

(2009) 12 MAD CK 0197

Madras High Court

Case No: Criminal Original Petition No. 18392 of 2009

Mathi @ Mathivannan
@ Mathimannan and
Chinna Munij @ Chinn

APPELLANT

Vs

State by Inspector of
Police

RESPONDENT

Date of Decision: Dec. 11, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 427, 428, 482
- Penal Code, 1860 (IPC) - Section 302, 341

Citation: (2010) 1 LW(Cri) 946

Hon'ble Judges: V. Periya Karuppiah, J; M. Chockalingam, J

Bench: Division Bench

Advocate: No appearance, for the Appellant; Babu Muthu Meeran, Additional Public
Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M. Chockalingam, J.

There was no representation on behalf of the Petitioners on the last hearing and even today.

2. Perused the averments made in the original petition and heard the learned Additional Public Prosecutor.

3. The Petitioner seeks to set off the remand period of 316 days from 27.08.2002 to 09.07.2003 in Sessions Case No. 72 of 2003 dated 09.07.2003 on the file of Additional District Judge, Fast Track Court No. I, Chennai.

4. The only grievance ventilated by the Petitioners is that when the matter was taken up by the Fast Track Court, Chennai, the Petitioners were awarded life imprisonment u/s 302 IPC along with fine and default sentence and also one month rigorous imprisonment u/s 341 IPC and the sentences were ordered to run concurrently; that an appeal was preferred therefrom in CA. No. 1283 of 2003 and the judgment of the trial court was affirmed by a judgment of this Court dated 26.10.2006; thus, the Petitioners have been undergoing the sentence imposed by the trial court, which was subsequently affirmed by this Court; that they were in remand for 316 days i.e. from 27.08.2002 to 09.07.2003 and the remand period was not given set off by the learned trial judge; that under such circumstance, it becomes necessary to seek the relief before this Court.

5. After going through the materials, the Court is of the considered opinion that the relief sought for by the Petitioners could not be granted by this Court. This application is filed under Sections 482 and 428 of Code of Criminal Procedure to set off the remand period. It is the settled principle of law laid down by the Apex Court in a decision reported in (2007) 1 SCC (Cri) 648 (M.P. Kudva ..v. State of A.P.) that in a given case like this, when the relief sought for has got to be given, it must be recorded by the trial court, namely, the Court of Session or the appellate court when the appeal is disposed of, and for that purpose, no question of exercising inherent jurisdiction arises while it was not exercised in appeal by the High Court and the relevant paragraph reads as follows:

The provision of Section 427 Code of Criminal Procedure 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 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 judgments in appeal. Section 482 Code of Criminal Procedure 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 Code of Criminal Procedure would be attracted. The said provision, therefore, could not have been applied in a separate and independent proceeding by the High Court. The appeal being devoid of any merit is dismissed.

Therefore, no question of ordering set off at this stage would arise by way of an independent original petition like this.

Following the ratio laid down by the Apex Court, this Court is of the considered opinion that it is not a fit case where the relief sought for by the Petitioners could be granted. Accordingly, the criminal original petition fails and is dismissed.