
(2012) 03 SHI CK 0112
In the High Court Of Himachal Pradesh
Case No : Criminal MMO No. 245 of 2011

Sunil Kumar

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 05-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 31, 427, 482
Penal Code, 1860 (IPC) — Section 354, 377, 71

Citation : (2012) 03 SHI CK 0112

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldeep Singh, J.—This petition has been filed u/s 482 Cr.P.C. against the order dated 22.2.2011 passed by learned Judicial Magistrate Ist Class, Ghumarwin, dismissing petition No. 20/4 of 2011 filed by petitioner u/s 427 Cr.P.C. on the ground that petitioner has been sentenced for offences punishable under Sections 377, 354 IPC. He has not been released by the Jail Authorities on the grounds that the Court has not directed that the sentences should run concurrently or consecutively. The learned Judicial Magistrate vide order dated 22.2.2011 dismissed the application on the ground that Section 31 Cr.P.C. provides that unless the Court directs the sentence to run concurrently, the sentence for two or more offences at one trial will commence one after the expiration of the other. The petitioner cannot claim his release without serving the sentence imposed upon him separately for both the sentences. The application filed by the petitioner was held not maintainable and the petitioner is not entitled to claim his release before undergoing the sentence imposed upon him.

2. I have heard the learned counsel for the petitioner. Section 31 Cr.P.C. provides that when a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of Section 71 of the Indian Penal Code sentence

him for such offences, to the several punishments prescribed therefore which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

3. The copy of judgment dated 30.9.1989 in Criminal Case No. 228/1 of 1988 has been placed on record. The petitioner was sentenced u/s 377 IPC for three years rigorous imprisonment and fine of Rs. 2000/- and two years simple imprisonment with fine of Rs. 1000/- u/s 354 IPC, in default of fine of each amount the petitioner was directed to further undergo one month simple imprisonment. The Court at that time did not exercise the discretion that the petitioner shall undergo the sentence imposed concurrently. The sentence imposed by the Court attained finality as nothing has been pointed out that sentence was modified by appellate or revisional Court. The application filed u/s 427 Cr.P.C. later on by the petitioner that he may be released after treating sentence imposed on him as concurrent before the trial Court is not maintainable. The trial Court has no jurisdiction to add in the judgment or modify the judgment dated 30.9.1989 after announcing and signing the judgment dated 30.9.1989 Only the appellate or revisional Court had jurisdiction to modify the judgment dated 30.9.1989. It has not been submitted that the judgment dated 30.9.1989 was modified by the appellate or revisional Court. The trial Court in the order dated 22.2.2011 has rightly considered the matter. There is no merit in the petition which is accordingly dismissed.