

Negotiable Instruments Act,1881 Be Ordered to Run Concurrently. Vs. Unknown

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Court : Punjab and Haryana

Decided On : Mar-06-2013

Appellant : Negotiable Instruments Act,1881 Be Ordered to Run Concurrently.

Respondent : Unknown

Judgement :

212-1 Criminal Misc.

No.72681 of 2012 in Criminal Revision No.3854 of 2012 Baljit Singh versus State of Punjab and another Present: None ..This order will dispose of Criminal Misc.

No.72681 of 2012 in Criminal Revision No.3854 of 2012 praying that sentence in two separate complaints under Section 138 of the Negotiable Instruments Act,1881 be ordered to run concurrently.

The petitioner Baljit Singh has been convicted in two complaints under Section 138 of the Negotiable Instruments Act, 1881; one filed by Harpal Singh and another filed by Dalip Singh pertaining to two different cheques of Rs.2.60 lacs dated 8.4.2003 and Rs.2.80 lacs dated 30.4.2003 respectively.

Petitioner Baljit Singh was convicted in the complaint of Harpal Singh on 15.7.2006 and was convicted in second complaint on 27.2.2006.

The conviction and sentence of one year was confirmed in fiRs.appeal on 4.5.2012 in the complaint of Harpal Singh and the sentence and conviction in complaint of Dalip Singh was confirmed on 14.7.2012.

Details of the above facts indicate that the petitioner has been convicted to undergo rigorous imprisonment for one year on 4.5.2012, whereas in second case, he has been sentenced to undergo rigorous imprisonment for one year on 14.7.2012.

The short question which is required to be adjudicated upon in the present case is whether sentences, which became final on 4.5.2012 and 14.7.2012 could be ordered to run concurrently as he has opted to file two criminal revisions i.e., Criminal Revision No.3854 of 2012 and 3855 of 2012 .

The instant Miscellaneous application under Section 427 read with Section 482 Cr.P.C.

has been filed by the petitioner for permitting the running of two sentences concurrently in complaint No.116/2 of 11.11.2003 titled Dalip Singh versus Baljit Singh and complaint No.178/4 of 15.11.2003 titled Harpal Singh versus Baljit Singh.

Vide order dated 4.12.2012, both the revision petitions have been ordered to be heard simultaneously.

Since there was delay of 40 days in filing of this revision petition, notice for condonation of delay was issued to the respondents.

It has also been brought to the notice of the Court that petitioner is not maintaining good health.

I have considered the above said circumstances to determine whether the sentences in above said two complaints could be ordered to run concurrently.

The legal position in context of provision of Section 427 Cr.P.C.and its applicability to convictions in cases under Negotiable Instruments Act, 1881 is no longer res-integra as in State of Punjab versus Madan Lal 2009(2) R.C.R.(Criminal) 602,

Hon'ble the Apex Court had an opportunity to consider the right of accused to claim the running of sentences concurrently in three cases.

In Madan Lal's case, the order of the High Court ordering sentences to run concurrently in three cases was upheld by the Apex Court.

The Apex Court had relied upon the majority view in *State of Maharashtra v.*

Najakat alias Mubarak Ali, 2001(2) RCR (Criminal) 778.

The operative part of the judgment in Mohan Lal's case relying upon *Najakat alias Mubarak Ali's case (supra)* is reproduced hereunder for ready reference:- 5.

The majority view in *State of Maharashtra v.*

Najakat alias Mubarak Ali, 2001(2) RCR (Criminal) 778 was to similar effect.

Paragraphs 14 to 18 in the above case it was held as follows: 14.

The purpose of Section 428 of the Code is also for advancing amelioration to the prisoner.

We may point out that the section does not contain any indication that if the prisoner was in jail as an under-trial prisoner in a second case the benefit envisaged in the section would be denied to him in respect of the second case.

However, learned counsel for the appellant contended that the words of the same case in the section would afford sufficient indication that the benefit is intended to cover only for one case and not more than that.

It must be remembered that the ideology enshrined in Section 428 was introduced for the first time only in the Code of Criminal Procedure, 1973.

For understanding the contours of the legislative measure involved in that section, it is advantageous to have a look at the Objects and Reasons for bringing the above legislative provision.

We therefore extract the same here: The Committee has noted the distressing fact that in many cases accused persons are kept in prison for very long period as under-trial prisoners and in some cases the sentence of imprisonment ultimately awarded is a fraction of the period spent in jail as under-trial prisoner.

Indeed, there may even be cases where such a person is acquitted.

No doubt, sometimes courts do take into account the period of detention undergone as under-trial prisoner when passing sentence and occasionally the sentence of imprisonment is restricted to the period already undergone.

But this is not always the case so that in many cases the accused person is made to suffer jail life for a period out of all proportion to the gravity of the offence or even to the punishment provided in the statute.

The Committee has also noted that a large number of persons in the overcrowded jails of today are under-trial prisoners. The new clause seeks to remedy this unsatisfactory state of affairs. The new clause provides for the setting off of the period of detention as an under-trial prisoner against the sentence of imprisonment imposed on him.

The Committee trusts that the provision contained in the new clause would go a long way to mitigate the evil.

(Emphasis supplied) 15.

The purpose is therefore clear that the convicted person is given the right to reckon the period of his sentence of imprisonment from the date he was in jail as an under-trial prisoner.

In other words, the period of his being in jail as an under-trial prisoner would be added as a part of the period of imprisonment to which he is sentenced.

We may not decipher the two requisites postulated in Section 428 of the Code: (1) During the stage of investigation, inquiry or trial of a particular case the prisoner should have been in jail at least for a certain period.

(2) He should have been sentenced to a term of imprisonment in that case.

16. If the above two conditions are satisfied then the operative part of the provision comes into play i.e. if the sentence of imprisonment awarded is longer than the period of detention undergone by him during the stages of investigation, inquiry or trial, the convicted person need undergo only the balance period of imprisonment after deducting the earlier period from the total period of imprisonment awarded.

The words if any.

in the Section amplifies that if there is no balance period left after such deduction the convict will be entitled to be set free from jail, unless he is required in any other case.

In other words, if the convict was in prison, for whatever reason, during the stages of investigation, inquiry or trial of a particular case and was later convicted and sentenced to any term of imprisonment in that case the earlier period of detention undergone by him should be counted as part of the sentence imposed on him.

17. In the above context it is apposite to point out that very often it happens when an accused is convicted in one case under different counts of offences and sentenced to different terms of imprisonment under each such count, all such sentences are directed to run concurrently.

The idea behind it is that the imprisonment to be suffered by him for one count of offence will, in fact and in effect be imprisonment for other count as well.

18. Reading Section 428 of the Code in the above perspective, the words of the same case are not to be understood as suggesting that the set off is allowable only if the earlier jail life was undergone by him exclusively for the case in which the sentence is imposed.

The period during which the accused was in prison subsequent to the inception of a particular case, should be credited towards the period of imprisonment awarded as sentence in that particular case.

It is immaterial that the prisoner was undergoing sentence of imprisonment in another case also during the said period.

The words of the same case" were used to refer to the pre-sentence period of detention undergone by him.

Nothing more can be made out of the collocation of those words.

(Per Justice Thomas) 6.

Justice Phukan agreed with the view expressed by Justice Thomas and observed in Para 44 as follows: The only question which according to me needs consideration is the true effect of the expression same case.

as appearing in Section 428 of the Code of Criminal Procedure.

The provision is couched in clear and unambiguous language and states that the period of detention which it allows to be set off against the term of imprisonment imposed on the accused on conviction must be one undergone by him during investigation, enquiry or trial in connection with the same case.

in which he has been convicted.

Any other period which is not connected with the said case cannot be said to be reckonable for set off.

The view of learned Brother Mr. Justice Thomas according to me accords the legislative intent.

Acceptance of any other view would mean necessary (sic necessarily) either adding or subtracting words to the existing provision, which would not be a proper procedure to be adopted while interpreting the provision in question.

The Apex Court on appreciation of purpose of Section 428 Cr.P.C. and taking into consideration the objects and reasoning of bringing of legislative provision by referring to the observations of the Committee, observed that there are two requisites postulated in Section 428 of the Code which are as follows:- (i) The

prisoner should have been in jail at least for a certain period during the stage of investigation, inquiry or trial of a particular case; (ii) The prisoner should have been sentenced to a term of imprisonment in that case; In case the above said two conditions are satisfied then the operative part of the provision under Section 428 Cr.P.C.comes into play i.e., if the sentence of imprisonment awarded is longer than the period of detention undergone by the prisoner during the stages of investigation, inquiry or trial, the convicted person need undergo only the balance period of imprisonment after deducting the earlier period from the total period of imprisonment awarded.

The above said principle has been applied by this Court in Mohan Lal versus State of Punjab and another 2011(7) R.C.R.(Criminal) 2503 in convictions and sentences under Section 138 of the Negotiable Instruments Act, 1881.

Madhya Pradesh High Court in Shafiq son of Jahur Ahmed v.

State of M.P.and another 2010(2) R.C.R.(Criminal) 95 has followed the judgment of Apex Court in Madan Lal's case in convictions under Section 138 of the Negotiable Instruments Act, 1881 and ordered sentences in two cases to run concurrently.

Following the above said judgments, this Court is of the opinion that the petitioner can be granted the benefit of sentences in two criminal complaints to run concurrently.

It is accordingly ordered that the sentences in complaint No.116/2 of 11.11.2003 titled as Dalip Singh versus Baljit Singh and complaint No.178/4 of 15.11.2003 titled Harpal Singh versus Baljit Singh would run concurrently.

However, he would be required to pay the fine separately in both the convictions.

For consideration of revision petition on merits, to come up on 25.3.2013.

March 6,2013 (M.M.S.BEDI) nk JUDGE

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