

(1992) 11 BOM CK 0034

In the Bombay High Court

Case No : Criminal Writ Petition No. 466 of 1992

Sadashiv Chhokha Sable

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 02-11-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 31, 427, 482

Penal Code, 1860 (IPC) — Section 392, 394, 397

Citation : (1993) 2 BomCR 1 : (1993) 95 BOMLR 10 : (1993) CriLJ 1469

Hon'ble Judges : V.A. Mohta, J; A.A. Cazi, J

Bench : Division Bench

Advocate : S.H. Chitnis, for the Appellant; D.U. Mirajkar, Assistant Public Prosecutor, for the Respondent

Judgement

V.A. MOHTA, J.—This is a petition u/s 482 of the Criminal Procedure Code, read with Article 226 of the Constitution of India.

2. The petitioner Sadashiv Sable has been convicted u/s 394 I.P.C. along with other co-accused, and sentenced to suffer R.I. for 5 years and to pay fine of Rs. 500/- in default, R.I. for 1 month by the learned Additional Sessions Judge, Greater Bombay, in Session Case No. 519 of 1986, decided on 20th February 1989. On that very dated by the very Sessions Judge he has also been convicted u/s 392 read with Section 397 of the I.P.C. and sentenced to suffer R.I. for 7 years in Sessions Case No. 615 of 1986.

3. A brief background of the two cases may be noted :

(1) Sessions Case No. 519 of 1986 :-

On 25-10-1985 at about 2 a.m. the Petitioner and his co-accused armed with weapons and travelling in a car followed a taxi coming from Sahar Airport, intercepted it at Vellore Gate, attempted to commit robbery and caused hurt in the process;

(2) Sessions Case. No. 615 of 1986 :

On 12-11-1985 the petitioner armed with a sword travelling in a car followed a taxi going from Bombay to Surat, overtook it soon after it crossed the city border and committed robbery by touching the sword to the throat of the passenger.

4. The learned Sessions Judge has not directed that the subsequent sentence shall run concurrently with the previous sentence and hence this petition for necessary direction.

5. Having regard to the fact that the offences are quite distinct and were tried separately, it is apparent that Section 31 Cr.P.C. is not attracted. Can Section 427 Cr.P.C. be attracted ? In our view, the Section can be attracted but having regard to the nature of the offences and the consistent modus operandi in their commission, we do not think any case for exercising extraordinary jurisdiction either u/s 482 Cr.P.C. or under Article 226 of the Constitution of India, has been made out, specially when no such prayer appears to have been made before the learned Sessions Judge before or at the time of recording the subsequent sentence.

6. We must notice that the learned Public Prosecutor for the State had contended that Section 427 Cr.P.C. is not attracted in the instant matter because the petitioner was not "undergoing a sentence of imprisonment" as contemplated under that provision, when subsequent sentence was awarded. According to him, unless the offender is physically in jail to suffer the sentence of imprisonment at the time of subsequent sentence, Section 427(1) cannot be pressed into service. In our view, such an approach to the provision would not be object oriented. Normal principle is that sentences should take effect immediately on conviction. Criminal Procedure Code provides that where several sentences are passed, such sentences should run one after the other i.e. consecutively unless the Court directs otherwise i.e. concurrently. A person sentenced to imprisonment must, for the purpose of Section 427, be deemed to be undergoing that sentence from the very moment the sentence is passed. The accused may be on bail or in custody in the earlier case at the time of passing of the subsequent sentence. There cannot be legislative intention to deny the benefit of the provision even in a deserving case by virtue of the only fact that the convict is on bail or in custody or could not be taken within the portals of prison for some genuine reason. Literal construction on the terminology "undergoing a sentence of imprisonment" as suggested on behalf of the State - would lead to absurd results specially where two separate sentences are awarded one after the other on one day in two different trials. Either the learned Judge would not exercise the discretion only because in the earlier case he had not gone inside the jail by that time or he will have to actually send the convict inside the jail for some time, and call him back immediately to pronounce judgment in the second case. We do not think such a absurd and farcical situation was intended by the legislature.

7. Under the circumstances, the petition is dismissed. Rule is discharged.

8. Petition dismissed.