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**(1994) 11 P&H CK 0052**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Criminal Miscellaneous No. 10083-M of 1992

Ram Chander

APPELLANT

Vs

Inspector General of Prison, Punjab

RESPONDENT

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**Date of Decision :** 22-11-1994

**Acts Referred:**

**Citation :** (1995) 3 RCR(Criminal) 228

**Hon'ble Judges :** N.K.Kapoor, J

**Advocate :** Manjit Singh, A.S. Trikha, Advocates for appearing Parties

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**Judgement**

N.K. Kapoor, J.

1. Petitioner seeks quashing the penalty of arrest for six months U/s 9 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (for short the Act) and in the alternative for modification of the order dated 21.12.1991 passed by the Judicial Magistrate in terms of section 427(2) of the Code of Criminal Procedure.

2. It is the case of the petitioner that he was undergoing life imprisonment under Section 302/34 of the Indian Penal Code under the order of Sessions Judge dated 10.12.1987. He was released on furlough for 21 days on 25.9.1991 but he could not surrender within the stipulated period as he was arrested by the police on the report of M/s Deepak Engineering Company, Ludhiana, and was ultimately handed over to the Superintendent Jail.

3. Superintendent Jail vide his order dated 5/781991 came to the conclusion that the petitioner has failed to explain the period of his over stay and so a complaint under section 8 read with section 9 of the Act was filed before the Chief Judicial Magistrate, Ludhiana, Judicial Magistrate Ist Class, Ludhiana, vide his order dated 21.12.1991 convicted the petitioner and after hearing him awarded a sentence of six months.

4. The sole submission of the learned counsel for the petitioner is that the

sentence awarded by the Judicial Magistrate Ist Class, Ludhiana, vide order dated 21.12.1991 it to run concurrently as the petitioner was already undergoing sentence of imprisonment for life. This is the mandate of Section 427(2) of the Code of Criminal Procedure.

5. Learned AAG Punjab, however, urged that the petitioner is neither entitled for quashing of order of Judicial Magistrate Ist Class nor is entitled for the relief of concurrence of sentence as per Explanation given below Section 9 of the Act which reads that "the punishment in this section is in addition to the punishment to the prisoner for the offence for which he was convicted." Since admittedly the order of Judicial Magistrate Ist Class, Ludhiana, has not been challenged in appeal, the same has achieved finality. In any case, there is no equity in favour of the petitioner nor the order suffers from any illegality or irregularity and so the petition deserves to be dismissed.

6. I have heard learned counsel for the parties. Facts are not in dispute. The petitioner was released on parole but he did not surrender within the stipulated period and so a complaint under Section 8 read with Section 9 of the Act was filed. Judicial Magistrate Ist Class, Ludhiana, vide order dated 21.12.1991 convicted him of the said offence and awarded six months imprisonment. No appeal was filed against the order of Judicial Magistrate Ist Class.

7. The submission of the learned counsel for the petitioner is that even if the order dated 21.12.1991 is valid, yet the sentence awarded is to run concurrently as the petitioner is already undergoing sentence of imprisonment for life. This plea has merit. Section 427(2) of the Code of Criminal Procedure reads as under :

"427(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."

Explanation given below Section 9 of the Act "the punishment in this Section is in addition to the punishment to the prisoner for the offence for which he was convicted" is not in conflict with the mandate of Section 427(2) of the Code of Criminal Procedure. As per Section 427(2) of the Code of Criminal Procedure, in case of life prisoner, any subsequent sentence is to run concurrently with the earlier sentence. The petition is accordingly partly accepted. The sentence of six months awarded under Section 8 read with Section 9 of the Act will run concurrently.