

Ravinder Kumar and Another Vs. State of Haryana

Ravinder Kumar and Another Vs. State of Haryana

SooperKanoon Citation : sooperkanoon.com/1063348

Court : Punjab and Haryana

Decided On : Nov-27-2012

Appellant : Ravinder Kumar and Another

Respondent : State of Haryana

Judgement :

CRA-S-3186-93-SB o

1. .IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH 1

Criminal Appeal not S-3186-SB of 2012 (O&M) Date of Decision : November 27th , 2012 Ravinder Kumar and another ...Appellants Versus State of Haryana ...Respondent 2.

Criminal Appeal not S-3187-SB of 2012 (O&M) Date of Decision : November 27th , 2012 Ravinder Kumar and another ...Appellants Versus State of Haryana ...Respondent 3.

Criminal Appeal not S-3188-SB of 2012 (O&M) Date of Decision : November 27th , 2012 Ravinder Kumar and another ...Appellants Versus State of Haryana ...Respondent 4.

Criminal Appeal not S-3189-SB of 2012 (O&M) Date of Decision : November 27th , 2012 Ravinder Kumar and another ...Appellants Versus State of Haryana ...Respondent CRA-S-3186-93-SB o

2. .5.

Criminal Appeal not S-3190-SB of 2012 (O&M) Date of Decision : November 27th , 2012 Ravinder Kumar and another ...Appellants Versus State of Haryana ...Respondent 6.

Criminal Appeal not S-3191-SB of 2012 (O&M) Date of Decision : November 27th , 2012 Ravinder Kumar and another ...Appellants Versus State of Haryana ...Respondent 7.

Criminal Appeal not S-3192-SB of 2012 (O&M) Date of Decision : November 27th , 2012 Ravinder Kumar and another ...Appellants Versus State of Haryana ...Respondent 8.

Criminal Appeal not S-3193-SB of 2012 (O&M) Date of Decision : November 27th , 2012 Ravinder Kumar and another ...Appellants Versus State of Haryana ...Respondent CRA-S-3186-93-SB o

3. .CORAM : HON'BLE Mr.JUSTICE VIJENDER SINGH MALIK 1 Whether Reporters of local papers may be allowed to see the judgment?.

2.Whether to be referred to the Reporters or not?.

3.Whether the judgment should be reported in the Digest?.

Present Mr.Prem Singh Bhangu, Advocate, for the appellants.

Mr.Sagar Deswal, AAG, Haryana, for the State.

VIJENDER SINGH MALIK, J.

For the reasons mentioned in the applications, delay in filing the appeals is condoned.

Main Appeals A common mixed question of law and fact is involved in the above mentioned eight appeals brought by Ravinder Kumar and Ramesh Kumar, who have been held guilty, convicted and sentenced by the court of learned Special

Judge, Panchkula under the Electricity Act.

The same is as to whether the sentence awarded to the appellants in eight cases could be ordered to run concurrently.

Therefore, all these eight appeals are being disposed of by this common order.

The facts are not to be noticed in great detail.

On the complaint of Sub Divisional Officer, Operation Sub Division, UHBVN, Barwala in Criminal Appeal not S-3186-SB of 2012, the case was registered at Police Station Raipur Rani.

The complaint was that the copper coils from 16 KVA transformer provided to Hakam Singh of village Bhonwli had been stolen by some miscreants during the night intervening 1st and 2nd January, 2012.

The appellants have been arrested in the said case and from them, the copper coils have been recovered for which they have been charged for an offence punishable under section CRA-S-3186-93-SB o

4. 136 of the Electricity Act and at the trial they have been held guilty and convicted on their confessing their guilt.

The confession made by the appellants was taken as without any pressure or coercion and on the basis of the same, the appellants and others were held guilty for the offence punishable under section 136 of the Act and had been convicted thereunder vide judgment dated 7.8.2012.

Hearing on quantum of sentence was given on the same day and the appellants have been sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of ` 10,000/- for committing the offence.

In default of payment of fine, they have been ordered to further undergo rigorous imprisonment for a period of one month.

The short grievance made out in these appeals, filed against the aforesaid judgments is that the sentences awarded in this case as well as in seven connected cases were not ordered to run concurrently with the previous sentence.

Learned counsel for the appellants has submitted that the discretion to order the sentence to run concurrently had been conferred on the court below as also upon this court while dealing with the appeals/revisions to order the sentences to run concurrently.

He has submitted that the conviction is on the basis of confession and the appellants are young persons and neither the offence is of very serious nature nor it is shown that the appellants are hardened criminals.

According to him, all these circumstances show that the court below should have exercised its discretion under section 427(1) Cr.P.C. and ordered the sentences awarded to the appellants in the eight cases to run concurrently.

5. .run concurrently.

Learned State counsel has submitted, on the other hand, that the large number of cases in which the appellants have been convicted, would show that they are not entitled to the exercise of discretion in their favour of ordering the sentences to run concurrently in eight cases.

He, however, did not dispute the other factual submissions made in this case regarding the nature of the offence and the age and antecedents of the appellants.

Section 427 Cr.

P.C. which deals with the aspect has been thoroughly examined with reference to decisions of this court as well as Hon`ble Supreme Court of India by a Full Bench of this court in Jang Singh versus State of Punjab 2008(1) R.C.R.(Criminal) 323.

Before advertng to the law laid down on the point in the said case, the provisions of section 427 (1) have to be noticed.

The same read 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 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.

CRA-S-3186-93-SB o

6. .The eight cases were though decided on the same date, yet it can definitely be said that one case was decided after the other.

As the sentence starts running from the time it is pronounced, the sentence awarded in the second case and for that matter in other subsequent cases would be covered by section 427(1) Cr.P.C.The rule under this provision is that a subsequent sentence of imprisonment or imprisonment for life awarded to a person shall commence at the expiration of the imprisonment to which he had been previously sentenced.

Under this rule, sentence of the second case would run after the appellants had completed the sentence of fiRs.case and the sentence awarded in the 3rd case would commence on the date the sentence awarded in the second case would expire.

Since the appellants have been sentenced to undergo rigorous imprisonment for a period of six months in eight cases, the sentences would count for rigorous imprisonment for a period of 4 yeaRs.However, the provisions of section 427 (1) contains an exception to this aforesaid rule and the same gives discretion to the court to direct the subsequent sentences to run concurrently with such previous sentence.

The question as to the principles, method and in what manner this judicial discretion has to be exercised was before the Full Bench of this court in Jang Singh's case (supra) and it has been laid down as under:- 18.

The consensus of the judicial opinion, as may emerge from different judgments passed by various High Courts and the Hon'ble Supreme Court, seems to be that
CRA-S-3186-93-SB o

7. .normal rule, as per Section 427 Criminal Procedure Code, is that, a person who is undergoing a sentence of imprisonment and is sentenced on a subsequent conviction to an imprisonment or an imprisonment for life, then such imprisonment or imprisonment of life shall commence after the expiration of the imprisonment, to which he has been previously sentenced.

This, however, would not be so if the Court directs that the subsequent sentence shall run concurrently with the previous sentence.

Such direction to make the sentences to run concurrently, as per various decisions noted above, can be exercised by the trial Court or by the appellate Court or a revisional Court at the time of exercising appellate or revisional jurisdiction as well.

However, if the trial Court does not pass any such direction for making the sentences to run concurrently and appeal or revision against said decision is also decided, then it may not be open for a person to seek such direction for making the sentences to run concurrently by moving an application under Sections 482/427 Criminal Procedure Code. The view taken by one set of the High Courts that such an application can be entertained while exercising inherent powers under Section 482 Criminal Procedure Code would no more appear to be a good law in view of the decision of the Hon'ble Supreme Court in M.R.Kudva case (supra). We are, thus, bound to take this view that this discretion though available with the trial Court, appellate Court or the revisional Court while holding trial or entertaining
CRA-S-3186-93-SB o

8. .appeal or revision but would not be so available to be exercised in isolation when application in this regard is moved either under Sections 482 or 427 Criminal

Procedure Code What principle and consideration will govern the exercise of this discretion, as already noted above can not be exhaustively enumerated.

Certain relevant fact ORS.as can be culled out from different judgments referred to above, may give an indication where such discretion may be exercised.

These factors generally would be the nature or character of the offences committed, the prior criminal record of the offender, character his age and sex etc.ghastly nature of the crime.

The offender being habitual would also be the factor, which can be relevantly taken into consideration.

It may be stated at the cost of repetition that these are not the only reasons for which the Court can exercise this discretion.

Discretion always is open to be exercised by any Court dependent upon the facts and circumstances of each case on any relevant or valid consideration as may be considered so by the Court while holding the trial or deciding the case at the stage of appeal or revision.

It may require a notice that Section 427 Criminal Procedure Code as observed by Hon'ble Supreme Court is aimed at amelioration and this aspect may also require to be kept in view while exercising the discretion.

Therefore, the considerations for exercising the judicial discretion vested in the court under section 427(1) Cr.P.C.has to be the nature of the offence, character and criminal history and record of the CRA-S-3186-93-SB o

9. .offender, his age, sex etc.The discretion is not to be exercised in favour of a person who if let loose would prove to be a menace to the society.

In the cases in hand, the recoveries have been effected at the same time.

There is no previous conviction of the appellants.

The appellants are young persons and have made a clean breast of the matter before the court and the offence for which they are convicted is also not a crime against the society as a whole.

In these circumstances, I find that there are circumstances available on the record in which the judicial discretion provided for in section 427 (1) Cr.P.C. could be exercised in favour of the appellants.

Hence, the appeals are allowed and the sentences awarded to the appellants in these eight appeals are ordered to run concurrently.

(VIJENDER SINGH MALIK) JUDGE November 27th , 2012 som

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com