

(2006) 10 GUJ CK 0032
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 10310 of 2006 in Criminal Appeal No. 612 of 2006

Sumlo @ Sumla Himla Bhuriya and Others APPELLANT
Vs

The State of Gujarat and Another RESPONDENT

Date of Decision : 05-10-2006

Acts Referred:

Arms Act, 1959 — Section 25(1)
Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 122, 427, 427(1), 427(2)
Gold (Control) Act, 1968 — Section 8
Penal Code, 1860 (IPC) — Section 307, 323, 34, 342, 394

Citation : (2007) CriLJ 612 : (2007) 3 GLR 2734

Hon'ble Judges : Ravi R. Tripathi, J

Bench : Single Bench

Advocate : Sadhana Sagar, s 1 - 3, for the Appellant; A.J. Desai, Assistant Public Prosecutor for Respondents 1 - 2, for the Respondent

Final Decision : Dismissed

Judgement

Ravi R. Tripathi, J.—The present is the application filed praying that,

9(A) Your Lordships be pleased to allow this application and be pleased to pass an appropriate order for concurrent both the sentences awarded by the Id. Additional Sessions Judge, Surendranagar in Sessions Case No. 43/2000, vide order dtd. 11th April 2001 and Id. Additional Sessions Judge, Nadiad, Fast Track Court, in Sessions Case No. 136/2000 vide order dtd/13/5/2003 in the interest of justice.

2. The learned advocate has placed on record a copy of the order dated 09.05.2003 passed by this Court (Coram: Sharad D. Dave, J.) in Criminal Misc. Application No. 2296 of 2003 in Criminal Appeal No. 640 of 2000. The learned advocate had submitted that a similar order be passed in the present application also. She invited attention of the Court to paras 8, 9, 10 and 11 of the said order.

The same are reproduced hereinbelow for ready perusal.

8. In support of her submission, Ms. S.G. Patel, learned advocate for the petitioner has relied upon in the case of Ammavasai and Anr. v. Inspector of Police, Valliyanur and Ors., reported in AIR 2000 S.C. 3544.

9. I have perused the aforesaid authority and also the allied papers produced along with this petition. First of all, on 10.04.2003, this Court ordered the petitioner to deposit the fine. On 02.05.2003, the petitioner has produced the xerox copy of intimation of recovery of the fine, issued by the Registrar, City Sessions Court, Ahmedabad. Due to longer time, that the petitioner spent in jail for Sessions Case No. 252 of 1998, the office of the City Sessions Court, Ahmedabad has recovered only Rs. 8,000/- instead of Rs. 13,000/-. I have perused the receipts No. 185 dated 02.05.2003 of Rs. 8,000/- in Sessions Case No. 252 of 1998 and receipt No. 184 dated 02.05.2003 of Rs. 2,000/- in Sessions Case No. 359 of 1998.

10. If, I perused the case of Ammavasai and Anr. [Supra], there were four cases, wherein he was found guilty u/s 395 of I.P.C. and was sentenced to undergo R.I. for seven years in each case. If the benefit conferred u/s 427 of Cr.P.C. is not extended to him, he may have to undergo imprisonment for a total period of twenty eight years in jail. While discussing the aforesaid facts, the Hon"ble Apex Court in para-4 of the said judgment has observed as under:

4. On the other hand, we allow the appellants to have the benefit of all the sentences to run concurrently, he would be out by now after serving only imprisonment for a period of 7 years awarded in one case. Both courses are unacceptable to us and, therefore, we thought of a via-media which would be consistent with the administration of criminal justice. After bestowing our anxious consideration we thought that if the appellants would undergo a total period of 14 years of imprisonment in respect of all the convictions passed against them that will be sufficient to meet the ends of justice.

11. It is pertinent to note that as per the jail report, there are two more cases, pending against the present petitioner, one is before the Satellite Police Station, bearing C.R.No.I-455/96 for the offences punishable under Sections 394, 397 and 307 of I.P.C. and another is before the Bapunagar Police Station, bearing C.R.No. 186/96 for the offences punishable under Sections 394, 395 and 397 of I.P.C., Section 135 of Bombay Police Act and Section 25(1)(a) of Arms Act. In both the aforesaid two pending C. Rs", the petitioner has been not granted bail.

3. The learned advocate submitted that the facts in the present case are identical and therefore, ends of justice will stand served if a similar order is passed.

4. In the present case the facts are that the applicants, three in number, are convicted for offence u/s 395 of the IPC and they are sentenced to undergo 4 years rigorous imprisonment and fine of Rs. 500/-, in default 3 months rigorous imprisonment.

5. The applicants are also convicted for offence u/s 342 of IPC and are awarded sentence of 6 months imprisonment and fine of Rs. 250/-, in default to further undergo simple imprisonment for 1 month, by the learned Presiding Officer, Fast Track Court, Nadiad by judgment and order dated 13th May 2003.

6. Against the order of conviction and sentence awarded, the applicants have preferred Criminal Appeal No. 612 of 2006, which, as stated by the learned advocate in para 2 of the memo of application, is admitted and is pending for final hearing.

7. These very applicants are also convicted for offences under Sections 395, 397 read with Section 34 of IPC in Sessions Case No. 43 of 2000 by the learned Additional Sessions Judge, Surendranagar and is awarded 7 years rigorous imprisonment and fine of Rs. 2000/-, in default to undergo rigorous imprisonment for 1 year. For offences u/s 452 read with Section 34 the applicants were awarded rigorous imprisonment for 2 years and fine of Rs. 1000/-, in default to undergo rigorous imprisonment for 6 months. For offences u/s 323 read with Section 34 of IPC, rigorous imprisonment for 3 months and fine of Rs. 500/-, in default rigorous imprisonment for 1 month was awarded by judgment and order dated 11.04.2001. All these sentences are ordered to run concurrently. Against the aforesaid conviction and sentence applicants No. 2 and 3 filed Criminal Appeal No. 493 of 2001, which is stated to have been admitted and pending.

8. These very applicants are also convicted in Sessions Case No. 72 of 2000 by the judgment and order dated 4th April 2003 for offence u/s 395 of IPC and awarded rigorous imprisonment for 4 years and fine of Rs. 250/-, in default further rigorous imprisonment for 1 month by the learned Additional Sessions Judge, 2nd Fast Tract Court, Vyara.

Against the said conviction Criminal Appeal No. 129 of 2006 is filed which is admitted and is pending.

9. After setting out details of the aforesaid convictions in three separate sessions cases, the ground is set out for making this application and seeking relief as aforesaid. It is mentioned in para 5 that:

5. Applicant further respectfully says and submits that all the applicants are in jail since the year of 1999 and already they have completed their sentences of 7 years awarded by the Id. Additional Sessions Judge, Kheda in Sessions Case No. 43/2000. and applicants are entitled u/s 427 of the Criminal Procedure Code and therefore, it is required to be ordered to run concurrently of both the sentences, then their sentence would be over.

The application is thoroughly misconceived. Section 427 of the Code of Criminal Procedure (hereinafter referred to as "the Code") pertains to sentence of offender already sentenced for another offence. Sub-section (1) of Section 427 of the Code reads as under:

When a person already undergoing 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.

Sub-section (2) reads as under:

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.

From the aforesaid section it is clear that the same is not applicable to the facts of the present case. In the present case the applicant is not undergoing imprisonment for life and therefore, there is no question of subsequent sentence to run concurrently. Besides, no case is made out for passing any order to this effect.

10. Learned Additional Public Prosecutor, Mr. A.J. Desai in this regard invited attention of this Court to a decision of the Hon'ble the Apex Court in the matter of Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs (Prevention), Ahmedabad and another,

The learned APP submitted that the Hon'ble the Apex Court had an occasion to consider the nature and scope of Section 427 of the Code. He submitted that the Hon'ble the Apex Court was pleased to observe that,

Section 427 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 concurrent or consecutive? 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 facts constituting the two offences are quite different.

Where the accused was in the first instance prosecuted under Gold (Control) Act for possession of primary gold prohibited u/s 8 of that Act and in the second case prosecuted under Customs Act for which the accused was prosecuted were quite distinct and different though the case under the Customs Act may, to some

extent, overlap the case under the Gold (Control) Act, the Courts would not be unjustified in directing that the sentences should be consecutive and not concurrent.

11. Mr. A.J. Desai, the learned APP submitted that in the present case there are three distinct sessions cases at three different places. First in point of time is Sessions case No. 43 of 2000, it is at Surendranagar decided on 11.04.2001. The second one is Sessions Case No. 136 of 2000, at Nadiad, decided by judgment and order dated 13.03.2003. Third one is Sessions Case No. 72 of 2000 at Vyara decided on 04.04.2003.

12. The rule of "single transaction" even if stretched to any extent will not bring the cases aforesaid under the umbrella of "single transaction" rule and therefore, this application fails. The application is rejected.

13. Office is directed to list Criminal Appeals No. 493 of 2001, 867 of 2001, 612 of 2006, 129 of 2006 for final hearing in regular course.