

(1995) 12 MAD CK 0041
In the Madras High Court
Case No : Criminal O.P. No. 50 of 1994

Lakshmi alias Mookayee @ Marudhayee	APPELLANT
Vs	
The Inspector General of Prisons and Others	RESPONDENT

Date of Decision : 05-12-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 427, 482
Penal Code, 1860 (IPC) — Section 395

Citation : (1996) 1 CTC 110 : (1996) 2 LW(Cri) 716

Hon'ble Judges : Shivappa, J

Bench : Single Bench

Advocate : P. Narayanamurthy, for the Appellant; B. Sriramulu, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Shivappa, J.—The petitioner is seeking for a direction to the first respondent herein to treat the sentence imposed on her in two Sessions Cases S.C. Nos. 170 of 1982 and 65 of 1982 to run concurrently.

2. The Brief facts are:- The petitioner was convicted by the Asst. Sessions Judge at Vridhachalam for an offence u/s 395 I.P.C. for a period of three years on 7.12.1982 in S.C. No. 170 of 1982. While undergoing the sentence the petitioner was convicted by the District and Sessions Judge at Tiruchirappalli to undergo imprisonment for life for an offence u/s 302 I.P.C. in C.C. No. 65 of 1982 on 31.3.1983. It is submitted that her husband is a cooly and she is not in a position to look after her female child aged about 9 years which requires care and protection. It is her case that she is languishing in prison for the last twelve years and that the District and Sessions Judge did not direct the sentences to run concurrently.

3. The Principal point for consideration is;- whether the High Court u/s 482 Cr. P.C., is competent to order the sentences to run concurrently when the conviction and sentence have been passed by two Criminal Courts of different Sessions

Division?

4. Section 427 of the Code of Criminal Procedure, hereinafter referred to as "the Code", for short, contemplates that when a person already undergoing a sentence of 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 direct that the subsequent sentence shall run concurrently with such previous sentence. Sub-Clause (2) contemplates 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. The section relates to administration of criminal justice and provides procedure for sentence.

5. The consensus of the Judicial opinion of different High Court seems to be that inherent powers of the High Court can be invoked u/s 482 Cr. P.C., even if the trial Court or appellate or revisional court has not exercised its discretion u/s 427(1) of the Code. The inherent power of the High Court is not in any way fettered by the provisions of Section 427(1) 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. The sentencing should not be treated as a mere matter of formality. In the matter of sentencing a person, courts will have to take note of the fact that human behaviour is the product of antecedent circumstances. The measures employed to treat a convicted offender should serve a therapeutic function. Such measures should be designed to effect changes in the behaviour of convicted person, the interest of his own happiness, health and satisfaction and interest and social defences. A person who is sincerely trying to rehabilitate herself ought not to be demoralised. Punishments are normally made cumulative. But the Court is given discretion to make subsequent sentence concurrently with such previous sentence but that discretion given to the Court can only be judicial discretion to be exercised reasonably, justly and not arbitrarily or whimsically. At the stage of exercise of discretion it should serve any of the three purposes mentioned in the section viz., to give effect to any order under the Code, or to prevent the abuse of the Court or otherwise to secure the ends of justice. It is equally well- established that the inherent power is to be exercised to do right and undo a wrong in the course of administration of justice and this power ought to be exercise sparingly only when the court feels that the ends of justice requires it and not as a matter of routine. Exercise of discretion depends on the facts and circumstances of each case. The nature of character of the offences committed the prior criminal record of the offender, age, sex, family background, interest of the dependents and urge to reform, are factors to be taken into consideration. Justice Krishna Iyer had said in Mohammad Giasuddin Vs. State of Andhra Pradesh, :

"The drawback of our criminal process is that they are built on the bricks of

impressionist opinions and dates values, ignoring empirical studies and deeper researches ... the human art of sentencing remains a retarded child of the Indian Criminal System". When he was a Judge of the Kerala High Court, he had said in *Shiva Prasad v. State of Kerala* 1969 Ker. L.T. 862 : "Criminal trial in our country is largely devoted only to finding out whether the man in the dock is guilty. It is a major deficiency in the Indian system of criminal trials that the complex but important sentencing factors are not given sufficient emphasis and materials are not presented before the Court to help it for a correct judgment in the proper personalised, punitive treatment suited to the offender and the crime".

The Supreme Court had said in *Ram Narain Vs. State of Uttar Pradesh*, :

"...the broad objected of punishment of an accused found guilty in progressive civilised societies is to impress on the guilty party that commission of crime does not pay and that it is both against his individual interest and also against the larger interest of the society to which he belongs."

The Law Commission speaking about a proper sentence stated:

"A proper sentence is a composite of many factors including the nature of the offence, the circumstances extenuating or aggravating the offence, the prior criminal record of the offender, the background of the offender with reference to education, homelife, sobriety and social adjustment, the emotional and mental condition of the offender, the possibilities of treatment and training of the offender, the possibility that this sentence may serve as a deterrent..."

6. The Supreme Court in *Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs (Prevention), Ahmedabad and another*, has said.

"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 Maximum sentence awarded in one case against the same accused is a relevant consideration, the earlier sentence being for three years in S.C. No. 170 of 1982 passed on 7.11.1982 and the subsequent sentence in S.C. No. 65 of 1982 being for an offence u/s 302 I.P.C. for imprisonment for life on 31.3.1983. In the instant case the earlier sentence is only for a period of three years and the life imprisonment is awarded in a subsequent conviction. An award of maximum sentence is in one case against the same accused being of relevant consideration, keeping in view the age of the petitioner, she is a lady having a daughter aged about 9 years and her husband being a cooly and languishing in jail for the last twelve years, now intending to look after the welfare of her daughter. In such a situation, the punishment should not be retaliatory but reformatory, that too when the petitioner seeks for a chance to return to the mainstream of life, giving a direction to run the sentence concurrently, it would be providing a chance to make effort to adopt herself to the society in a

meaningful and a new possible manner. Being impelled by these considerations, I direct that the sentence passed in S.C. No. 65 of 1982 on 31.3.1983 to run concurrently with the remaining sentence awarded in S.C. No. 170 of 1982 on 7.12.1982.

7. In the result, the conviction and sentence passed in S.C. No. 65 of 1982 on 31.3.1983 passed by the District and Sessions Judge at Tiruchirappalli and S.C. No. 170 of 1982 on 7.12.1982 by the Asst Sessions Judge, Vridhachalam shall run concurrently. The petitions is allowed.