

(2023) 01 MP CK 0084

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No.44015 Of 2022

Maresh And Others

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 20-01-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 31, 31(1), 427, 482
Indian Penal Code, 1860 — Section 71, 380, 457
Evidence Act, 1872 — Section 27

Citation : (2023) 01 MP CK 0084

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Siddharth Jain, Chetan Jain

Final Decision : Dismissed

Judgement

Vivek Rusia, J

The present petition has been filed under Section 482 read with Section 31(1) of the CRPC seeking direction with regard to sentences passed against the present petitioner under Sections 457 and 380 of IPC in Crime No.305/2015 to run concurrently.

The facts of the case in short are as under:-

1. One Gulab Singh Bhide, Jan Sikshak was posted at Government Middle School, Jeerabad . Shri A.S. Yadav, Principal lodged a report that on 19.09.2015 when he opened the Principal's room of the school found that computer, C.P.U. mouse, keyboard, cable spike, scanner (cannon) mike, inverter-2, battery, tabular, printer and old monitor are missing. According to them, in the preceding night, some unknown persons committed loot , on such reporting an FIR was registered at Crime No.305/2015 under Sections 457 and 380 I.P.C. of the Indian Penal Code against some unknown persons. The investigation was started, a spot map was prepared and on the basis of discrete information, the applicants Maresh,

Ajeet, Guddu @ Yashwant and Chhatar Singh were arrested. In their memorandum prepared under Section 27 of the Indian Evidence Act, they have admitted the commission of a crime and on their disclosure, all the looted articles have been recovered. After the completion of the investigation, a charge- sheet was filed. The prosecution has examined seven witnesses. The applicants denied the charges and pleaded for trial. After appreciating the evidence on record the learned Court below has convicted the applicants under Sections 457 and 380 I.P.C and sentenced 1-1 year with a fine of 10,000-10,000. Learned the Trial court did direct to run both sentences run concurrently. Being aggrieved by the above judgement the accused proffered criminal appeal and Criminal Revision and both have been dismissed by the learned Additional Session Judge and this High Court respectively. The applicants did not make a prayer before superior courts to make sentences run concurrently.

2. Now applicants have approached this court by way of a petition under section 482 of Cr.P.C. seeking direction to sentences run concurrently otherwise they will have to undergo 2 years in jail.

3. Learned counsel for the petitioner submits that the Full Bench of this Court in the case of Sher Singh Vs. State of M.P. reported in 1989 MPLJ SCC 116 has considered the scope of Section 482 of the Cr.P.C in the applicability of Section 427 of the Cr.P.C and held that the High Court has inherent powers to pass an appropriate order to meet the ends of justice same analogy can be applied to the applicability of Section 31 for these applicants, who are the first offender in this case. It is further submitted that at the time of the offence, they were aged about 21 and 22 years and if they are required to remain in jail for two years for conviction under Sections 457 and 380 of IPC their future may be spoilt. Therefore it is a fit case in which the High Court can exercise the powers under Section 482 of Cr.P.C to direct for running both sentences concurrently.

4. Learned Government Advocate opposes the prayer by submitting that under Section 31 the power lies with the trial Court to pass an order for running the sentences concurrently if no order has been passed then all sentences are liable to be run separately.

Heard and conclusion

5. Section 427 and Section 31 of the Cr.P.C deals with different fields . Section 427 Cr.P.C applies where the accused is convicted in two different trials by two different Courts but in Section 31 if the accused is convicted for two offences in one trial then the trial Court in the given facts and circumstances may direct to run the sentences concurrently.

6. After conviction by the trial Court, the applicants preferred an appeal and did not pray for the running of the sentence concurrently and the Appellate Court has confirmed the order of conviction and sentence as it is. Thereafter the revision was filed even at that stage no prayer was made. However, while confirming the sentence, this Court has observed that under Section 457 of IPC

the sentence may go up to 14 years but looking at the facts and circumstances only one year sentence has been awarded. Likewise under Section 380 of IPC maximum sentence is seven years but only one year has been awarded. Cumulatively these applicants are liable to run two years sentence with a fine which appears to be proper looking to the offence and sentence provided or the offences under sections 380 and 457 I.P.C. As stated above Section 31 of the Cr.P.C. relates to sentences in cases of conviction of several offences at one trial. Under proviso to Sub Section (2) of Section 31 of Cr.P.C. in no case a person can be sentenced to imprisonment for a period longer than fourteen years and the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence. Section 31 of Cr.P.C. is reproduced as under:

"31. Sentences in cases of conviction of several offences at one trial.(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which= such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that-(a) in no case shall such person be sentenced to imprisonment for longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence."

7. It is correct that under section 31 of Cr.P.C the powers lie before the trial Court to pass specific orders for running the sentences concurrently, otherwise such punishments shall run concurrently. The holding of the accused guilty under two or more offences of I.P.C. of other enactments the learned Trial Court fix the date for hearing on sentences at that time the accused may pray of running the sentences concurrently. In this case, the learned Trial Court did not pass any order to run both sentences run concurrently and the said judgment has been affirmed by this Court, therefore the coordinate Bench in the exercise of powers under Section 482 of the Cr.P.C which is akin to Section 397 of the Revisional Jurisdiction cannot direct to run sentences concurrently by way modification of the order passed by this High Court in revisional jurisdiction, which is not

permissible under the Cr.P.C.

The petition is accordingly dismissed.