 251 of 1996 is no more in force for us to direct the subsequent sentence imposed on the petitioner on 3-7-1997 in CC No. 30 of 1997 by the Judicial First Class Magistrate, Banaganapalli, to run concurrently with the earlier sentence."

6. For the reasons aforementioned, we do not find any merit in the application. However, in the event the petitioner is ready and willing to pay the amount in question, the 2nd respondent herein may consider the desirability of passing such order or orders as he deems fit and proper.

7. The W.P.M.P. is dismissed, subject to the aforementioned observation.

8. As a batch of writ petitions is pending wherein the vires of Section 27 of the Consumer Protection Act has been questioned,, let his writ petition be admitted and posted along with other batch of cases.