

(1964) 03 AP CK 0004

In the Andhra Pradesh High Court

Case No : Criminal Miscellaneous Petition No. 535 of 1964

Mullapudi Venkanna

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 23-03-1964

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 369, 397(1), 435, 561A

Citation : AIR 1964 AP 449 : (1964) CriLJ 377

Hon'ble Judges : Mohamed Mirza, J

Bench : Single Bench

Advocate : Adavi Ramarao, K. Nagaraja Rao and A.V. Radhakrishna, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Mohamed Mirza, J.—This petition is filed by Mr. Adavi Rama Rao, the learned Counsel praying that this Court may order the sentence passed in S. C. No. 2/61 on the file of the Assistant Sessions Judge, Gudivada to run concurrently with that passed in S C. No. 26/57 on the file of the Assistant Sessions Judge, Eluru. The learned Counsel appearing for the Public Prosecutor relied on In Re: Nachimuthu, and submits that the High Court has no power to review the orders passed by the trial Court or appellate Court and the order to make the sentences run concurrently cannot be passed when there is no appeal pending before the High Court. But in my opinion, the High Court has wide powers u/s 485, Criminal Procedure Code and it can always consider the propriety of a sentence recorded by the lower Courts and in case it feels that the sentence is inappropriate it can always correct it. The power to order the sentences to run concurrently is provided u/s 397(1) Criminal Procedure Code, and the Court can always consider the feasibility of ordering the sentences to run concurrently. Thus the High Court cannot be in a worse position than the trial Court or the lower Appellate Court to exercise that power and for this purpose I think the provisions of Section 561-A can always be invoked.

2. The learned Counsel for the petitioner has referred me to a decision of the Patna High Court in Baijnath v. State AIR 1901 Pat 138 wherein it has been laid down that a petition of this type does not raise any question either of altering or reviewing the judgment of the High Court and overriding the specific provisions of Section 369 Criminal Procedure Code because the judgment will stand as it is and the order passed u/s 561-A would be a separate order and complete by itself. I entirely agree with the view expressed in the Patna case.

3. In the result, I allow the petition and order that the sentence passed in S. C. 2/61 on the file of the Assistant Sessions Judge, Gudivada shall run concurrently with the sentence passed in S.C. 26/57 on the file of the Assistant Sessions Judge, Eluru.