

(2011) 03 P&H CK 0082

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-24431 of 2010

Mohan Lal, Sole Proprietor and Lakhbir Singh Mohan Lal,
Commission Agent

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 25-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 427, 427(1), 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2012) 2 BC 155 : (2011) CriLJ 4623

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Daya Chaudhary, J.—The present petition u/s 427 read with Section 482 Code of Criminal Procedure has been filed on behalf of petitioner Mohan Lal, sole proprietor of M/s Lakhbir Singh Mohan Lal with the prayer that the sentences awarded in two different cases be ordered to run concurrently.

2. Learned Counsel for the petitioner submits that on the basis of complaint filed by complainant-respondent No. 2 in respect of dishonour of cheque for a sum of Rs.2 lacs u/s 138 of the Negotiable Instruments Act, the petitioner was convicted vide judgment dated 16th January, 2007 and sentenced to undergo RI for two years with fine of Rs.5000/- and in default of payment of fine to further undergo RI for two months. Appeal was dismissed and criminal revision filed before the High Court was partly allowed and sentence of imprisonment was reduced from two years to one year but the sentence of fine remained the same. In another complaint No. 12/2 dated 24.1.2003 u/s 138 of the Negotiable Instrument Act (for short "the Act"), the petitioner was convicted and sentenced vide judgment dated 16th January, 2007 and sentenced to undergo RI for two years with fine of Rs.5000/- and in default of payment of fine to further undergo RI for two months. The appeal was dismissed and the criminal revision filed in the High

Court was partly allowed and sentence of imprisonment was reduced from two years to one year RI and sentence of fine remained the same.

3. Learned Counsel for the petitioner further submits that both the complaints were u/s 138 of the Negotiable Instruments Act and were decided on the same day i.e. 16th January, 2007. Learned Counsel also submits that petitioner is having three minor children and facing agony of protracted criminal proceedings since the year 2003 and because of lapse on the part of the lawyers appearing on behalf of the petitioner before the courts below, order for running the sentence concurrently could not be passed. The petitioner should not suffer due to lapse on the part of the lawyers appearing for him. The petitioner has no criminal background. He has been convicted and sentenced u/s 138 of the Negotiable Instruments Act in both the cases. Learned Counsel for the petitioner also relies upon the judgment of Rajasthan High Court in Achalchand Sancheti v. State of Rajasthan 2010 (3) RCR 576 in support of his contention.

4. Learned Counsel for the State opposes the prayer of the petitioner on the ground that request for running the sentences to concurrently was not made at the time of passing of the judgment before the trial Court as well as at the appellate Court and even at the time of hearing of the revision petition in the High Court , no such prayer was made. Learned Counsel for the State also relies upon the judgment of Hon''ble the Apex Court in M.R.Kudva v. State of Andhra Pradesh 2007(1) RCR 868 to support her contention.

5. Heard the arguments of learned Counsel for the parties and have also perused the documents available on the file.

6. In the present case, admittedly the petitioner was convicted in two different complaints u/s 138 of the Negotiable Instruments Act and sentenced for a period of two years by the trial Court with fine of Rs.5000/- and in default of payment of fine to undergo further RI for two months. Appeal filed against judgment of the trial Court was dismissed by the learned Additional Sessions Judge, Nawanshahr and Crl.Revisions in both the cases were partly allowed by the High Court and sentence was reduced from two years RI to one year RI and sentence of fine remained the same. It is also an admitted fact that no such application for running the two sentences concurrently was made neither before the trial Court nor before the appellate Court or even in the High Court also.

7. It would not be appropriate to go into the controversy whether it was fault of the lawyers appearing before the Courts or fault lies with the Petitioner. This application has been filed after completion of first sentence. It is also mentioned in the petition that the petitioner is having three minor children and is facing the protracted criminal proceedings since the year 2003 and has also suffered mental agony and physical pain. Different views have been taken in different judgments. It would be appropriate to quote Section 427 Code of Criminal Procedure which reads as under:

427. Sentence on offender already sentenced for another offence.

(1) When a person already undergoing a sentence of imprisonment is sentenced on 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 u/s 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.

(2) 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.

8. Although discretion has been left to the Court but that discretion is to be exercised by taking into consideration the different provisions which depend upon facts of each case, nature and character of the offence, criminal background of the case, his age, sex etc. All these provisions would be relevant while exercising the discretion in view of the provisions of Section 427 (1) Code of Criminal Procedure Even in Full Bench judgment of this Court in Jang Singh v. State of Punjab 2008(1) R.C.R. 323 after discussing judgment of Hon''ble the Supreme Court in M.R.Kudva's case (supra), it has been held in para No. 18 of the judgment as under:

The consensus of the judicial opinion, as may emerge from different judgments passed by various High Courts and the Hon''ble Supreme Court, seems to be that normal rule, as per Section 427 Code of Criminal Procedure, is that, a person who is undergoing a sentence of imprisonment and is sentenced on a subsequent conviction to an imprisonment or an imprisonment for life, then such imprisonment or imprisonment of life shall commence after the expiration of the imprisonment, to which he has been previously sentenced. This, however, would not be so if the Court directs that the subsequent sentence shall run concurrently with the previous sentence. Such direction to make the sentences to run concurrently, as per various decisions noted above, can be exercised by the trial Court or by the appellate Court or a revisional Court at the time of exercising appellate or revisional jurisdiction as well. However, if the trial Court does not pass any such direction for making the sentences to run concurrently and appeal or revision against said decision is also decided, then it may not be open for a person to seek such direction for making the sentences to run concurrently by moving an application under Sections 482/427 Code of Criminal Procedure The view taken by one set of the High Courts that such an application can be entertained while exercising inherent powers u/s 482 Code of Criminal Procedure would no more appear to be a good law in view of the decision of the Hon''ble Supreme Court in M.R.Kudva case (supra). We are, thus, bound to take this view

that this discretion though available with the trial Court, appellate Court or the revisional Court while holding trial or entertaining appeal or revision but would not be so available to be exercised in isolation when application in this regard is moved either under Sections 482 or 427 Code of Criminal Procedure. What principal and consideration will governs the exercise of this discretion, as already noted above can not be exhaustively enumerated. Certain relevant factors, as can be culled out from different judgments referred to above, may give an indication where such discretion may be exercised. These factors generally would be the nature or character of the offences committed, the prior criminal record of the offender, character, his age and sex etc. ghastly nature of the crime. The offender being habitual would also be the factor, which can be relevantly taken into consideration. It may be stated at the cost of repetition that these are not the only reasons for which the Court can exercise this discretion. Discretion always is open to be exercised by any Court dependent upon the facts and circumstances of each case on any relevant or valid consideration as may be considered so by the Court while holding the trial or deciding the case at the stage of appeal or revision.

It may require a notice that Section 427 Code of Criminal Procedure as observed by Hon''ble Supreme Court is aimed at amelioration and this aspect may also require to be kept in view while exercising the discretion.

9. In view of the law position and the facts of this case as discussed above, the present case is also of such nature where such discretion ought to be exercised as petitioner is facing the agony of protracted trial since the year 2003. He is having three minor children and having no criminal background and offence is also u/s 138 of the Negotiable Instrument Act and sentence in both the cases is one year. He has already completed sentence in one case and then application has been moved after conclusion of the proceedings and after exhausting all remedies but inadvertently the prayer for running the sentences concurrently was neither made before the trial Court nor before the appellate Court or even before the revisional Court.

10. Keeping in view the facts and circumstances of the present case as mentioned above and in both the cases complaints were u/s 138 of Negotiable Instruments Act and both cases were decided on the same date. So, keeping in view the nature of offence and the fact that the petitioner has already undergone half of the substantive sentence and he is facing protracted trial since 2003. Accordingly, the petition is allowed and it is directed that the substantive sentences awarded to the accused petitioner u/s 138 of the Act in Complaint No. 13/2 dated 24.1.2003 and Complaint No. 12/2 dated 24.1.2003 shall run concurrently.