

Irfan vs.state

Irfan vs.state

SooperKanoon Citation : sooperkanoon.com/1221147

Court : Delhi

Decided On : Feb-05-2019

Appellant : Irfan

Respondent : State

Judgement :

\$~48 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

05. 02.2019 CRL.REV.P. 127/2019 IRFAN STATE versus

... Petitioner

..... Respondent Advocates who appeared in this case: For the

... Petitioner

: Mr. Archit Upadhayay, Advocate. For the Respondent: Ms. Meenakshi Dahiya, APP for the State. SI Shiv Singh, PS Saket. CORAM:-

"HONBLE MR JUSTICE SANJEEV SACHDEVA JUDGMENT SANJEEV SACHDEVA, J.

(ORAL) Crl.M.A.2235/2019 (exemption) Exemption is allowed subject to all just exceptions. Crl.M.A.2234/2019 (for condonation of delay) 1. Learned counsel for the petitioner submits that since the petitioner was incarcerated, the petition was filed through jail, on account of which, the delay took place. He further submits that

the petitioner did not have resources to appoint a private counsel and petition has been filed through legal aid. Learned APP for the State submits that in view of the 2. CRL.REV.P. 127/2019 Page 1 of 9 averments in the application, she does not oppose condonation of delay.

3. For the reasons stated in the application, the application is allowed. The delay in filing the petition is condoned. CRL.REV.P. 127/2019 & Crl.M.(Bail) 199/2019 (for suspension of sentence) 1.

... Petitioner

impugns judgment dated 15.09.2018, whereby, appeal of the petitioner, impugning judgment on sentence dated 28.07.2015 and order on sentence dated 30.07.2015, has been dismissed.

2.

... Petitioner

has been convicted of an offence under Section 382 IPC read with Section 34 IPC and sentenced to undergo 4 years rigorous imprisonment and also convicted of an offence under Section 25(1-B) (a) Arms Act and sentenced to undergo 1 year rigorous imprisonment for the same. By order on sentence dated 15.09.2018, the Trial Court directed that both the sentences to run one after the other.

3. Learned counsel for the petitioner inter alia submits that order on sentence dated 15.09.2018 is erroneous and contrary to the settled position of law and submits that as the both the offences were part of one transaction, the Trial Court erred in directing that the substantive sentences shall run one after the other. He contends that in view of Section 31 of the Criminal Procedure Code, as interpreted by the CRL.REV.P. 127/2019 Page 2 of 9 Supreme Court in Manoj Alais Pannu vs. State of Haryana: (2014) 2 SCC153 sentences should have run concurrently and not consecutively.

4. Learned counsel for the petitioner further submits that as per the Nominal Roll dated 26.11.2018, the petitioner, as on 22.11.2018, had already undergone 3 years 5 months and 13 days of incarceration and earned remission of 9 months

and 22 days. As per the Nominal Roll of the petitioner, the unexpired period of sentence, as on 22.11.2018, was 8 months and 25 days, if fine paid.

5. Learned counsel for the petitioner submits that since there was no fine imposed on the petitioner, as on date nearly 6 months of sentence is remaining out of 5 year period (i.e. 4 + 1).

6. Learned counsel for the petitioner submits that in case ratio of the judgment in Manoj Alias Panu (supra) is applied, he has instructions not to press the petition on merits.

7. Section 31(1) Cr.P.C. lays down as under:-

"31. Sentences 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 therefor which such Court such is competent to inflict; CRL.REV.P. 127/2019 Page 3 of 9 8. 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. Section 31 Cr.P.C. came up for interpretation in Manoj Alias Panu (supra), wherein also the Supreme Court was considering the case where the Trial Court had directed that the sentence shall run consecutively in terms of Section 31 Cr.P.C.

9. The Supreme Court in Manoj Alias Panu (supra) held as under:-

"10. It was submitted that the courts below have committed a grave error of law by convicting the appellant despite the prosecution having failed to prove the case against the appellant and having not considered the tender age of 18 years of the appellant as also that the appellant has already undergone almost six years of imprisonment. He also contended that as per the law laid down by this Court the punishment and sentence for offences under a single transaction should have run concurrently and that in the present case, the firing incident pertains to a single FIR, and that the courts below failed to understand that the consecutive sentences

awarded in the present case are disproportionate to the facts.

11. The learned senior counsel for the appellant further contended that the courts below failed to consider the settled legal position and also the provisions of Section 31 of Cr.P.C. and the decision in *Chatar Singh v. State of M.P.* [(2016) 12 SCC37]. wherein it was CRL.REV.P. 127/2019 Page 4 of 9 observed that in a sentence for conviction for several offences, accused cannot be sentenced to imprisonment for a period longer than 14 years. Therefore, the order passed by the lower courts in sentencing the appellant for more than 14 years is not only perverse but also illegal and is liable to be set aside.

12. Reliance was also placed upon the judgment in *Mohd. Akhtar Hussain v. Collector of Customs* [(1988) 4 SCC183 in support of the proposition of law laid down by this Court on the issue of concurrent or consecutive sentences, the relevant portion of which is extracted hereunder :

10. 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. The same position of law was adopted by this Court in *State of Punjab v. Madan Lal* [(2009) 5 SCC238 by observing in para 5 that :-

"5. The majority view in *State of Maharashtra v. Najakat Alia Mubarak Ali* [(2001) 6 SCC311 was to the similar effect..it was held (in para

17) as follows:

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 CRL.REV.P. 127/2019 Page 5 of 9 that the imprisonment to be suffered by him for one count of offence will, in fact and in effect be imprisonment for other counts as well. 13. On the other hand, Mr. Manjit Singh, Additional Advocate General appearing for the respondent-State has sought to justify the impugned judgment contending that the

High Court on re-appreciation of evidence on record has rightly concurred with the findings of fact recorded on the points raised and not interfered with the sentence imposed by the learned Sessions Judge and, therefore, the same does not call for interference by this Court. the took trial court 14. We have heard the learned counsel for both the parties. The ground on which the appellant was awarded the sentence which was to run consecutively was due to the previous criminal record of the appellant for a similar type of offence of shooting in the court premises, which charge was proved as per Ex. P-1. This is the basis on which the extenuating circumstances into consideration to impose punishment for offences committed by the appellant, sentencing him to different periods for each one of the offences committed by him. The sentences were ordered to run consecutively, and the same was upheld by the High Court in exercise of its appellate jurisdiction. In view of the aforesaid legal position laid down by this Court regarding concurrent and consecutive sentences, the sentences imposed upon the appellant for different offences to run consecutively under the IPC and the Arms Act, is erroneous in law, as the same is contrary to law laid down by this Court as per the cases referred to supra upon which reliance has been rightly placed by the learned senior counsel on behalf of the appellant. CRL.REV.P. 127/2019 Page 6 of 9 15. Further, having regard to the age of the appellant at the time of committing the offences, we feel it would not be just and proper to allow the sentences to run consecutively. As the offences committed by the appellant have been committed under a single transaction, it is well-settled position of law that the sentences must run concurrently and not consecutively. (underlining supplied) 10. The Supreme Court after considering the legal proposition laid down by the several judgments held that the sentences imposed upon the appellant therein, for difference offences to run consecutively, under IPC and Arms Act was erroneous in law as the same was contrary to the law laid down by the Supreme Court, which was referred to in the said judgment.

11. The principle of law as laid down by the Supreme Court in Manoj Alias Panu (supra) was once again reiterated by the Supreme Court in Nagaraja Rao vs. Central Bureau of Investigation: (2015) 4 SCC302 wherein, the Supreme Court held that if a person is convicted of different offences but part of the same transaction then the sentences should run concurrently and not consecutively.

Similar is the ration of the judgment of the Supreme Court in V.K. Bansal vs. State of Haryana:

2013. (8) Scale 405 and Sharad Hiru Kolambe vs. State of Maharashtra and others: AIR2018 Supreme Court 4595.

12. In the facts of the present case, the petitioner has been convicted of an offence under Section 382 IPC and Section 25 Arms CRL.REV.P. 127/2019 Page 7 of 9 Act. The allegations being that he alongwith the co-accused snatched a chain of a lady and while fleeing threatened her with something. Though, the contention of the learned counsel for the petitioner is that it has not been established as to what was the weapon which was used for threatening if at all there was a weapon used.

13. In view the facts and circumstances of the case, and also the fact that the two offences are part of the same transaction, I am of the view that the order of the Trial Court directing that the sentences shall run one after the other falls foul of the law laid down by the Supreme Court. The Supreme Court has specifically held that if the accused is convicted of separate offences under IPC as also the Arms Act but they are part of the same transaction, the sentences shall run concurrently and not consecutively.

14. It is not the case that petitioner was already sentenced or undergoing sentence of imprisonment for an earlier conviction so as to attract Section 427 Cr.P.C.

15. Keeping in view the totality of facts and circumstances of the case, the order of sentence is modified to the limited extent that the sentences shall run concurrently and not consecutively.

16. The petition is allowed in the above terms.

17. The effect of the above order is that the petitioner already having undergone the substantive sentence of over 4 years, and there CRL.REV.P. 127/2019 Page 8 of 9 being no fine imposed, the petitioner is liable to be released forthwith.

18. It is thus held that the petitioner has undergone the substantive sentence for both the offence for which he was convicted in the subject FIR and is accordingly directed to be released forthwith, if not required in any other case.

19. Order Dasti under signatures of the Court Master.

20. Order be also communicated to the Superintendent Jail for compliance.
FEBRUARY05 2019 st SANJEEV SACHDEVA, J CRL.REV.P. 127/2019 Page 9
of 9

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