

Rohtash Vs. State

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Court : Delhi

Decided On : Dec-23-2014

Judge : V.P.Vaish

Appellant : Rohtash

Respondent : State

Advocate for Def. : Mr. Navin Sharma

Advocate for Pet/Ap. : Ms. Inderjeet Sidhu

Judgement :

\$~16 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

23. d December, 2014 % + CRL.M.C. 2182/2014 ROHTASH Through:
Petitioner Ms. Inderjeet Sidhu, Advocate. versus STATE Through: Respondent
Mr. Navin Sharma, APP for the State with SI Balbeer Singh, P.S.Shahdara.
CORAM: HON'BLE MR. JUSTICE V.P.VAISH VED PRAKASH VAISH, J.

(ORAL) 1. By this petition filed under Section 482 read with Section 427 of Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.), the petitioner seeks the sentences in case FIR No.194/2004 under Sections 392/394/397/411/34 IPC and FIR No.65/2009 under Sections 308/379/324/34 IPC both registered at P.S. Shahdara, Delhi to run concurrently.

2. The concise facts of the present case are that the petitioner was convicted in case FIR No.65/2009 under Sections 324 and 325 read with Section 34 IPC by learned District Judge-cum-Additional Sessions Judge, In-charge, North East District, Karkardooma Courts, Delhi vide judgment dated 19.05.2012 and vide order on sentence dated 26.05.2012 the petitioner was sentenced to RI for two years and fine of Rs.1,000/- under Section 324 and RI for three years with fine of Rs.1,000/- under Section 325/34 IPC and in default of payment of fine, the petitioner was to undergo further RI for three months and the substantive sentences were to run concurrently. The petitioner was also convicted on 16.08.2010 and vide order dated 19.8.2010 sentenced to undergo RI for 10 years and fine of Rs.3,000/- (Rupees Three thousand) in default of payment of fine the petitioner was to further undergo RI for 9 months in case FIR No.194/2004 under Sections 392 and 394 read with Section 34 IPC registered at P.S. Shahdara, Delhi. The petitioner preferred Criminal Appeal No.268/2011 before this Court. Vide order dated 24.03.2014 judgment of conviction was maintained and order on sentence was modified to the period already undergone. It was also observed that the appellant had undergone more than 5 years incarceration.

3. Learned counsel for the petitioner submits that the petitioner was arrested on 20.01.2010 in case FIR No.65/2009 under Sections 308/379/324/34 IPC registered at P.S. Shahdara, Delhi and since then he is in judicial custody. She, therefore, prays that sentences in both the cases may be allowed to run concurrently.

4. At this juncture, it is necessary to reproduce Section 427 Cr.P.C, which reads as under:

427 Cr.P.C: 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.

5. A bare perusal of the provisions of Section 427 Cr.P.C. suggests that when a person is already undergoing a sentence of imprisonment in one case and is further sentenced in the second case, the second sentence shall commence at the expiry of imprisonment for which he has been previously sentenced unless the courts directs the subsequent sentence to run concurrently.

6. While considering the provisions of Section 428 and 427 Cr.PC the Apex Court in *State of Maharashtra vs. Najakat Ali Mubarak Ali* (2001) 6 SCC311 observed that Section 428 Cr.PC precedes Section 427 which provides that when any person sentenced on a conviction is already undergoing sentence of imprisonment, such subsequent imprisonment shall commence at the expiration of the imprisonment to which he has been previously sentenced. However, the court upon its discretion can direct that subsequent sentence shall run concurrently with such previous sentence. Section 427 of the Code thus authorizes a court of law to direct the sentence awarded by it to run concurrently which is to be done keeping in view the facts of each case. His detention pending investigation, inquiry and trial in that case or some other cases being relevant consideration while directing the sentences to run consecutively or concurrently. In *Jadu @ Jadua Bhai vs. State of Orissa* 1992 Cri.L.J.

2117 it was held that under Section 482 Cr.PC the Court has the power to order sentences to be run concurrently. However, it is to be decided taking into consideration the factual matrix of each case.

7. The Full Bench of Madhya Pradesh High Court in *Shersingh vs. State of M.P.* 1989 Cri.L.J.

632 observed that inherent power of the High Court under Section 482 of Cr.PC could be exercised even if the trial Court or the Appellate or Revisional Court has been unable to invoke its powers under Section 427(1) of Cr.PC in directing running of previous and subsequent sentences concurrently. High Courts inherent powers can be invoked at any stage and are not hampered by the provisions of Section 427(1) Cr.PC. This is also the case even when no such Order is passed under Section 427(1) Cr.PC by the trial Court or Appellate or Revisional Court and even though the conviction has become final.

8. In the present case, the petitioner was convicted in FIR No.65/2009 under Sections 324 and 325 read with Section 34 IPC registered at P.S. Shahdara, Delhi. The petitioner was also convicted in case FIR No.194/2004 under Sections 392/394/397/411/34 IPC registered at P.S. Shahdara, Delhi and the petitioner preferred Criminal Appeal No.268/2011. Vide order dated 24.03.2014 in the said appeal this Court modified the sentence of imprisonment in case FIR No.194/2004 to the period already undergone. As per nominal roll the petitioner was in custody in case FIR No.65/2009 w. e. f. 20.01.2010 and the sentence in case FIR No.194/2004 started from 25.03.2014 after completion of sentence in first case.

9. Considering in totality the facts and circumstances of the case that the petitioner is in judicial custody since 20.01.2010, it is hereby directed that substantive sentences imposed upon the petitioner in case FIR No.194/2004 under Sections 392 and 394 read with Section 34 IPC registered at P.S. Shahdara and FIR No.65/2009 under Sections 324 and 325 read with Section 34 IPC registered at P.S. Shahdara, Delhi shall run concurrently.

10. With the aforesaid observations, the petition stands disposed of.

11. A copy of this order be sent to Superintendent, Jail for necessary action and compliance. (VED PRAKASH VAISH) JUDGE DECEMBER23 2014 hs

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