

(2009) 01 BOM CK 0008

In the Bombay High Court

Case No : Criminal Application No. 807 of 2008

Satnam Singh Puransing Gill

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 14-01-2009

Acts Referred:

Constitution of India, 1950 — Article 142, 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 122, 31, 31(1), 31(2), 389
Customs Act, 1962 — Section 135
Gold (Control) Act, 1968 — Section 8, 85, 85(1)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15, 31, 32A
Penal Code, 1860 (IPC) — Section 120B, 302, 395, 397, 420
Prevention of Corruption Act, 1947 — Section 5(1)

Citation : (2009) CriLJ 3781 : (2009) 1 RCR(Criminal) 703

Hon'ble Judges : Swatanter Kumar, C.J;V.K. Tahilramani., J;S.A. Bobde, J

Bench : Full Bench

Advocate : Yug Mohit Chaudhary, for the Appellant; Prajakta P. Shinde and A.S. Pai, APPs., for the Respondent

Judgement

Swatanter Kumar, C.J.—Sentencing is one of the most important facet of administration of criminal justice system. Apart from statutory restrictions, an appropriate sentence is a matter for the discretion of the sentencing Judge. The decisions of the Courts on points of substantive law are binding on the Court itself and the Courts subordinate thereto. However, decisions on sentencing are no more than examples of how the Court has dealt with a particular offender in relation to a particular offence. In the modern times, criminal jurisprudence has developed to some extent except the principles of uniformity of sentence for a particular category of crime. But they are not authoritative in a strict sense. Limitation or curtailment of sentencing may be regulated by legislative provisions and other modes of fettering discretion in awarding of punishment may also result from principles stated by judicial pronouncement. In English and American Law, the component of justice model is the constriction of judicial discretion by the promulgation of standards with which the Judge must substantially comply.

The main three strategies are : (a) the enactment directly by legislature of a detailed set of principles of sentencing, indicating a normal or presumptive sentence for given classes of case, with specified aggravations and mitigations, leaving the sentencing Judge very limited discretion; (b) the promulgation of standards, by a Commission composed of Judges and other interested persons, which would be more detailed than a direct legislative enactment, less exposed to change but at the same time more flexible and capable of amendment in the light of experience; and (c) the evolution of guidelines based on an empirical study of current sentencing practice within the jurisdiction concerned. In most of the systems, discretion is vested with the Courts in matters of sentencing and passing other related orders. Continuous efforts are made to avoid disparity of sentencing as individualisation of sentencing will naturally undermine uniformity of sentencing practice and would create disharmony detrimental to public confidence. Under the penal system, discretion is exercised by the Courts awarding sentence. (Ref: Sentencing and the Penal System Text and Materials by Christopher Harding and Laurence Koffman published by Sweet and Maxwell, (London) 1988).

2. The English Sentencing System points out that the aim of the penal system is to reduce crime by making as many people as possible who want to obey criminal law. The two stated objects for general practice of punishment would justify such a policy if there is reduction of crime and promotion of respect for criminal law. Historically the instinctive reaction to criminal act is retaliation by the injured person expressing his resentment or hostility towards the criminal and his conduct. Punishment for such an offence thus became this essence of any organised state to maintain the rule of law. The notion of "Just deserts" or the sentence proportionate to the offender's culpability was the principle which, by passage of time, became applicable to criminal jurisprudence. For an offender to receive a sentence which adequately reflects the gravity of his offence, the punishment ought not to be so lenient and should not be heavier than that justified by the offence. The sentence must not be too long or excessive. Lord Denning, while giving evidence to the Royal Commission on capital punishment stated:

The ultimate justification of any punishment is not that it is deterrent but that its emphatic denunciation by the community of a crime.

The term "Sentencing" is used in its generic sense. A criminal trial may result in either acquittal or conviction. In the event of conviction, punishment, with or without other measures, is the logical end of a criminal trial. It imposes not only a discretion but also a great responsibility on the Courts administering criminal justice system and sentencing forms one of the most important facets. Sentencing is a complex process. A proper sentence is a composite of many factors, including the nature of the offence, the circumstances extenuating or aggravating of the offence, and in such cases whether sentences awarded should run concurrent or consecutive. The determination of the sentence within certain

limits is the discretion of the trial Court and it is in many cases one of the most delicate matter with which the Courts have to deal with. An offender's previous conviction and gravity of that offence is of definite significance in subsequent proceedings or orders of sentence or conviction. An assumption is current that exemplary sentence will have a salutary effect on the minds of the potential offenders especially when a particular type of offence is very much prevalent in a community at a given time and punishment being treated as a deterrent. Therefore, while awarding consecutive and/or concurrent sentences the Court decides and records its direction in that regard in specific terms. (Ref: Sentencing By Courts in India by G.N. Sabhahit, First Edition - 1975 published by Dixit Publications, Bangalore.)

3. Sentencing of convicted criminals engages the interest, and sometimes the passion, of the public at large more than anything else Judges do. The requirements of deterrence, rehabilitation, denunciation, punishment and restorative justice all of which are identified as purposes of sentencing, do not point in the same direction and requirements of justice, in the sense of Just deserts" and of mercy often conflict. The purpose of sentencing principles or guidelines and the appellate process is to ensure that these individual differences are kept within proper bounds. It, would undermine public confidence in the administration of criminal justice if it became widely believed that the result was a lottery based on who the Judge was. The need for, consistency is only one of the numerous constraints on the sentencing task. Centuries of practical experience establishes that the sentencing task is best conducted by the exercise of the broad discretion. The rigid law in some cases may leave no discretion. In all of the recorded history there has never been a time when crime and punishment has not been the subject of debate and difference of opinion. This even may not change in future. It is so because sentencing task is, a process of balancing within the limitation of legislative restrictions and proper exercise of judicial discretion. (Ref: A Guide to Sentencing by J.J. Spigelman AC, Chief Justice of New South Wales, Sydney, Australia dated 5th October, 2007 -Supreme Court: Lawlink NSW.)

4. In a Sentencing Information Package prepared jointly by Victims of Crime Bureau and Criminal Law Review Division, NSW, Australia, explaining purposes of sentencing, the basic elements of sentencing procedure and the terminology used by a Sentencing Court, also referred to cumulative and concurrent sentence. If the offences have features in common or if they happened at around the same time and are connected, the Court is more likely to decide the sentences be served concurrently. (Hammond (2002) 118 A Crim R 66)V Where there are different offences at different" times against different victims, it will be" an error to impose wholly concurrent sentences. (VAA (2006) NSWCCA 44).

5. Even in the case of People v. Laureano 8 NY 2D 640 (Mar. 26, 1996), New York Court of Appeals stated the principle that sentences must run concurrently when the act constitutes one offence and is also a material element of another offence.

This was with reference to penal law u/s 70.25(2) while dealing with a case of manslaughter in the first degree and robbery in the first degree when the same act caused the victim serious injuries and his death. Referring to these circumstances, the Court took the view that concurrent sentence must be imposed upon the convict.

6. All these principles which we have referred under different laws are not founded on any codified statutes as under the Indian criminal jurisprudence.

7. The extent of judicial discretion thus could emerge from either enacted law or through the guidelines and precepts which are recognised over a span of time. Both these sources would have a direct impact on the exercise of, discretion by the Courts while imposing punishment. It could be at the stage of first conviction or at a subsequent conviction of the same accused. Besides, imposition of punishment in such cases, the Court also have an additional obligation to direct whether the sentences awarded would run" concurrently or consecutively. This aspect of criminal jurisprudence has been statutorily recognised in Indian Criminal Law where the legislature has introduced Sections 31 and 427, respectively of the Code of Criminal Procedure, 1973, (hereinafter referred to as the "Code").

8. Section 31(1) of the Code vests a discretion in the Court to direct that the punishment shall run concurrently when a person is convicted at one trial of two or more offences. The Court may sentence the accused for such offences to the several punishments prescribed therefore which such Court is competent to inflict. Such punishments would consist of imprisonment to commence the one after the expiration of the other in such" order as the Court may direct subject to the limitation contained in Section 71 of the Indian Penal Code.

9. In terms of Section 31(2) of the Code wherever the Court awards consecutive sentences, it shall not be necessary for the Court to send the offender for trial before a higher Court on the ground that the aggregate punishment for the several offences is in excess of the punishment which it is competent to inflict on conviction of a single offence. This, however, is further subject to the proviso to Section 31(2) of the Code. This discretion of the Court is, therefore, applicable only in the cases which fall in the category of at one trial of two or more offences. On a bare reading of this Section, it has no application to the cases where a person is tried and convicted under two or more different trials for different offences. This aspect is covered by Section 427 of the Code,, 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 a 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.

10. Before we proceed to analyse the provisions of Section 427 of the Code, it would be appropriate to refer to the facts and reasons leading to the reference of the legal questions arising therefrom to a larger Bench. The order of reference can be usefully reproduced as it refers to, both, the facts and the cause for reference. The order of reference reads as follows:

The submissions of the learned Counsel appearing for the applicant and the learned A.P.P were heard on the last date. This application has been received from jail. The prayer in this application is for passing a direction for concurrent running of substantive sentences imposed on the petitioner in two separate cases. The applicant has been convicted by judgment and order dated 30th November 2005 passed by the learned Judge of the Special Court at Amritsar u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985. By the said judgment and order, the applicant was sentenced to undergo rigorous imprisonment for two years and was ordered to pay a fine of Rs. 5,000/-. In default of payment of fine, he was further sentenced to undergo rigorous imprisonment for one month. By order dated 26th February, 2004 passed by the learned 7th Additional Sessions Judge, Satara the applicant was convicted for an offence punishable u/s 395 read with Section 397 of the Indian Penal Code and he was sentenced to suffer rigorous imprisonment for Seven years and pay fine of Rs. 1,000/-. In default of payment of fine, he was ordered to suffer rigorous imprisonment for six months.

2. The objection raised by the learned A.P.P to the application is on the ground that the conviction of the applicant is not based only on one incident but the conviction is based on two totally independent incidents or transactions. The submission is that in view of the decision of the Division Bench of this Court the case of Ramesh Krishna Sawant Vs. State of Maharashtra, power u/s 427 cannot be exercised in the present case for directing that the sentence shall run concurrently. Reliance was also placed on judgment and order dated 4th June, 2007 in Criminal Application No. 3959 of 2006 (Sanjeev Kumar Sadanandan Pillai and Anr. The State of Maharashtra).

3. The learned Counsel appointed to espouse the cause of the applicant invited my attention to a decision of another Division Bench of this Court in the of Sadashiv Chhokha Sable Vs. State of Maharashtra, He submitted that the

Division Bench has expressly held that in such a case provisions of Section 427 will be attracted. Referring to decision of this Court in Criminal Application No. 3959 of 2006 he pointed out that this Court has relied upon the decision of Division Bench in the case of Ramesh Sawant (supra). He pointed out that this Court observed in the said order dated 04th June, 2007 that the Apex Court has not granted relief in the case of Ammavasai and Another Vs. Inspector of Police and Others, by exercising the power u/s 427 of the said Code of 1973, but the exercise power was under Article 142 of the Constitution of India. He further pointed out the decision of the Apex Court in the case of M.R. Kudva Vs. State of Andhra Pradesh, and submitted that in paragraph 10 of the said decision, the Apex Court has observed that in the case of Amma Vasai (supra), the said Court granted relief in exercise of powers u/s 427 of the said Code of 1973. He, therefore, submitted that even if the offences relate to independent transactions, this Court in a petition u/s 482 of the said Code can exercise power u/s 427 of the said Code for directing concurrent running of sentences.

4. Insofar as the decision of this Court in the case of Ramesh Sawant (supra) is concerned, the Division Bench referred to the decision of the Apex Court in the case of Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs (Prevention), Ahmedabad and another, . After referring to paragraph 10 of the said decision, the Division Bench observed thus:

It is evident from the observations of Their Lordships of the Apex Court that in cases which do not arise from a single transaction but, arise out of different transactions, it would not be just and proper to order sentences to run concurrently. In view of the law laid down in the aforesaid decision, with which we are in, respectful agreement and also keeping in mind that all the three cases in which the petitioner has been convicted are cases u/s 395, Indian Penal Code, which is an anti-social offence, we do not think it expedient in the interest of justice to direct that the sentences of petitioner to run concurrently.

5. Another Division Bench of this Court in the case of Sadashiv Sable (supra) considered the question of applicability of Section 427 of the said Code of 1973. In paragraph 5 the Division Bench has held thus:

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....

6. It must be noted that when this Court decided Criminal Application No. 3959 of 2006 in the case of Sanjeev Kumar Sadanandan Pillai (supra), the other decision of the Division Bench in the case of Sadashiv Sable (supra) was not brought to the notice of this Court.

7. I have also perused the judgment of the Apex Court in the case of M. R. Kudva (supra). Prima facie it is not possible to accept the submission made by the learned Counsel for the applicant that the said decision holds that in the case of Amma Vasai (supra), the Apex Court exercised the power u/s 427 of the said Code of 1973.

8. Nevertheless, it appears to me that there is a clear-conflict in the view taken by the two Hon''ble Division Benches of this Court on the question which is involved in this application regarding applicability of Section 427 of the said Code of 1973 where conviction is for offences which are distinct and which were tried separately by two different Courts. I am of the view that this conflict will have to be resolved by placing the matter before the appropriate larger Bench.

9. In my view, the question which arises for consideration of the appropriate larger Bench is "whether power u/s 427 of the Code of Criminal Procedure, 1973 can be exercised when the conviction of the accused is in two or more cases for distinct and separate offences arising out of different transactions/incidents?".

10. The Registrar Judicial(I) is directed to place papers of this application before the Hon''ble Chief Justice for seeking appropriate directions in terms of 7 Chapter I of the Appellate Side Rules.

11. As the issue involved in this application arises in many applications, the Registrar Judicial will place the matter before the Hon''ble Chief Justice as expeditiously as possible.

11. The question of law as posed opens with the words ""whether power u/s 427 of the Code can be exercised by the Court..." in the circumstances stated in the question. This obviously means that the Court has the power in terms of Section 427 of the Code to issue directions to order as to whether the sentences awarded upon conviction on a subsequent trial would run concurrently or consecutively. How this discretion is to be exercised would primarily be a matter depending upon the facts and circumstances of a given case. Before we venture into the various judgments relating to exercise of judicial discretion u/s 427 of the Code, it will be appropriate to examine first the legal provisions, principles of interpretation and application of statutory law to such cases.

12. Let us analyse Section 427 of the Code. The application of this provision will be attracted:

- (i) When a person already undergoing a sentence of imprisonment is convicted;
- (ii) While undergoing such a sentence, such person is subsequently convicted and awarded a sentence of imprisonment including imprisonment for life;
- (iii) then such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced; and
- (iv) the Court directs that subsequent sentence shall run concurrently with such previous sentence.

These are the principal requirements which ought to be satisfied before the Court in a subsequent trial convicting a person already undergoing a sentence can pass such a direction. Sub-section (2) of Section 427 by a specific legislative mandate directs that a person already undergoing a sentence of imprisonment for life, if subsequently convicted to imprisonment for a term or imprisonment for life again, the same shall "run concurrently" with such previous sentence. Insofar as the provisions of Sub-section (2) are concerned, the law operates on the strength of the statutory provisions and is not dependent upon exercise of discretion by the Court which is concerned with the subsequent trial, conviction and sentence of the person already undergoing imprisonment for life. The expression "shall" will have to be read as "shall" and cannot be construed or implied as "may". It is a legislative mandate which operates on its own force. In contra-distinction to this provision, Section 427(1) of the Code vests discretion in the Court, which has to be exercised judiciously and in conformity with the settled principles, to direct whether the sentence passed on conviction in the subsequent trial will run concurrently or consecutively with the previous sentence awarded to the accused. The Legislature, thus, has made it obligatory upon the Court to exercise such discretion. A bare reading of the Section does not contemplate even an application by convict or an accused in that behalf. The legislative intent requires the Court to act on its own as sentencing is primarily the duty of the Court and it is expected to consider all facets of sentencing policy while passing an order as envisaged u/s 427(1) of the Code. It is only the subsequent conviction and sentence in case of a person already undergoing a sentence of imprisonment in a previous conviction that the provisions of this Section would operate. Expression "the Court" appearing at the end of Section 427(1) of the Code obviously refers to the Court of competent jurisdiction which deals with the imposition of sentence of imprisonment in a subsequent conviction. It entirely falls within the jurisdiction of that Court as to whether the sentence awarded upon a subsequent conviction would run concurrently or consecutively with the previous sentence of imprisonment awarded to the accused by the earlier Court. While passing such an order the Court would have to consider the facts of each case, nature or character of the offence for which the accused was punished in the earlier case, prior criminal record of the offender, age, sex, impact of such sentencing on social fabric of the society, attendant circumstances and amongst others as to whether the crime committed was heinous, etc. The provisions of Section 427 obviously have no application to the cases which fall u/s 31 of the Code as they are controlled by that provision. In a case where a person has committed different offences and is facing one trial for committing two or more offences, even in such cases, the sentences awarded for different offences would commence one after the expiration of the other unless the Court directs that the sentence shall run concurrently. The provisions of Section 427 would come into play obviously where the case of the convict is not covered u/s 31 and he is tried for two different offences in two different cases, one in the earlier trial and then the other in the subsequent one. The language of the Section, therefore, clearly suggests that the person for whose

benefit or otherwise the Court dealing with subsequent conviction and sentence will have jurisdiction only where the accused is a person already undergoing a sentence of imprisonment. This means the person should have been tried, convicted and sentenced to undergo imprisonment on any given offence including offence punishable with imprisonment for life. The analysis of the plain reading of the Section leaves no doubt that the discretion is vested in the Court to direct subsequent sentence to run concurrently or consecutively with the previous sentence in two different cases and even obviously for different offences.

Restrictions on the power of Court

13. An ancillary but another important question that arises for consideration of the Court is whether the discretion vested in the Court u/s 427(1) of the Code has been legislatively circumscribed and, if not, can the provision be so construed so as to impose limitations on exercise of power of the Court while awarding sentence. It is a settled canon of statutory interpretation that penal statutes are to be construed strictly while the remedial statutes would receive a liberal construction. By development of law, the distinction between liberal and strict construction has very much narrowed down and is only important, in resolving a doubt which other canons of construction fail to solve when two or more constructions are equally open. In case of remedial statutes, the Court ought to give widest operation which the language of the provision permits. In case of pure penal statutes, it is also an equally settled principle that in penal or procedural provisions relating to criminal jurisprudence, liability or punishment would be capable of narrower construction, but the construction which will tilt the interpretation favourable to the accused will be preferred over the interpretation which would adversely affect the right of a person/accused under trial.

14. The principle of reasonable interpretation is more tilted in favour of the accused and it should preferably be adopted in contrast to narrower or strict "construction. It was also said, "All modern Acts are framed with regard to equitable as well as legal principles and where there is an enactment which may entail penal consequences, you ought not to do violence to the language in order to bring people within it, but ought rather to take care that no one is brought within it who is not brought within it by express language." (See Craies on Statute Law, Seventh Edition).

15. The rule of literal, liberal or strict construction may be applied while interpreting a statute but in either of them it is hardly permissible to add or read into the provisions. The expression or the words which are non-existent in the statute cannot be read into it when the provisions on its plain reading is clear and unambiguous. Maxwell while interpreting the narrow distinction between the liberal" and strict construction stated as under:

The tendency of, modern decisions, upon the whole, is to narrow materially the difference, between what is called a strict and a beneficial construction. All statutes are now construed with; a more attentive regard to the language, and

criminal statutes with a more rational regard to the aim and intention of the legislature, than formerly. It is unquestionably right that the distinction should not altogether be erased from the judicial mind, for it is required by the spirit of our free institutions that the interpretation of all statutes should be favourable to personal liberty, and this tendency is still evinced in a certain reluctance to supply the defects of language, or to eke out the meaning of an obscure passage by strained or doubtful influences. The effect of the rule of strict construction might almost be summed up in the remark that, where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself. But it yields to the paramount rule that every statute is to be expounded according to its expressed or manifest intention and that all cases within the mischiefs aimed at are, if the language permits, to be held to fall within its remedial influence.

16. In the case of *Bhagirath Vs. Delhi Administration*, , the Supreme Court overruled its earlier decision and held that the beneficent provisions of Section 428 of the Criminal Procedure Code directing set-off of the period of pre-conviction detention against term of imprisonment is applicable even to cases where the sentence is imprisonment for life and that such a sentence is also imprisonment for a term within the Section. To deny such benefit is to withdraw the application of benevolent provision from a large majority of cases in which such benefits would be needed and justified.

17. Even in the case of *Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. and Another*, , the Supreme Court held as under:

a penal statute, in the event different meanings are possible to be given, must be construed liberally in favour of the accused, while the Court shall give due weightage to the need of the victim. It cannot ignore the right of an accused and in a case of conflict construction which favours the accused shall prevail.

Of course, the intention was not to unnecessarily enlarge the right of the accused.

18. A great balance is required to be drawn between the rule of strict construction and liberty of a subject including fair trial. The Code of Criminal Procedure is intended to provide for the control of the offences, primarily the offences punishable under the Indian Penal Code. Thus, in a way, it is a procedural remedial code having the colour that of a penal statute. Thus, the basic rules of construction would still remain the same.

19. Lord Esher, MR, even in relation to penal Sections observed that if there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions we must give the more lenient one.

20. In the case of *Tolaram Relumal and Another Vs. The State of Bombay*, , the Supreme Court said:

If two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the Court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature.

21. The provisions of Section 427 of the Code are titled to provide a benefit in favour of a convict. Whether the sentence awarded earlier or the sentence awarded on subsequent conviction to run consecutive or concurrent is a matter of importance not only from the point of view of the accused but even administration of criminal justice. The Court has been vested with this power and is expected to apply this provision in every case at the time of awarding the sentence. The obligation cast upon the Court is of a mandatory nature as it has the impact of granting or declining to grant a benefit to a convict. Thus, it may not be appropriate to read into the provisions of Section 427 any, restriction or limitation on the discretion of the Court which Was not been specifically imposed by the Legislature.

22. As we have already noticed, the Legislature in its wisdom has not imposed any bar or limitation on the basis of which case of any subsequent conviction would fall outside the ambit or scope of Section 427. On the contrary, to apply these provisions to different cases is the very intent behind this provision. Sub-section (2) of Section 427 requires mandatorily that life imprisonment in two different cases shall run concurrently. To hold that the provisions of Section 427(1) would not apply to any case would be an. interpretation which would neither be permissible on any principles or any accepted canons of interpretation of statutes nor with reference to the legislative intent behind this provision.

23. We are unable to see any statutory restriction on the powers of the Court or legislative mandate to exclude any class of cases from the provisions of Section 427 of the Code once the ingredients of the provision are satisfied. It is not for the Court to read into the provisions what is not stated unless it becomes imperative due to the rule of implied construction. On its plain reading, the language of the provision does not admit any direct or implied restriction. Of course, the Court has to exercise its discretion guided by law and legal principles. It must be governed by rules, not by humour and cannot be arbitrary, vague and fanciful. It essentially has to be legal, regular and according to the rules of reason and justice. (See *Ramji Dayawala and Sons (P) Ltd. Vs. Invest Import,*).

24. In the case of *The Assistant Commissioner, Assessment-II, Bangalore and Others Vs. Velliappa Textiles Ltd. and Others*, the Supreme Court in relation to general principle of interpretation of statutes relating to criminal law specifically stated as under:

... It is not open to the Court to add something to or read something in the statute on the basis of some supposed intendment of the statute. It is not the function of this Court to supply the casus omissus. If there be one. As long as

the presumption of innocence of the accused prevails in this country, the benefit of any lacuna or casus omissus must be given to the accused. The job of plugging the loopholes must strictly be left to the legislature and not assumed by the Court.

25 . These principles Are applied to interpretation of criminal statutes and they further would support the proposition that indictment of unstated "restriction on the powers of the Court is hardly permissible. A Bench of Punjab and Haryana High Court dealt with somewhat similar question in the case of Pardeep and Ors. v. State of Haryana Criminal Misc. No. 7268 of 1997 in Criminal Appeal No. 312-DB of 1997 in Criminal Appeal No. 290-DB of 1997 and other connected master) decided on 28th May, 1997, where a view of another Bench that in murder appeals a convict sentenced to life imprisonment would not be entitled to bail during the pendency of the appeal except on the grounds stated therein was under consideration. It Was, firstly, on medical ground, secondly, on the ground of some natural calamity and, thirdly, if his kith or kin suffering from a very serious disease and attendance of the accused in that regard was essential. In that case, the bail application had been filed u/s 389 of the Code during the pendency of the Appeal. Dealing with the question of reading into the provisions of Section 389, such restriction or excluding of other matters of bail in criminal appeals was stated to be not proper and the Court held as under:

The provisions of Section 389(1) of the Code do not admit any limitation and if legislature has opted not to Impose any limitation for grant of such relief, it will be difficult for the Court to hold that such limitation can be read into statute by judicial pronouncement. Every case must be adjudicated on its own facts, merits and demerits. It is not possible to prescribe straightjacket formula which will govern all cases and would adequately provide parameters on the basis of which each bail application could be granted or declined.

The nature of wide powers which are intended to be vested in Court by the Legislature is further indicated in Sub-section (3) of Section 389 of the Code. These provisions make it obligatory upon the Court convicting the accused if punishment awarded is under three years, to grant bail unless it has sufficient reasons for declining such relief to the accused. This is indicated from the expression "shall" and unless there are special reasons for refusing bail and even in that event, the Court has to grant time to the accused to present the bail application and obtain orders to approach the Appellate Court. We have made a reference to these provisions primarily for the reason of discussion and to aid the reasoning given by us in this judgment. It is the settled principle of law that gravity of the offence, manner in which it was committed, the background and motive leading to commission of the crime, read with the findings of the trial Court based upon evidence recorded by it, effect of the crime alleged to be committed on the society and the consequences flowing from the release of the accused amongst others, are the few considerations which weigh normally in the mind of the Court while considering such an application. Each case must be and

has to be considered and application of these statutory provisions applied to the merits of a given case, while not losing sight of the need to provide due safeguards in this regard.

We find it difficult to define the limitation in such cases which could be imposed on the powers exercisable by the Appellate Court as prescription of such limits by judicial intent, we fear, may neither be possible nor permissible keeping in view the statutory provisions governing the subjects. It has been repeatedly held by various Courts that laying down of conditions which would universally apply in granting or refusing a bail application irrespective of other factors, grounds and reasons, may ultimately prove more disadvantageous than furthering the cause of these statutory provisions which give a definite right to an accused or convict. In the famous case of *Kashmira Singh Vs. The State of Punjab*, the Hon'ble Supreme Court of India while dealing with the arguments identical to the one advanced on behalf of the State in *Subhash Chand's case* (supra), before the learned Division Bench of this Court and accepted by the Division Bench, was repelled by the Supreme Court while declining the relief and it expressed its view as follows:

The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Court and in the Supreme Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose so long as his conviction and sentence are not set aside, but the underlying postulate of this practice was that the appeal of such would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent; he would not have to remain in jail for an unduly long period. The rationale of "this practice can have no application where the Court is not in a position to dispose of the appeal for five or six years.

It is, therefore, absolutely essential that the practice which the Supreme Court has been following in the past must be reconsidered and as long as the Supreme Court is not in a position to hear the appeal of an accused within a reasonable period of time the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in case where special leave has been granted to the accused to appeal against his conviction and sentence." (Emphasis supplied by us).

In the case of *Gudikanti Narasimhulu and Others Vs. Public Prosecutor, High Court of Andhra Pradesh*, Hon'ble Supreme Court while considering the concept of "Bail or Jail" at the pre-trial or post-conviction stage observed as under:

"Bail or jail" at the pre-trial or post-conviction stage belongs to the blurred area of the criminal justice system and largely hinges on the hunch of the bench, otherwise called judicial discretion".

Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Article 21 of the Constitution that the crucial power to negate it is a great trust exercisable, not casually but judicially,

with lively concern for the cost to the individual and the community." "The basics being thus illuminated, we have to apply them to the tangled knot of specifics projected by each case. The delicate light of the law favours release unless centered by the negative criteria necessitating that course. The corrective instinct of the law plays upon release orders by strapping on to them protective and curative conditions.

The afore-stated observations of the Hon''ble Supreme Court indicate the wide ranged powers and scope of authority exercisable by the Courts under these provisions.

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"The grounds indicated by the Division Bench in the case of Subhash Chand (supra) in fact are the grounds specifically incorporated by the Legislature under Sections 3 and 4 of the Punjab Good Conduct Prisoners (Temporary Release) Act. This Act is limited in its operation and scope. Thus, to us it appears that these provisions are ancillary to the basic provisions regulating the bail during appeal and consequently cannot circumscribe or limit the scope of the larger provisions. Though they operate in different fields but on some spheres and grounds they indicate the same legislative intent.

To impose limitations which are not incorporated in the statute itself to the disadvantage of the convict, may result in decimate of valuable right arising out of a statute. "Expressum facit cessare taciturn" is a well accepted principle of interpretation of statutes. In other words expression precludes implications and to imply what is not provided for by the Legislature is normally not permissible. To our mind reading of such limitations into the provisions of Section 389 is not necessitated on the principles of necessary implication.

The practice and pronouncements of the Court for over such a long period clearly indicate that it is neither possible nor permissible to provide any hard and fast rules consisting of limitation or guidelines which would govern and apply universally in determining the fate of every ball application preferred by the convict during the pendency of appeal.

26. Judicial discretion is vested in the Court u/s 389 of the Code in regard to grant or refusal of bail. Similarly, discretion is also vested in the Court which is exercising powers u/s 427 of the Code. The mere fact that wide discretion is vested in the Court in relation to either of these provisions, per se would not justify imposition of restrictions or limitations which are not specified by the Legislature. As already indicated, the discretion is to be well guided by law and principles enunciated by judgments of the Courts.

27. Once the parameters contained in Section 427 of the Code are satisfied, the competent Court is then required to exercise its discretion to pass appropriate orders in relation to the sentence awarded in a subsequent conviction should run concurrently or consecutively with the previous imprisonment. This discretion is

guided by law and stated precepts as noticed by us above as well as which are stated by development of law, but there is hardly any scope left for exclusion of cases Otherwise covered u/s 427 and/or for imposing any restriction or limitation on the power of the Court vested by the Legislature in terms of Section 427 of the Code. Proper exercise of discretion has inbuilt command that it should be exercised appropriately and in consonance with the settled guidelines. The importance and impact of exercise of judicial discretion in relation to matter of sentencing has already been referred by us not only in Indian criminal jurisprudence but even principles prevalent in Laws of United Kingdom and America.

28. Another aspect which needs to be clarified with reference to the legislative intent apparent from the language of the Section is that imprisonment of subsequent conviction shall commence at the expiration of the imprisonment to which the accused has been previously sentenced unless the Court directs such sentence to run concurrently with the previous sentence. This clearly indicates that the normal rule would be that sentence would run consecutively and exception is that they would run concurrently. The pre-requisite of the exception being that Court has to apply its mind and pass a specific order directing that the sentences shall run concurrently with the previous sentence but for such specific exercise of discretion, the rule of sentence running consecutively would cover the case. We have already noticed that this requirement of law has to be satisfied by the Court. The law intends to provide a benefit to the accused of calling upon the Court to exercise discretion where a sentence awarded in a subsequent trial would run consecutively or concurrently with the previous sentence. Wherever the provisions of the Criminal Procedure Code are applicable the Court would be required to apply the provisions of Section 427 of the Code unless their application was specifically barred by the Legislature or by its necessary implication. The language of Section 427 read cumulatively does not command an accused or a convict to make such an application as consideration of this aspect of sentencing requires, the Courts to exercise the discretion in terms of Section 427 of the Code. No doubt, it will be always more appropriate that the factum of previous conviction and sentence and the reasons for exercising the judicial discretion u/s 427 is brought before the Court by means of an appropriate application, but this cannot be termed as a requirement absolutely mandatory and without which the Court would not be in a position to pass appropriate orders as regard directing the sentences to run concurrently or consecutively. While passing an order of imprisonment/sentence upon a subsequent conviction, it will always serve the ends of justice better and would be in conformity with public good that such discretion is even exercised by the Court suo motu. The Legislature in its wisdom did not leave any choice or discretion with the Courts in relation to sentences covered u/s 427(2) of the Code and mandated that they would run concurrently. This is to be seen in contra-distinction to the judicial discretion vested by the Legislature in the Court u/s 427(1) of the Code, where all convicts undergoing imprisonment in a

previous conviction, except imprisonment for life, can invoke the jurisdiction of the Court in terms of Section 427 of the Code. The expression "unless the Court directs" clearly suggested that the Court would apply its mind and by virtue of some reasoned directions direct that the sentences shall run concurrently with the previous sentence. The Court while dealing with stringent laws and particularly penal statutes is required to ensure that the intention of the Legislature is not frustrated and even if necessary it should take recourse to the rule of purposive construction as more the stringent is the law less is the discretion with the Court. While dealing with such enactments, even on the first principle the course which is favourable to further the legislative cause should be adopted and an interpretation which would reduce the legislation to futility should be avoided. One provision alone need not be construed in isolation and it is always preferred rule of interpretation that a provision should be construed with reference to other relevant provisions as well as the scheme of law underlining the said provisions. (See Prakash Kumar @ Prakash Bhutto Vs. State of Gujarat, .

29. It is also equally well settled principle of law that the Court cannot enlarge the scope of legislation or intention when the language of the statute is plain and unambiguous as well as that the Court would not read into the provisions what has not been stated in the language of the provision. (A.N. Roy, Commissioner of Police and Another Vs. Suresh Sham Singh, . Section 31 and Section 427 both should be read in conjunction with the other provisions of the Code which vests the Court with judicial discretion in regard to imposition of imprisonment and should be seen in the backdrop of the scheme of the Code and basic rule of criminal jurisprudence with an interpretation which provides an advantage to the under-trial is preferred to the one against him. May be parameters and criteria in awarding sentence under different provisions of the Code would largely be applicable even to exercise of jurisdiction u/s 427 of the Code. The nature and gravity of the previous offence, the punishment inflicted, the circumstances leading to the occurrence, conduct of the accused could be looked into by the Court through the judgment of the previous conviction while deciding whether the sentence in a subsequent conviction would run consecutively or concurrently. The gravity, nature and circumstances in relation to the crime committed in subsequent conviction could further help the Court to exercise the discretion in consonance with the settled principles. Merely because the conviction is in two different cases and the punishment awarded in previous conviction was for a heinous crime, per se would not exclude the jurisdiction of the Court u/s 427(1) of the Code. It is apparent that the Legislature in its wisdom has chosen not to impose any such restriction on the power of the Court. The provisions relating to vesting of jurisdiction or judicial discretion are not to be construed narrowly when they are capable of admitting no ambiguity. The maxim *est boni iudicis ampliare jurisdictionem* is indicative of proper amplification of jurisdiction particularly in relation to matters arising out of procedural law.

30. A Division Bench of the Kerala High Court in the case of Mani and Another Vs.

State of Kerala, , while relying upon the judgments of the Supreme Court held as under:

10. The real question that arises in the case is when can the Court give a direction in its discretion that the subsequent sentence should run concurrently with the former sentence. It will not be possible to give very positive directions with regard to that. It should depend on the facts of each case, the nature or character of the offences committed, the prior criminal record of the offender, his age and sex etc. As Justice Krishna Iyer had said in Mohammad Giasuddin Vs. State of Andhra Pradesh,

The drawback of our criminal process is that they are built on the bricks of impressionist opinions and dated values, ignoring empirical studies and deeper researches... the human art of sentencing remains a retarded child of the Indian Criminal System.

When he was a Judge of the Kerala High Court, he had said in Shivaprasad v. State of Kerala 1969 Ker LT 862:

Criminal trial in our country is largely devoted only to finding out whether the man in the dock is guilty. It is a major deficiency in the Indian system of criminal trials that the complex but important sentencing factors are not given sufficient emphasis and materials are not presented before the Court to help it for a correct judgment in the proper personalised, punitive treatment suited to the offender and the crime.

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14....The sentencing stage should not be treated as a mere matter of formality. In the matter of sentencing a person, the Courts will have to take note of the fact that human behaviour is the product of antecedent circumstances. The measures employed to treat a convicted offender should serve a therapeutic function. Such measures should be designed to effect changes in the behaviour of the convicted person, the interest of his own happiness, health and satisfaction and the interest of social defences. A person who is sincerely trying to rehabilitate himself ought not to be demoralised.

31. The undergoing of sentence of imprisonment indicates a previous conviction and an order of sentence awarding imprisonment to the accused upon subsequent conviction, obviously in a different case, for a different offence there shall be a subsequent order of conviction and imprisonment. Unless these essential features are in existence, the Court dealing with the subsequent conviction and imprisonment would not be in a position to exercise the discretion within its meaning even if called upon to do so and once they are satisfied, it will otherwise be just and proper for the Court to exercise such discretion as that would be in conformity with the provisions and the legislative scheme of the Code without expanding or narrowing the meaning of the Section on its plain reading. We have already noticed that the legislative command in terms of

Section 427(1) is that every subsequent conviction to imprisonment including imprisonment for life shall commence at the expiration of the imprisonment to which he is previously sentenced unless the Court directs that subsequent sentence shall run concurrently with such previous sentence. Therefore the rule as well as an exception to the rule founded on judicial discretion of the Court has been unambiguously stated in the provision itself. No further restriction or embargo has been put relating to nature of the case and/ or offence which has resulted in conviction of the accused in both previous and/or subsequent conviction.

Discussion on Case Law.

32. The formation of the question in the Order of Reference opens with the words, "whether power u/s 427 of the Code of Criminal Procedure, 1973 can be exercised when the conviction of the accused is in two or more cases for distinct and separate offences arising out of different transactions/incidents?". This itself indicates that there is no ambiguity in the provision as well as in the question that the power is vested in the Court. Initially an attempt was made by the learned Counsel appearing for the parties to argue as to whether power is vested in the Court to pass an order of consecutive and/or concurrent running of sentence, but subsequently the learned Counsel were ad idem that power is vested in the Court but primarily it is the exercise of such power in relation to different convictions, different offences arising out of different transactions that needs to be answered by this Bench.

33. The learned Counsel appearing for the State as well as the accused have referred to various judgments of the Supreme Court as well as that of the High Courts, but none of the judgments have nowhere even remotely suggested, much less held that u/s 427(1) the power to pass an order for running of the sentence concurrently or consecutively, as the case may be, is not vested in the Court. In fact, all the judgments while referring to the facts and circumstances of those cases have held and observed as to whether the power vested in the Court under the exception to the rule should or should not have been exercised by the Court.

34. Let us examine the judgments relied upon by the learned Counsel. In the case of Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti v. Assistant Collector of Customs (Prevention), Ahmedabad and Anr. (1988) 4 SCC 183 : AIR 1988 SC 2143, the Court was concerned with a case where a foreign national was charged u/s 85(1)(ii) of the Gold (Control) Act, 1968 pursuant to seizure of 7000 tolas of gold of foreign mark and had been convicted and sentenced to maximum punishment for 7 years and fine of Rs. 10 lakhs u/s 85 of the said Act. This conviction even on appeal became final. While undergoing sentence, he was tried for another offence alongwith others and was prosecuted u/s 135 of the Customs Act, 1962 and was convicted, upon pleading guilty, for a sentence of 4 years and fine of Rs. 2 lakhs. The two sentences were ordered to run concurrently by the Court which passed the subsequent order. On appeal, the High Court increased

the sentence to 7 years. While referring to the facts of the case, and the nature of the offence, the Supreme Court stated that transaction constituting two offences under two enactments generally it is proper and legitimate to have concurrent sentences, the Court held as under:

8. Section 427 Cr PC incorporates the principle of sentencing an offender who is already undergoing a sentence of imprisonment. The relevant portion of the Section reads:

427 (1) when a person already undergoing a sentence of imprisonment is sentenced on a 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.

9. The Section relates to administration of criminal justice and provides procedure for sentencing. The sentencing Court is, therefore, required to consider and make an appropriate order as to how the sentence passed in the subsequent case is to run. Whether it should be concurrent or consecutive?

10. The basic rule of thumb over the years "has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.

11. In this appeal, the primary challenge to the sentence is based on assumption that the two cases against the appellant, under the Gold (Control) Act, and the Customs Act pertain to the same subject matter. It is alleged that the appellant was prosecuted under the two enactments in respect of seizure of 7000 tolas of gold. On this basis, reference is also made to Section 428, CrPC claiming set off in regard to the period of imprisonment already undergone by the appellant.

12. The submission, in our opinion, appears to be misconceived. The material produced by the State unmistakably indicates that the two offences for which the appellant was prosecuted are quite distinct and different. The case under the Customs Act may, to some extent, overlap the case under the Gold (Control) Act, but it is evidently on different transactions. The complaint under the Gold (Control) Act relates to possession of 7000 tolas of primary gold prohibited u/s 8 of the said Act. The complaint under the Customs Act is with regard to smuggling of gold worth Rs. 12.5 crores and export of silver worth Rs. 11.5 crores. On these facts, the Courts are not unjustified in directing that the sentences should be consecutive and not concurrent.

35. The above dictum of the Supreme Court has thus stated the principle that it is proper and legitimate to have concurrent sentences and it may not have

application in cases relating to different offences. Firstly, on facts where the accused had been punished for two different offences, one u/s 85 of the Gold (Control) Act, 1968 and in the other u/s 135 of the Customs Act, 1962 in two different transactions, the Supreme Court held that principle of concurrent sentencing should have been followed in the facts of the case. In this very judgment, the Supreme Court also observed that the broad expanse of discretion left by legislation to sentencing Courts should not be narrowed only to the seriousness of the offence. No single consideration can definitely determine the proper sentence. In arriving at an appropriate sentence, the Court must consider and sometimes reject many factors. The Court must recognise, learn to control and exclude many diverse data. It is a balancing act and tortuous process to ensure reasoned sentence. In consecutive sentences, in particular, the Court cannot afford to be blind to imprisonment which the accused is already undergoing.

(Emphasis supplied).

The judgment of the Supreme Court does not record any reasons for making the observations which were made by the Court in paragraph 9 of the judgment. On the true construction of paragraphs 9 to 12 of the judgment read with dictum stated in paragraph 18, it is clear that the basic rule in single transaction is concurrent sentence while in different offences arising out of different transaction under two different enactments, the rule is consecutive sentence with clear power vested in the Court for directing concurrent running of sentences while the Court is performing the balancing act in relation to awarding of sentences.

36. For a judgment to be binding on a question of law has to be urged before the Court, the question thus should be considered by the Court and reasons to be stated for arriving at a conclusion particularly when it states the principles of law. In this case, the Court was primarily concerned with the, offence under two different laws but still awarded application of rule of concurrent sentencing as opposed to consecutive sentences. In our view, the Supreme Court has not laid down any absolute rule of law to hold that in a case of two different offences under two different laws or on different facts, there is any apprehension in applying the rule of concurrent sentencing. That is why the Supreme Court has stated that generally the rule of consecutive sentence is applicable in such cases and that is what exactly the intent of Section 427(1) of the Code that consecutive sentencing is the rule with vesting while the discretion is vested with the Court to direct running of sentence concurrently for the reasons to be recorded.

37. A Full Bench of this Court in the case of Emkay Exports and Mrs. Kanchan S. Chaudhary, partner of Emkay Exports Vs. Madhusudan Shrikrishna, referred to the concept of reasoning in law of precedent as follows:

6. The concept of precedent has attained important role in administration of justice in the modern times. The case before the Court should be decided in

accordance with law and the doctrines. The mind of the Court should be clearly reflecting on the material in issue with regard to the facts of the case. The reason and spirit of case make law and not the letter of a particular precedent. Halsbury's "The Laws of England", explained the word "ratio decidendi" as "It may be laid down as a general rule that that part alone of a decision by a Court of law is binding upon Courts of coordinate jurisdiction and inferior Courts which consists of the enunciation of the reason or principle upon which the question before the Court has really been determined. This underlying principle which forms the only authoritative element of a precedent is often termed the ratio decidendi." It is by the choice of material facts that the Court create law. The law so created would be a good precedent for similar subsequent cases unless it falls within the exceptions hereinafter indicated.

7. The doctrine of precedent relates to following of previous decisions within its limitations. It introduces the concept of finality and adherence to the previous decisions and while attaining it, it creates consistency in application of law. The later judgment should be similar to the earlier judgment, which on material facts are the same. Finding ratio decidendi is not a mechanical process but an art which one gradually acquires through practice. What is really involved in finding the ratio decidendi of a case is the process of abstraction. Ratio decidendi is a term used in contrast to obiter dictum which is not necessarily binding in law. According to Sir John Salmond, "a precedent is a judicial decision, which contains in itself a principle. The only principle which forms its authoritative element is often termed the "ratio decidendi". The concrete decision is binding between the parties to it, but it is the abstract ratio decidendi which alone has the force of law as regards the world at large". According to Austin, the general reasons or principles of judicial decision abstracted from peculiarities of the case are commonly styled by writers on jurisprudence as "ratio decidendi".

8. Amongst the principles of law governing the binding value of Judgments, doctrine of precedent is not only a well accepted principle but is one of the most pertinent facets of judicial interpretation. A ruling of Bench of higher Court is considered to be binding on the lower Courts and the Courts having a smaller Bench structure. Earlier judgments are even taken to be binding on subsequent equi Bench unless and until reasons compelling for, taking a divergent view are stated. To apply this principle, the Court must examine by process of appropriate reasoning as to the applicability of the precedent cited before the Court or even which of the views expressed by a higher Court or even a larger Bench or even a Bench of equi strength is more aptly applicable to the facts and circumstances of the case in hand. The essence of law of precedent is its applicability on the basis of ratio decidendi. The importance and significance of adherence to law of precedent was emphasized by the Supreme Court in the case of S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others, .

38. In the case of Ammavasai and Another Vs. Inspector of Police and Others, where the Appellants were convicted in four different cases in relation to the

occurrences which took place between 27th March, 1990 to 7th May, 1990 and the cases were registered u/s 395 of the Indian Penal Code, the Supreme Court directed that punishment in subsequent three cases would run concurrently but would run consecutively to the first sentence awarded to the accused.

39. In the case of *M.R. Kudva Vs. State of Andhra Pradesh*, , the Supreme Court was primarily concerned with entertaining an application, filed after dismissal of the Special Leave Petition, with a prayer to direct sentence already awarded to accused to run concurrently on the strength of provisions of Section 427 of the Code. While dismissing the application as not maintainable and that such provision had to be invoked in regular proceedings at the first instance by the Trial Court, the Court observed that the case of *Amavasai* (supra) was not the proposition of law that it is obligatory upon the Court to direct in these kind of cases that the sentences shall run concurrently and not consecutively. In the said case, the Appellant who was an employee of the Bank was involved in two cases under Sections 120-B/420, 468 and 471 of IPC read with Section 5(1) of the Prevention of Corruption Act, 1947 while the subsequent case was also on similar charges registered against the accused.

40. A Full Bench of Allahabad High Court in the case of *Mulaim Singh Vs. State*, stated two principles of law, one that the Trial or the Appellate Court is competent to exercise the discretion u/s 397(1) equivalent to Section 427(1) of the present Code at the stage when the Court records the subsequent conviction. The language of the Section does not suggest that after passing of the final judgment, the Court will be competent to exercise such discretion. Secondly, that the High Court is competent u/s 561-A equivalent to Section 482 of the Code. Now the sentences could run concurrently with the previous sentence but such as the inherent powers could even be exercised to undue or wrong in the Courts of administration of justice. It further clarified the principle that where the offences giving rise to separate rights of conviction are distinct and are not immediately connected, the sentences should be made to take normal course and may not be ordered to run concurrently. As far as first principle is concerned, to the larger extent, it stands approved by the judgment of the Supreme Court in the case of *M.R. Kudva* (supra) where the Supreme Court has held to the extent that the provisions of Section 427 could not be applied in a separate and independent proceedings by the High Court as no order was made within the scope of Section 427 at the time of passing the order of conviction by the trial Court or the High Court. In this very case, the Supreme Court also indicated that the judgments of the Supreme Court in the cases of *Amavasai* (supra) and *Mohd. Akhtar Hussein* (supra) were not the authorities for the proposition that it is incumbent upon the Court to direct in a case of this nature that both the sentences shall run concurrently and not consecutively. The Court, of course, did not in any way indicate that the power of the Court to pass direction with regard to running of the subsequent sentence consecutively or concurrently with the previous sentence did not exist. As far as the second aspect is concerned, it again lays down some principle which the Courts may examine while passing such an order.

Thus, jurisdiction of the Court to examine this aspect of the sentence is not questionable in law. 41. It is evident from afore-narrated discussion that none of these judgments can be stated to be as a binding precedent in relation to the referred question.

42. A Division Bench of this Court in the case of Hariom @ Kalicharan Shiriram and Gopal Agarwal @ Saxena Vs. The State of Maharashtra, had taken the view that the sentence would be directed to run consecutively. Though the Bench did not rely upon any of the judgments of the Supreme Court of India it adopted the approach that was¹ adopted in the case of Amavasai's case AIR 2000 SC 3544 (supra) and directed that the Bench was adopting a midway approach and ordered the two sentences to run concurrently and third sentence to run consecutively. While adopting this approach the Bench specifically held as under:

In other words, where several sentences are passed against the same person, such sentences should run consecutively i.e. The one after the expiration of the other, unless the Court directs that they should run concurrently. Section 31 of the Criminal Procedure Code also enacts the rule that the sentences are to run consecutively unless the Court directs that they should run concurrently when a person is convicted on trial of several offences and several sentences are given. The discretion given to the Court under Sections 427(1) and 31 of the Criminal Procedure Code has to be exercised on sound judicial basis and judiciously. Section 482 of the Criminal Procedure Code vests in the High Court inherent powers to make such orders as may be necessary to secure ends of justice and to prevent injustice. The High Court has inherent powers to act *ex debito justitiae* to do real and substantial justice for administration of which alone the Court exists. Such inherent powers vested in the High Court are quite wide but at the same time it should be well remembered that in a case like the present one conflicting interests of an individual's liberty and the safety and security of the citizens at large should be harmoniously settled.

43. Another Division Bench of this Court in the case of State of Maharashtra Vs. Raju Dadaba Borge, , had referred to various judgments of the Supreme Court including Mohammed Akhtar Hussein's case AIR 1988 SC 2143 (supra) and had taken the view that a person who was undergoing a sentence of imprisonment for life, while on parole being convicted for an offence punishable u/s 302 of IPC, the Bench took the view that after conversion of sentence of death into imprisonment for life only the provisions of Section 427(2) of the Code were attracted and both the sentences were ordered to run concurrently. The reason recorded by the Division Bench was that a sentence of imprisonment for life means a sentence for entire life and, therefore, there can be no question in the event of a person being sentenced to life imprisonment for two offences with a sentence commencing to run in the latter offence after he has served out his sentence in the former offence. The reasoning being that life imprisonment means that from the date of conviction, the accused has to spend his life span in the jail and could not relate to any period less than life span. The legislature,

therefore, has made it mandatory for the second sentence of life to essentially running concurrent with the first life. (See : Mohd. Munna v. Union of India, (2005) 7 SCC 417 : AIR 2005 SC 3440).

44. A single Bench of this Court in the case of Mohan Bhanudas Mohite Vs. State of Maharashtra, , where the accused was convicted in two different cases, the Court took the view that upon subsequent conviction, imprisonment awarded could run concurrently with the first awarded sentence. The Court held as under:

6. Section 427 of the Criminal Procedure Code provides that if a person is already undergoing a sentence of imprisonment and is subsequently convicted to imprisonment or imprisonment for life, the second imprisonment shall commence at the expiration of first imprisonment. However, the Courts have been given powers to direct that subsequent sentence shall run concurrently with the previous sentence.

7. In this case, the judgment of the Additional Sessions Judge in Sessions case No. 316 of 1990 delivered on 18-1-1992 is the judgment of 1st conviction and sentence and; while the accused was undergoing for that sentence, he came to be again convicted and sentenced in Sessions Case No. 244 of 1991 by the judgment dated 13-3-1992.

8. Therefore, the prayer of the accused in this appeal, through jail, is that if both the sentences are not made to run concurrently, then he will have to be-in jail for 20 years commencing from the date of his arrest on 2-5-1990 and then in that case will be released in 2010 (excluding the sentence imposed upon him in (default of payment of fine). The learned APP for the State fairly concedes that the facts of the case do not justify the accused to undergo sentence of 20 years and this is a case where the Court can exercise its discretion and order that subsequent sentence imposed in Sessions Case No. 244 of 1991 can run concurrently with the earlier sentence. However, the learned APP for the State contended that u/s 32-A of the N.D.P.S. Act the sentence awarded under that Act cannot be suspended, remitted or commuted, and therefore, according to him, the powers given to the Court u/s 427 of the Criminal Procedure Code cannot be exercised to make two sentences to run concurrently. It is not possible to accept this argument because while exercising the powers u/s 427, Sub-section (1) of the Criminal Procedure Code the Court does not suspend or either of the sentences, the Court does not remit either both of the sentences nor the Court commutes the sentences. The order to make two sentences to run concurrently is therefore ,not covered by Section 32-A of the N.D.P.S. Act, and, therefore, this argument and appeal of the APP cannot be accepted. Therefore, taking into consideration the aforesaid judgment of the Supreme Court relied upon by the Counsel for the accused, this appeal is allowed to the extent only with the following directions:

9. Sentence of 10 years imprisonment imposed upon the accused in Sessions Case No. 244 of 1991 vide Judgment dated 13-3-1992 to run concurrently with

the sentence of ten years imposed upon the accused in Sessions Case No. 316 of 1990 vide Judgment dated 18-1-1992; that is to say, both the substantive sentences of ten years in the above two sessions cases to run concurrently. It is clarified that in default sentences of non-payment of fine will have to be undergone separately and independently, if the fine is not paid....

45. In the order of reference, learned single Judge has also referred to another Division Bench of this Court in the case of Sadashiv Chhokha Sable Vs. State of Maharashtra, . In the said case, the accused was convicted in a subsequent trial for an offence punishable u/s 392 read with Section 397 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 7 years and on that very day, in an earlier judgment, he had been convicted for an offence punishable u/s 394 of Indian Penal Code and sentenced to suffer rigorous imprisonment for 5 years with fine of Rs. 500/-. The Division Bench took a view that the provisions of Section 427 of the Code were attracted and rejected the contention of the Public Prosecutor that since the accused was not actually in jail, he was not covered by the phrase "undergoing a sentence of imprisonment" as contemplated u/s 427(1) of the Code and specifically held as under:

There cannot be legislative intention to deny the benefit of 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 to 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.

46. Reference was also made to the judgment of a Division Bench of Andhra Pradesh High Court in the case of V. Venkateswarlu v. State of Andhra Pradesh, 1987 Cri LJ 1621, where the Court held that the High Court in exercise of its power can direct the sentence to run concurrently when the accused had been convicted of two different offences by different Session Courts with the aid of provisions of Section 427 of the Code. The Court held that sentence to run concurrently and did not find fault with the order of the Court below.

47. It is important for us to refer to the judgment of the Supreme Court in the case of Ranjit Singh Vs. Union Territory of Chandigarh and another, , where a person already serving sentence of life imprisonment was again sentenced to life imprisonment on a subsequent conviction. Following the command of Section 427(2) of the Code, the Supreme Court clearly held the subsequent sentence will run concurrently even in absence of any specific direction by the Court to that effect though in a given circumstances the convict may not be entitled to get benefit of re-mission and commutation in respect of the earlier sentence.

Importantly, the Court though primarily dealing with the question, of life imprisonment punishment covered u/s 427(2) of the Code, held as under:

8. Sub-section (1) of Section 427, Cr.P.C. provides for the situation when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or life imprisonment. In other words, Sub-section (1) of Section 427, Cr.P.C. deals with an offender who while undergoing sentence for a fixed term is subsequently convicted to imprisonment for a fixed term or for life. In such a situation, the first sentence, being for a fixed term, expires on a definite date which is known when the subsequent conviction is made. Sub-section (1) says that in such a situation, the date of expiry of the first sentence which the offender is undergoing being known, ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the Court directs the subsequent sentence to run concurrently with the previous sentence. Obviously, in cases covered by Sub-section (1) where the sentence is for a fixed term," the subsequent sentence can be consecutive unless directed to run concurrently. Sub-section (2), on the other hand, provides for an offender "already undergoing sentence of imprisonment for life" who is sentenced on a subsequent conviction to imprisonment for a term or for life. It is well settled since the decision of this Court in *Gopal Vinayak Godse Vs. The State of Maharashtra and Others*, and reiterated in *Maru Ram and Others Vs. Union of India (UOI) and Others*, that imprisonment for life is a sentence for the remainder of the life of the offender unless the remaining sentence is commuted or remitted by the appropriate authority. This being so at the stage of sentencing by the Court on a subsequent conviction, the earlier sentence of imprisonment for life must be understood in this manner and, therefore, there can be no question of a subsequent sentence of imprisonment for a term or for life running consecutively which is the general rule laid down in Sub-section (1) of Section 427. As rightly contended by Shri Garg, and not disputed by Shri Lalit, the earlier sentence of imprisonment for life being understood to mean as a sentence to serve the remainder of life in prison unless commuted or remitted by the appropriate authority and a person having only one life span, the sentence on a subsequent conviction of imprisonment for a term or imprisonment for life can only be superimposed to the earlier life sentence and certainly not added to it since extending the life span of the offender or for that matter anyone is beyond human might. It is ? this obvious situation which is stated in Sub-section (2) of Section 427 since the general rule enunciated in Sub-section (1) thereof is that without the Court's direction the subsequent sentence will not run concurrently but consecutively. The only situation in which no direction of the Court is needed to make the subsequent sentence run concurrently with the previous/sentence is provided for in Sub-section (2) which has been enacted to avoid any possible controversy based on Sub-section (i) if there be no express direction of the Court to that effect. Sub-section (2) is in the nature of an exception to the general rule enacted in Sub-section (1) of Section 427 that a sentence on subsequent conviction commences on expiry of the first sentence

unless the Court directs it to run concurrently. The meaning and purpose of Sub-sections (1) and (2) of Section 427 and the object of enacting Sub-section (2) is, therefore, clear.

48. Thus, in the above case, one finds the discussion in some elaboration in relation to the applicability and scope of Section 427(1) of the Code, It has been held that only situation in which no direction of the Court needed to make subsequent sentence run concurrently to the previous sentence is provided in Sub-section (2).

49. Somewhat contra view was expressed by a Division Bench of this Court in the case of Ramesh Krishna Sawant Vs. State of Maharashtra, where the accused was tried and convicted in three different cases arising out of different facts and transactions registered under separate numbers, the Court took the view that the sentence cannot be ordered to run concurrently. The three different cases were registered under Sections 395 of IPC, 395 read with 397, and Section 395 read with 397 and u/s 342 of IPC In all the three cases, different sentences were awarded and referring to paragraph 10 of Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs (Prevention), Ahmedabad and another, , the Court concluded as under:

It is evident from the observations of their Lordships of the Apex Court that in cases which do not arise from a single transaction but, arise out of different transactions, it would not be just and proper to order sentences to run concurrently. In view of the law laid down in the aforesaid decision, with which we are in respectful agreement and also keeping in mind that all the three cases in which the petitioner has been convicted are cases u/s 395, Indian Penal Code, which is a anti-social offence, we do not think it expedient in the interest of justice to direct that the sentences of petitioner to run concurrently.

50. Some of the judgments above referred take the view that even in the given facts and circumstances of the case, the sentence should be ordered to run concurrently while in the other cases, they have been ordered to run consecutively. The two judgments, i.e. Amavasai" case AIR 2000 SC 3544 (supra) of the Supreme Court and Hariom alias Kalicharan"s case 1995 AIHC 489 (supra) of the Bombay High Court, had adopted a midway while deciding the question as contemplated u/s 427 of the Code. In these two cases, the approach adopted by the Court was partially consecutive and partially concurrent. The views expressed in these judgments thus clearly indicate that the Court has to exercise its judicial discretion in pursuance with the settled precepts of criminal sentencing within the four corners of Section 427(1) of the Code. We have no doubt in our mind that none of the judgments above referred enunciate the proposition of law that the Court does not at all have the power to pass an order directing sentences to run concurrently and not consecutively. Of course, this would depend upon the facts and circumstances of a given case. The Court will have to decide the question of sentence to run concurrently or consecutively keeping in view the parameters of sentencing policy and imposition of sentence.

Judicial discretion of the Court is to be guided by the settled principles and there is no bar in law on the power of the Court to pass such an order. This is clear from the plain reading of the provisions of Section 427 of the Code. Even in the case of Ramesh Krishna Sawant Vs. State of Maharashtra, , the Division Bench of this Court has not stated in principles of law that the power of the Court to pass an order of concurrent sentences is not available. However, keeping in view the fact that the Petitioner in that case had been convicted in three cases and the offence was an anti-social offence, the Court felt that it was not expedient or in the interest of justice to direct that the sentences awarded in those different cases to run concurrently. Vesting of power is one thing while exercise of power is another. There can be no doubt much less a sustainable argument that on the plain reading of the provisions of Section 427 of the Code, the Court passing an order of imprisonment upon a subsequent conviction of an accused who is already undergoing a sentence of imprisonment awarded in an earlier case, has power to direct that the subsequent sentence awarded is to run consecutively or concurrently. While deciding this question, the Court would normally take into consideration the facts of the previous conviction, the circumstances, the conduct of the accused, nature of the crime and the sentence awarded by the previous Court. Similar factors of the subsequent conviction would have to be considered cumulatively by the Court before it exercises its judicial discretion directing the running of sentences to be consecutive or concurrent. Merely because the accused has been punished under two different enactments in two different set of facts which are independent of each other would not deprive the accused of a benefit available to him in the discretion of the Court u/s 427(1) of the Code. None of the provisions of the language of Section 427 of the Code neither by specific language nor even by necessary implication indicate that the legislature intended to put any limitations of this nature on the power of the Court. Once the legislature has left it open and vested wide discretion in the Court, it would be impermissible to introduce such limitations through the process of interpretation of statute.

51. We have already discussed at some length the principles of interpretation which need to be adopted while examining the provisions of a criminal statute. The power is vested in the Court to direct the sentences to run concurrently but such power need not be exercised on impulses, whims or unregulated benevolence. It has been held that casual directions made for making the sentences to run concurrently often go against the express provisions of the statute and such exercise may not be Justifiable. (Suke alias Sukumaran v. State of Kerala 1989 (1) Crimes 133 (Kerala)). The, single transaction rule as regards concurrent sentences is covered under the legislative scheme of Section 31 of the Act where a person is convicted at one trial of two or more offences and different punishments are inflicted upon the convict even then sentence of imprisonment is to commence one after the expiration of the other unless ordered by the Court to run concurrently. There being a specific provision in relation to single transaction or where accused is tried for different offences in a

same trial is the basis for invoking the provisions of Section 31, and Section 427(1) of the Code operates in relation to different convictions at different points of time and obviously, for different offences. An accused who has been tried and convicted once for an offence cannot be tried again for the same offence. The cumulative effect of this constitutional protection is sufficiently indicative of the legal principle that the accused has to be convicted at two different points of time obviously for different offences and under different trials then alone can the accused satisfy the requirements of Section 427(1) of the Code that he was undergoing sentence of imprisonment in a previous conviction and could make prayer and/or Court itself could pass direction whether the imprisonment in the subsequent conviction would run concurrently or consecutively with the previous sentence. The general rule would be that the sentences given in the cases covered u/s 427(1) of the Code are mandated to run consecutively unless otherwise directed by the Court that sentences would run concurrently. This is the extent of judicial discretion vested in the Court which has to be exercised as per settled principles depending on the facts and circumstances of a given case. In our opinion, it is neither possible nor permissible to spell out universal principle or formula which would be applicable to all cases for exercise of jurisdiction by the Court u/s 427(1) of the Code. The power is vested in the Court to direct sentence of imprisonment to run concurrently or consecutively with the previous sentence of imprisonment but whether they should or not run consecutively or concurrently is a matter of judicial discretion to be guided by settled canons of criminal jurisprudence of sentencing policy with reference to the facts and circumstances of a given case.

52. In the case of *Ranjit Singh Vs. Union Territory of Chandigarh and another*, , the Supreme Court dealt with the application of Section 427(1) of the Code at some length and particularly in paragraph 8 of the Judgment. A person undergoing sentence of imprisonment including imprisonment for life on subsequent conviction is sentenced to imprisonment or imprisonment for life, the subsequent sentence shall commence at the expiration of imprisonment to which the accused is previously sentenced unless the Court directs the subsequent sentence" to run concurrently with previous sentence. This clearly indicates the desire of the framers of law that this power is explicit and is not circumscribed by any specified limitations. The discretion of the Court Would be guided by settled norms. The date of expiry of the first sentence which the accused is undergoing is known and as regards the subsequent sentence, the Court has to pass a direction in relation to the subsequent sentence as to whether it is to run consecutively or concurrently to the previous sentence.

53. Even in the case of *Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs (Prevention), Ahmedabad and another*, , the Supreme Court specifically noticed that the case under the Customs Act to some extent overlapped the case under Gold Control Act but it was evidently on different transactions and the complaints were based on different facts. One was a case of unauthorized smuggling of gold and export of silver under the Customs

Act while the other related to possession of 7000 Tolas of primary gold prohibited u/s 8 of the Gold Control Act. Thus, the accused was convicted for different offences committed at different points of time and under different statutes. Then the Supreme Court proceeded to grant benefit of Section 427(1) of the Code to the accused on these facts and held that the Court was not justified in directing that the sentences would run consecutively and not concurrently.

54. In various judgments of the Supreme Court and this Court, including a Division Bench judgment in the case of *Sadashiv Chhokha Sable Vs. State of Maharashtra*, the Courts have clearly stated the principle of law that the Court is vested with the power u/s 427(1) of the Code to pass an order of sentence upon a subsequent conviction, for the sentences to run concurrently or consecutively or concurrently instead of consecutively. Of course, these judgments also state the canons of law in consonance with which jurisdiction is to be exercised, while keeping in mind the rule that subsequent sentence of imprisonment should run consecutively to the previous sentence of imprisonment unless directed specifically to run concurrently by the Court. The provisions of Section 427 of the Code is beneficial to the accused and it also places an obligation upon the Court to consider such: a plea. If the legislature intended to deprive of benefit of Section 427(1) of the Code to any classes of convicts undergoing previous sentence from the operation of Section 427(1) of the Code the legislature would have specifically spelt out the same in the provision itself. An approach which would render u/s 427(1) of the Code or any part thereof as repugnant or ineffective would hardly be permissible. Furthermore, this power is to be exercised by the Court while ensuring that indulgence shown by the Court, with reference to the facts and circumstances of a given case, does not adversely affect the administration of criminal justice and does not encourage commission of such crime so as to prejudicially affect the society at large.

55. Thus, there is hardly any judgment brought to the notice of this Court which lays universal principle that wherever the accused is convicted for two different transactions under two, different enactments at two different points of time, then the Court is divested of its power and jurisdiction under the provisions of Section 427(1) of the Code. The emphasis in the language u/s 427(1) is not on different offences but the application thereof is on the premise of undergoing sentence of imprisonment in a previous conviction and directing sentence of imprisonment on a subsequent conviction to run consecutively unless directed to run concurrently by the Court of competent jurisdiction. The exclusion of the provisions of Section 427(1) with reference to different transactions, different offences and different cases, is not comprehensible within the language, particularly, in view of the unambiguous and clear terms used by the legislature in Section 427(1) of the Code, The Section is probably intended to achieve a twin purpose, one which is beneficial to the accused where the Court is expected to consider directing the imposition of subsequent sentences to run consecutively or concurrently with the previous sentence and secondly, a general and administrative concept that of over-crowded jails where under trials and convicts are lodged so as to even

require the State to act in the interest of ad-ministration of criminal justice system and not to frustrate the purpose of sentencing by ill-treating the convict, These along with the above-referred criteria are relevant consideration for exercise of jurisdiction but certainly are not determinative as they would have to be seen in the facts and circumstances of a given case. The Court which exercises such jurisdiction has to be the Court of competent jurisdiction and the matter essentially should fall within its jurisdiction. Exercise of judicial discretion presupposes legal and inherent jurisdiction to entertain such matters.

56. During the course of hearing, question as regards to the very jurisdiction of the Bombay High Court to entertain such an application came up for consideration. Ancillary question there to was if the answer is in the negative, whether such application would be liable to be transferred to the Court of competent jurisdiction in terms of Section 427(1) of the Code. Keeping in view the scope of the question referred to this Bench, we prefer not to examine this aspect of the case and leave the matter to be decided by the learned single Judge in accordance with law.

57. In the present case the accused was convicted under Sections 395 and 397 of the IPC and was sentenced to undergo rigorous imprisonment for 7 years and a fine of Rs. 1000/- vide judgment dated 26th February, 2004 by the Sessions Judge, Satara in Sessions Case No. 140 of 2002. While undergoing the sentence in the previous conviction, the accused was found guilty of an offence u/s 15 of the NDPS Act by the Special Judge, Amritsar, Punjab in Sessions Case No. 267 of 1997 and was sentenced to undergo rigorous imprisonment for two years with fine of Rs. 5000/-. The appeal being Appeal No. 549 of 2004 filed by the accused against the judgment of the Sessions Judge, Satara dated 26th February, 2004 was withdrawn. Thereafter, an application through jail was moved on 15th December, 2006 praying for issuance of a direction of the sentence in both the sentences may be ordered to run concurrently. We have already said that question of jurist diction, maintainability will have to be decided by the learned single Judge and that the power of the Court u/s 427(1) of the Code is not excluded and is available to be exercised by the concerned Court. In other words, application filed by the accused; would have to be decided by the learned single Judge in accordance with law and keeping in view the above enunciated principles. The jurisdiction of the Court would not be ousted only on the ground that the accused was involved in two different cases for committing distinct offences on different set of facts.

58. In view of our detailed discussion," now we proceed to answer the question referred as under:

a) Neither the Court of competent jurisdiction is divested Of its power to pass appropriate order in terms of Section 427(1) of the Code of Criminal Procedure, 1973 nor does the accused lose this statutory benefit of right of consideration by the Court, only on the ground that the accused has been tried in two or more cases separately and they arise from distinct and separate offences arising out of

different transactions/ incidents.

b) It is neither permissible nor possible to spell out universal principle or formula which would be applicable to all cases for exercise of power vested in Court u/s 427(1) of the Code. Such power and judicial discretion has to be exercised in terms of the settled precepts of criminal jurisprudence, sentencing policy and with reference to the facts and circumstances of a given case, where the previous and subsequent sentences of imprisonment awarded to the accused are in two or more cases for distinct and separate offences arising out of different transactions/incidents and even under different enactments.

59. Having answered the question of law as aforestated, we direct that the application now be placed before the learned single Judge for disposal in accordance with law.