

(2013) 02 BOM CK 0215**Bombay High Court**

Case No: Criminal Writ Petition No. 3462 of 2012, Cri. Application No. 626 of 2012 and Cri. Application No. 648 of 2012 in Writ Petition No. 3462 of 2012

Navnit Madhukar Naik and Priya

Navnit

APPELLANT

Vs

State of Maharashtra,

Mantralaya, Mumbai

RESPONDENT

Date of Decision: Feb. 15, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 29, 30(1)(b), 427, 428, 482
- Negotiable Instruments Act, 1881 (NI) - Section 138
- Penal Code, 1860 (IPC) - Section 201, 34, 380, 420, 454

Citation: (2013) 2 ABR 779 : (2013) ALLMR(Cri) 1582 : (2013) 2 BomCR(Cri) 827

Hon'ble Judges: A.S. Oka, J; A.P. Bhangale, J

Bench: Division Bench

Advocate: Arfan Sai, for the Appellant; S.D. Shinde, Assistant Public Prosecutor for the State, for the Respondent

Judgement

A.P. Bhangale, J.

Rule. Taken up for hearing by consent. Heard submissions at the Bar. Perused record in the proceeding. By application no. 626 of 2012 and 648 of 2012 the applicants- convict Navnit Madhukar Naik and his wife Sau Priya Navnit Naik prayed for concurrent running of sentences instead of consecutive sentences in all three cases in which they were convicted on the ground that they belong to very poor family having a dependant minor Son aged about six years old, who is at present residing with aged parents of Navnit. Father of Navnit is suffering from High blood pressure and diabetes, while Mother of Navnit is suffering from short sightedness. Navnit is bread earner for the family, but since in jail the family may be facing difficulties even to earn livelihood. Education of the Son is also adversely affected and his future appears dark, under the circumstances if the applicants are to

undergo the full sentences of imprisonment imposed consecutively and not concurrently.

2. The facts are admitted and the petitioners were convicted in three criminal cases.

a) In Regular Criminal Case No. 105 of 2011 tried before the Judicial Magistrate F.C., Igatpuri the accused were prosecuted for the offences punishable u/s 420, 380 read with Section 34 of the Indian penal Code. Upon the conviction on 04-07-2012 the maximum sentence of imprisonment imposed upon both the Petitioners was only eighteen Months directed to run concurrently. In addition for the Petitioners the fine was imposed in the sum of Rs. 1000/-, and in default to undergo imprisonment for 4 months.

b) In Regular Criminal Case No. 08 of 2011 tried before the Judicial magistrate F.C., Murud District Raigarh, the petitioners were prosecuted for the offences punishable u/s 380, 454, and Section 201 of the Indian Penal Code, in which the petitioners were convicted of the offences punishable u/s 380 and 201 of IPC. In this case maximum imprisonment was 18 Months for offence punishable u/s 380 and 201 of the IPC for each offence and the substantive sentence of imprisonment were ordered to run concurrently. The fine was imposed in addition in the sum of Rs. 6000/-, in default the imprisonment was 15 days. This case was decided after nine witnesses were examined by the prosecution and reasoned Judgment and order of conviction was recorded by the trial Magistrate after full-fledged trial was held.

c) In Regular Criminal Case No. 26 of 2011 tried in the Court of Judicial magistrate F.C. Wada the petitioners were prosecuted for the accusations punishable under 380 read with S. 34 of the IPC and maximum sentence of Imprisonment was 18 months and fine in the sum of Rs. 1000/- in default to undergo imprisonment for one month.

3. Learned Advocate Mr. Arfan Sait, on behalf of the Petitioners contended that petitioners had voluntarily pleaded guilty in Regular Criminal Case No. 105 of 2011 heard by Learned J.M.F.C. Igatpuri and in Regular Criminal Case No. 26 of 2011 heard by J.M.F.C., Wada, because they wanted early completion of criminal trials, while police had also involved them in third case however they had not preferred any appeal against their conviction in third case i.e. Reg. Criminal case 08 of 2011 heard by learned J.M.F.C. Murud. The petitioners had pleaded for leniency in the form of concurrent sentence in the trial Courts but their plea was rejected. Under these circumstances they had no other alternative remedy except approaching this Court in writ jurisdiction. Mr. Sait urged that the sentences imposed against the Petitioners may be directed to run concurrently.

4. Learned A.P.P. Mr. Shinde opposed the plea for the concurrent sentences on the ground that the Petitioners were involved in three cases of identical accusations. Learned APP argued that in the case of M.R. Kudva Vs. State of Andhra Pradesh, the Apex Court held that the High Court could not have exercised power u/s 482 of Cr. P. Code as provision u/s 427 Cr. P. Code could not be applied in a separate and

independent proceeding.

5. Mr. Sait in reply submitted in exercise of Writ jurisdiction this Court has power to direct concurrent sentence with reference to the ruling in [Boucher Pierre Andre Vs. Superintendent, Central Jail, Tihar, New Delhi and Another](#), the Apex Court had dealt with Sec. 428 Cr. P.C. and has held that Sec. 428 Cr. P.C. applies not only in relation to the substantive sentence of imprisonment but also in relation to the sentence of imprisonment in default of payment of fine and further held that the set off however, does not absolve the accused persons from the liability to pay fine imposed on him.

6. Reference may also be made to the ruling in [Chinnasamy Vs. State of Tamil Nadu and Others](#) a Division Bench of Madras High Court had considered a case of an accused convicted on the same accusation in all the cases and ordered the sentences to run concurrently.

7. We have perused report received from the Superintendent of Ratnagiri Special Jail. It is reported that the conduct of the Petitioners in jail is satisfactory and they have earned remission of 28 days. While considering the minimum fine that could be imposed, the Apex court in [Shanti Lal Vs. State of M.P.](#), has considered Sec. 30(1)(b) of Cr. P.C. which authorizes the Court to award imprisonment in default of payment of fine up to limits as authorized by law; Section 29 limits the term of sentences of imprisonment or fine which the court of the Magistrate is competent to inflict as punishment for the offence triable in the court of Magistrates. Sec. 427 of Cr. P.C. empowers the Court to direct the subsequent sentence to run concurrently with a previous sentence when a person is already undergoing a sentence of imprisonment in a previous case. The court may direct that the sentence in the subsequent criminal case shall run concurrently with previous sentence awarded in the earlier case of conviction. But this power is an exception to the general rule in the section that the imprisonment awarded in a subsequent case will commence at the expiration of the sentence awarded in the previous case. However considering that the petitioners voluntarily pleaded guilty in two cases and gave full co-operation for the early completion of the trial, it is submitted that exceptional power can be used by exercise of discretion with due regard to the facts and circumstances of the case. This Court in exercise of writ jurisdiction can consider using fair discretion to determine the suitability of a concurrent sentence considering the peculiar circumstances of the cases faced by the Petitioners, upon compassionate ground and with adequate leniency towards the Petitioners -convict and their dependant family members- a minor school going Son of Petitioners and aged parents of Navnit, we feel it righteous to consider directing the sentences in at least two cases a) and c) SUPRA (in which the Petitioners pleaded guilty) to run concurrently instead of consecutively. Having regard to the facts brought to our notice, it appears that the convicts were particularly cooperative throughout legal proceedings against them, and have no prior history of criminal offences to their

discredit except the above three cases, and considering other mitigating factors that are involved, we feel it necessary to consider allowing the prayer for concurrent sentence. In our view in the present case substantive sentences of imprisonment may be directed to run concurrently considering that the charges were of similar gravity in nature i.e. Section 380 read with 34 IPC in at least two cases (a) and (c) abovementioned in which the accused had voluntarily pleaded guilty and invited infliction of punishment against them. The object of criminal justice system is to reform the criminal as well as to prevent the repetition of crime. Penology has thus double object, i.e. (i) to punish the criminal to prevent repetition of crime and (ii) to endeavour for his reform wherever possible. When a person is very poor and because of his poverty he could not pay the fine amount and is ordered to remain in jail even after the period of substantive sentence of imprisonment is over, a serious prejudice would be caused to the person. This principle has been laid down by the Apex Court in [Shanti Lal Vs. State of M.P.,](#)

31.The term of imprisonment in default of payment of fine is not a sentence. It is a penalty which a person incurs on account of non-payment of fine. The sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole either in appeal or in revision or in other appropriate judicial proceedings or "otherwise". A term of imprisonment ordered in default of payment of fine stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. He, therefore, can always avoid to undergo imprisonment in default of payment of fine by paying such amount. It is, therefore, not only the power, but the duty of the court to keep in view the nature of offence, circumstances under which it was committed, the position of the offender and other relevant Considerations before ordering the offender to suffer imprisonment in default of payment of fine.

8. It is also relevant to consider the ruling delivered by three Judges reported in [State of Punjab Vs. Madan Lal](#), wherein, the Apex Court dismissed the appeal filed by the State of Punjab challenging the order of the P & H High Court ordering concurrent running of sentences in cases u/s 138 on Negotiable Instruments Act, it has been held by the Supreme Court that Punjab and Haryana High Court had came to the correct conclusion while it dismissed the appeal by the State stating that there is no infirmity or illegality in the order passed by Punjab & Haryana High Court. In the said case, the appellant/accused has filed a petition u/s 482 of Cr. P.C., which was taken on file in Crl. A. No. 529 of 2004 by the High Court. In that, while, considering the facts of the case, the application filed for direction to the effect that the quantum of punishment awarded to run concurrently in respect of the three convictions and sentences imposed was allowed by the High Court, wherein the conviction were in terms of Section 138 of Negotiable Instrument Act, i.e. the High Court had directed that the sentences imposed by the learned Additional Sessions Judge, Ludhiana and Sub Divisional Judicial Magistrate, Khanna to run concurrently.

9. Here, in the case on hand, the petitioners were convicted in criminal cases listed as a) to c) above and sentenced to undergo 18 months of imprisonment in each case and they had not preferred any appeals against the same. In this situation, the said decision in State of Punjab Vs. Madan Lal, is equally applicable to the facts of the present case.

10. In sequel to the discussion as above, in the light of decision by the Apex Court in Madan Lal's case, we are of the considered view to direct that the Petitioners shall suffer all the substantive sentences of imprisonment imposed in cases a) and c) concurrently and not consecutively. In other words, considering the fact that the Petitioners will have to undergo the sentence of imprisonment as directed by the trial magistrate in the case b) since it was decided after full-fledged trial referred as above, We think it fair and even handed objective view, bearing in mind the facts and circumstances of the case to direct that the substantive sentence of imprisonment which each of the Petitioners will have to undergo shall not altogether exceed 36 (thirty- six) months in total, in respect of all the three cases listed as a) to c) as above. Upon expiry of thirty six months of imprisonment in respect of all three cases suffered by each of the petitioners-convicts (with set off allowed for the period of imprisonment already underwent) they shall be released from the jail. Order accordingly shall be communicated to the Petitioners-convicts and the Prison authority concerned for implementation as directed by us. Writ Petition and applications filed by the convicts herein are allowed and disposed of accordingly.