
(2015) 02 CHH CK 0016
In the Chhattisgarh High Court
Case No : Criminal M.P. No. 1031 of 2014

Tulsi Sarthi

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 31(1), 427, 428, 482
Penal Code, 1860 (IPC) — Section 122, 379, 64, 71

Citation : (2016) 1 CCR 281 : (2015) CriLJ 2267 : (2015) 4 Crimes 36 : (2015) 4 RCR(Criminal) 77

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Hemant Gupta, for the Appellant; Omprakash Sahu, Govt. Advocate and Kishore Bhaduri, Amicus Curiae, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J.—The petitioner is in custody in Central Jail Bilaspur consequent to his conviction in different cases. By this application under Section 482 of Code of Criminal Procedure, 1973, he seeks release from custody on the ground that if proper calculation is made then he has served out his sentences and/or there is no case in which he can be retained or detained in custody. The imperative facts necessary to find out whether petitioner is entitled for relief claimed in this application are as under:--

1.1 The petitioner was arrested on 18-12-2011 in connection with four criminal cases (three criminal cases registered in Police Station Civil Lines, Bilaspur and one criminal case registered in Police Station Balod). The details of the four criminal cases are as under (for sake of convenience) I refer the four cases as the first case, second case, third case, fourth case:--

1.2 First Case : Criminal Case No. 252/2011 for offence under Section 379 of IPC wherein the petitioner was sentenced on 2-1-2012 for one year imprisonment and he was in jail during the course of trial.

2.3 Second Case : Criminal Case No. 1873/2011 for offence under Section 379 of IPC wherein the petitioner was sentenced on 12-3-2012 for one year imprisonment and he was in jail during the course of trial.

2.4 Third Case : Criminal Case No. 301/2012 for offence under Section 379 of IPC wherein the petitioner was sentenced on 10-10-2012 for ten months imprisonment and he was in jail during the course of trial.

2.5 Fourth Case : Criminal Case No. 334/2012 for offence under Section 379 of IPC wherein the petitioner was sentenced on 28-2-2013 for one year, two months and ten days imprisonment and he was in jail during the course of trial.

2.6 In the fourth case against the conviction and sentence the petitioner preferred criminal revision No. 210/2014 (Tulsi Sarthi v. State of Chhattisgarh) and also filed an application for suspension of sentence. This Court by order dated 10-10-2014 observed that the applicant was in jail throughout the period of trial and he has been sentenced to the period already undergone during trial and application for suspension of sentence was rejected.

2.7 Thereafter, the petitioner has preferred this petition under Section 482 of the Code of Criminal Procedure, 1973 stating inter alia that he is in jail since 18-12-2011 and has served out and completed all the jail sentences awarded in all four cases, but still he is in custody and he has not been released, and on the information was sought, the Superintendent of jail by memo dated 5-7-2014 has informed that he is serving sentence in fourth case (Criminal Case No. 334/2012). It is further case of the petitioner that he is illegally detained/confined by the respondent Nos. 2 and 3 without any authority of law and as such he be directed to be released and suitable action be taken against the respondent Nos. 2 and 3, in addition to granting compensation to the petitioner for illegal detention.

2.8 The respondent/State has filed his counter affidavit stating inter alia that in the first case, he was convicted on 2-1-2012 and petitioner was in jail since 18-12-2011 therefore, after remission of one month and twenty six days the sentence lasted on 21-10-2012 and in the second case after remission of one month and twenty seven days and deducting judicial custody of fifteen days, the sentence stood completed on 9-8-2013 and in the third case after remission of two months and five days and deducting judicial custody of fifteen days, the said sentence would stand completed on 20-3-2014 and in the fourth case after deducting judicial custody of fifteen days, the said sentence would complete on 15-6-2015 and he will be released accordingly. Therefore, he is at present undergoing and serving sentence awarded in fourth case i.e. criminal case No. 334/2012 and relied upon circular dated 13-7-1998, 3-10-1997 and has stated that the petition under Section 482 of Cr.P.C. deserves to be dismissed.

2. Shri Hemant Gupta, learned counsel appearing for the petitioner would submit that the petitioner was arrested on 18-12-2011 in four criminal cases registered in two different police stations and tried by two criminal courts i.e. Bilaspur and

Akaltara and in all cases he was convicted for offence under Section 379 of the Indian Penal Code on different dates. He would further submit that though in all cases he was arrested on 18-12-2011 and in first case he was convicted on 2-1-2012 and in the second case he was convicted on 12-3-2012 and in third case 10-10-2012 and in fourth case 28-2-2013 but he will be under trial prisoner in respect of second, third, fourth case for the purpose of calculating the period undergone by him during the investigation w.e.f. 18-12-2011 (date of arrest) under Section 428, Cr.P.C., though he has been convicted in the first on 2-1-2012 but yet he will be entitled for the period from 18-12-2011 to 28-2-2013 under Section 428, Cr.P.C. as set off, in the fourth case which has been granted by the learned Judicial Magistrate in his judgment and which has also been made basis by this Court in criminal revision No. 210/2014 for rejecting the application for suspension and grant of bail filed by the petitioner in the criminal revision filed against the judgment of conviction recorded by trial magistrate in fourth case, therefore he is entitled to be released forthwith.

3. Shri Omprakash Sahu, Learned Govt. Advocate appearing for the State would submit that petitioner is at present serving sentence in the fourth case being criminal case No. 334/2012 w.e.f. 28-2-2013, and entice awarded is one year two months and ten days, which petitioner would complete after deduction of remission/judicial custody on 15-6-2015. He would further submit that though he has been arrested in all four cases on 18-12-2011 but once he has been convicted in first case on 2-1-2012 then his status changes from under trial prisoner to sentence server prisoner and he would cease to be the under trial prisoner though facing trial in other criminal cases as the period undergone as a sentence in the first case cannot endure to his benefit in terms of Section 428 of Cr.P.C. and in fourth case, he would only be entitled to period of fifteen days as set off from 18-12-2011 to 2-1-2012 (conviction in first case). He would also rely upon the circular dated 3-10-1997 and 13-10-1998 issued by Jail Head Quarters Madhya Pradesh (Bhopal), he would lastly submit the present petition as framed and filed is substance less and deserves to be dismissed.

4. Mr. Kishore Bhaduri, learned counsel appearing as a amicus curiae would submit that the petitioner having been arrested on 18-12-2011 and first sentenced on 2-1-2012 in first case and started serving sentence in that case but yet the petitioner would be under trial prisoner in respect of second, third and fourth case and upon his conviction in fourth case on 28-2-2013, he would be entitled to set off entire period i.e. 18-12-2011 to 28-2-2013 by virtue of provision contained in Section 428, Cr.P.C. He would further submit that is the reason why the trial magistrate has held that petitioner has already undergone the sentence of one year two months and ten days in custody and this Court also accepted the same position by rejecting the application for suspension of sentence filed in criminal revision.

5. I have heard the learned counsel for the parties and given my thoughtful consideration to the submissions made herein and also gone through the records

with utmost circumspection.

6. The neat legal issue which falls to be answered in this petition is whether while a person is serving out a sentence, having been convicted in one case and who has been remanded during said period of sentence, custody in another case, can the period of remand be taken into consideration for the purpose of set off against the sentence which is passed upon conviction in other case?

7. In order to consider the question involved in this petition, it would be apposite to notice the statutory provisions contained in Sections 31(1), 427 and 428 of the Criminal Procedure Code and Section 64 of the Indian Penal Code respectively, which are quoted hereunder:--

"31. Sentence in cases of conviction of several offences at one trial--(1) 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 (45 of 1860), 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."

"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 under Section 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."

"428. Period of detention undergone by the accused to be set off against the sentence of imprisonment.--Where an accused persons has, on conviction, been sentenced to imprisonment for a term not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of

imprisonment imposed on him:

Provided that in cases referred to in Section 433-A, such period of detention shall be set off against the period of fourteen years referred to in that section."

Indian Penal Code:

"64. Sentence of imprisonment for nonpayment of fine.--In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine, it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence. "Section 427, Cr.P.C. incorporates the principle of sentencing an offender who is undergoing a sentence of imprisonment. The sentencing Court is required to consider and make an appropriate order as to how the sentence passed in subsequent case is to run whether it should be concurrent or consecutive. The ordinary Rule is that the sentences awarded are to run consecutively unless the Court directs them to run concurrently, if there be more than one sentence awarded in same trial are in different trial."

8. The principle of set off as against period of conviction, detention in case as against sentence upon conviction is contained in Section 428 of the Code of Criminal Procedure and by virtue of that provision, the period of detention as under trial i.e. during the investigation inquiry or trial or a same case has to be set off against the imprisonment awarded in the same case upon conviction. The Section 428, Cr.P.C. is silent and doesn't provide if a person is convicted and sentenced while serving sentence, he is remanded in another case, then whether he would be entitled to be set off for the remand period as a undertrial in another case?

9. In the matter of Raghbir Singh Vs. State of Haryana, AIR 1984 SC 1796 : (1984) 2 Crimes 569 : (1984) 2 SCALE 365 : (1984) 4 SCC 348 : (1985) 1 SCR 724 : Raghbir Singh Vs. State of Haryana, AIR 1984 SC 1796 : (1984) 2 Crimes 569 : (1984) 2 SCALE 365 : (1984) 4 SCC 348 : (1985) 1 SCR 724 , their Lordships of the Supreme Court have held that in order to secure the benefit of Section 428 of the Code, prisoner must show that he had been detained in prison for the purpose of investigation, inquiry or trial of a case in which, he is later on convicted and sentenced and if he is already convicted and undergoing the sentence in one case during the period of investigation or trial in other case, he is not entitled to claim that period occupied by such investigation or inquiry or trial should be set off as he cannot claim double benefit under Section 428 of the Code same being counted as a part of imprisonment imposed for committing the former offence and also set off under Section 428, Cr.P.C. against the period of

imprisonment imposed for committing the latter offence as well.

10. In the decision reported in *State of Maharashtra and Another Vs. Najakat Alia Mubarak Ali*, AIR 2001 SC 2255 : (2001) CriLJ 2588 : (2001) 3 Crimes 9 : (2001) 1 JT 279 Supp : (2001) 4 SCALE 71 : (2001) 6 SCC 311 : (2001) 3 SCR 600 : (2001) 2 UJ 1510 : (2001) AIRSCW 2059 : (2001) 4 Supreme 45 , it has been held by their Lordships of Supreme Court that period of remand in each case that would be set off against the sentence imposed in that case and as the petitioner was on remand as an under trial in both the cases, he would be entitled to be set off in both the cases for respective period of remand.

11. In the matter of *Atul Manubhai Parekh Vs. Central Bureau of Investigation*, (2010) CriLJ 2113 : (2009) 15 JT 65 : (2009) 14 SCALE 144 : (2010) 1 SCC 603 : (2009) 15 SCR 1105 , the question arose for consideration before the Supreme Court as recorded in paragraph three of the report is quoted hereunder:--

"3. The short point involved in this application is whether a person, who has been convicted in several cases and has suffered detention or imprisonment in connection therewith, would be entitled to the benefit of set off in a separate case for the period of detention or imprisonment undergone by him in the other cases.

Their Lordships have answered the above-stated question in paragraph 14 of the reports after considering the case of *Raghubir Singh, Raghubir Singh Vs. State of Haryana*, AIR 1984 SC 1796 : (1984) 2 Crimes 569 : (1984) 2 SCALE 365 : (1984) 4 SCC 348 : (1985) 1 SCR 724 (supra) and *State of Maharashtra and Another Vs. Najakat Alia Mubarak Ali*, AIR 2001 SC 2255 : (2001) CriLJ 2588 : (2001) 3 Crimes 9 : (2001) 1 JT 279 Supp : (2001) 4 SCALE 71 : (2001) 6 SCC 311 : (2001) 3 SCR 600 : (2001) 2 UJ 1510 : (2001) AIRSCW 2059 : (2001) 4 Supreme 45 and it has been held as under:--

"14. The wording of Section 428 is, in our view, clear and unambiguous. The heading of the section itself indicates that the period of detention undergone by the accused is to be set off against the sentence of imprisonment. The section makes it clear that the period of sentence on conviction is to be reduced by the extent of detention already undergone by the convict during investigation, enquiry or trial of the same case. It is quite clear that the period to be set off relates only to pre-conviction detention and not to imprisonment on conviction."

12. From the principles of law laid down by their Lordships of the Supreme Court in aforesaid case *Atul Manubhai Parekh Vs. Central Bureau of Investigation*, (2010) CriLJ 2113 : (2009) 15 JT 65 : (2009) 14 SCALE 144 : (2010) 1 SCC 603 : (2009) 15 SCR 1105 , it is quite vivid that the period of set off as provided under Section 428, Cr.P.C. would be in case a person is under remand custody as an under trial, and once he is sentenced and period is spent as sentence serving prisoner, that period cannot be taken into account as a remand period as an under trial prisoner in another case. A convict cannot claim double benefit under

Section 428 of the Code as the same period is being counted as a part of sentence serving for commission of the former offence and also being set off against the period of sentence awarded for latter offence as such the distinction between the nature and the status of the detention has to be maintained and to be kept in mind while granting set off under Section 428, Cr.P.C. Accordingly it is held that the remand period in the later case, when he was already undergoing sentence in the former case cannot endure to his benefit in terms of Section 428 of the Code of Criminal Procedure, 1973.

13. Keeping in mind the principles of law laid down by their Lordships of the Supreme Court in the above-stated decision and on the basis of analysis made hereinabove, if the facts of the present case are examined, it would appear that the petitioner was arrested on 18-12-2011 in all the four cases and convicted in the first case on 2-1-2013 then his status would change and he ceases to be the under trial prisoner and becomes a sentence server prisoner w.e.f. 2-1-2012, therefore for the fourth case he is not entitled to claim set off from 18-11-2012 (date of arrest) to 28-3-2013 (date of conviction in fourth case) as under trial prisoner because during that period, he was sentence serving prisoner in the other three cases and he will be entitled for set off of fifteen days only i.e. from 18-12-2011 to 2-1-2012 date of conviction in first case and he would be entitled to be released on 15-6-2015 after completion of the sentence awarded in fourth case and therefore the submission of the petitioner that he has been illegally detained in jail deserves to be rejected as merit less and substance less.

14. As a fallout and consequence of the aforesaid discussion, this petition under Section 482 of Cr.P.C. deserves to be and is accordingly dismissed. No order as to cost(s). Before parting with the record, this Court records appreciation for the valuable assistance rendered to this Court by Mr. Kishore Bhaduri learned amicus curiae.