

Bhimashankar Vs. State of Karnataka

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Court : Karnataka

Decided On : Sep-03-2003

Reported in : 2004(2)KarLJ25

Judge : M.F. Saldanha, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 362 and 482

Appeal No. : Criminal Petition Nos. 3078 to 3088 of 2003

Appellant : Bhimashankar

Respondent : State of Karnataka

Advocate for Def. : H.S. Chandramouli, State Public Prosecutor

Advocate for Pet/Ap. : Ravi B. Naik, Adv.

Judgement :

ORDER

M.F. Saldanha, J.

1. I have heard the petitioner's learned Advocate and the learned State Public Prosecutor in this group of eleven petitions. The petitioner has filed these eleven interlocutory applications pointing out that he has undergone the sentence of one year that was awarded by the Court, that he is still in custody and that the Jailor is

not releasing him on the ground that the earlier order did not specify that the sentences awarded in the eleven cases were to run concurrently. The view taken by the authorities is that in the absence of an order for concurrence, that each sentence will have to be served individually which means that the accused would have to remain in custody until the last of the sentences has been served. The contention raised before me is that this was an obvious error and that having regard to the facts and circumstances of the case, that the concurrency aspect ought to have been pointed out to the Courts at the time of decision which was overlooked and that consequently, no direction for concurrence was issued. The learned Judge who had disposed of the group of civil revision petitions has retired and even though these interlocutory applications are in the form of review, consequently they would have to be heard by some other Judge which is why they are placed before this Court.

2. The learned State Public Prosecutor submits that in the first instance, the orders that are sought to be reviewed now are very old orders passed before 1996 which have all assumed finality. Secondly, he submits that if final orders are passed in criminal cases, that under Section 362 of the Cr. P.C. there exists a total legal bar to the alter those orders in any respect. His submission is that this bar would apply to the orders parsed at all the three levels, viz., the Trial Court, the appeal Court and this Revisional Court and that consequently, even assuming without admitting that some variation may have been justified, that this Court is precluded from doing so.

3. In reply, Mr. Naik, learned Counsel who represents the petitioner-accused submits that he is conscious of the difficulties in this way but, he points out that he has approached this Court under Section 482 of the Cr. P.C. or in other words that he has invoked the inherent powers of the High Court and that he is not asking for any variation or modification of the earlier orders but, for a fresh direction. His submission is that in a situation where the facts and circumstances so warrant, that it is open to the High Court to invoke the inherent powers and that this is one such case.

4. As far as the legal obstacle is concerned, it is true that Section 362 of the Cr. P.C., will preclude me from varying the earlier orders and the learned State Public Prosecutor is also right when he points out that the time factor is against the petitioner. At the same time, the Court cannot shut its eyes to the overriding considerations viz., the interests of justice and the fact that this would be an appropriate case where the inherent powers of the High Court can be invoked. The first necessary corrective therefore would be that the interlocutory applications would have to be withdrawn and represented in the form of petitions under Section 482 of the Cr. P.C. That would only involve delay in the paper work and in order to obviate it, I have granted the request of the petitioner's Counsel that the eleven interlocutory applications be converted into petitions under Section 482 of the Cr. P.C. The petitioner's learned Counsel will have to however comply with the following formalities.--

(a) That the necessary modifications will have to be done in the interlocutory applications but, in order to simplify the task both for the learned Advocate and the office, it would be more desirable to re-present the same in the form of eleven fresh petitions which the office shall take on record in place of the eleven interlocutory applications which will be treated as having been disposed of.

(b) That the office shall then number those eleven petitions treating them as petitions under Section 482 of the Cr. P.C. The numbers will have to be indicated to the Stenographer for being incorporated in this order.

(c) That the petitioner's learned Advocate shall serve on the learned State Public Prosecutor, copies of the eleven petitions indicating the numbers that have been assigned to them by the office. These formalities to be completed within an outer limit of one week from today.

5. Coming to the merits, the learned State Public Prosecutor is right when he points out that it is the duty of the Court particularly when multiple sentences are awarded in the same or several cases, to specify as to whether the sentences should run concurrently or consecutively and it is obvious that this was an error on the part of each of the Courts concerned. The accused cannot be made to suffer for this more so, when he has already undergone the sentence.

6. I have heard the learned Advocates on both sides on merits and to my mind, the facts do not justify the sentences running consecutively and it is therefore directed that the sentences shall run concurrently. The petitioner's learned Advocate informs me that the fine amount have been tendered. If that has not been done, the fine of Rs. 1,000/- in each of the cases will have to be tendered to the Trial Court before the petitioner is released from custody. It is accordingly clarified that since it is obligatory on the part of the Courts while imposing multiple sentences to specify as to whether the sentences should be concurrent or consecutive and since the case-law is to the effect that in the absence of such a direction, that it shall be presumed that the Court intended that the sentences be consecutive, this Court hereby directs that the sentences in the eleven cases shall run concurrently and since the accused has served the sentences, that he shall be released from custody forthwith subject to his complying with the condition that the amount of Rs. 20,000/- in all will have to be deposited in the Trial Court before his release. If the accused has paid the earlier fine amount of Rs. 11,000/- he shall be given credit for the same.

With these directions, the petitions which are allowed to stand disposed of.

Copy of this order to be furnished to the learned Advocates forthwith.

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