

Shersingh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Dec-16-1988

Reported in : 1989CriLJ632; 1989MPLJ116

Judge : C.P. Sen, Ag. C.J.,; P.C. Pathak and ;Y.B. Suryavanshi, JJ.

Appellant : Shersingh

Respondent : State of M.P.

Judgement :

C.P. Sen, Ag. C.J.

1. The applicant who is undergoing sentences in two different cases has sent a petition from jail to make the sentences passed in those two cases to run concurrently by invoking inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973. In view of the conflicting decisions as to whether the inherent powers can be invoked under Section 482 when there is a specific provision under Section 427(1) of the Code, the learned single Judge has referred the following questions for decision by Full Bench:

(i) Whether the law laid down in A. S. Naidu's case 1975 Cri LJ 498 (Madh Pra), still holds good ?

(ii) Whether the High Court can entertain application under Section 427, Cr. P.C.?

(a) from accused who, while undergoing sentence of imprisonment was sentenced on subsequent conviction to the imprisonment and whose appeal/revision against the subsequent sentence stood disposed of without any direction under Section 427, Cr. P.C.?

(b) from accused who, while undergoing sentence of imprisonment, was sentenced on subsequent conviction to the imprisonment without any direction under Section 427 of the Code and does not file appeal or revision against his subsequent sentence?

2. The applicant along with others was prosecuted in Sessions Trial No. 21/84 decided on 12-4-1984 by the 1st Additional Sessions Judge, Durg, and he was convicted and sentenced to undergo imprisonment for a term of two years under Section 148, IPC and under Section 307/149 he was sentenced for a term of 5 years. It does not appear that any appeal was preferred against the convictions and sentences. The applicant along with others was again prosecuted in S.T. No. 45/84 decided on 25-9-1984 by the 11 Additional Sessions Judge, Durg, and so far as the applicant is concerned, he was convicted under Section 395, IPC and sentenced to R.I. for 5 years. He preferred Criminal Appeal No. 1331/85 which was decided by this Court on 10-4-1984 maintaining his conviction but reducing his sentence from 5 years to 4 years' R.I. It appears that neither the prosecution nor the applicant referred to the earlier conviction nor the trial Court invoked its power under Section 427(1) of the Code. The present application under Section 482 of the Code of Criminal Procedure has been made by the applicant from jail on 15-6-1987. The matter came to be heard by the learned single Judge who made the aforesaid reference by referring to the Commentary of Sarkar on Criminal Procedure Code, 5th Edition under Section 427(1) at page 710, by referring to the various decisions of different High Courts, that inherent powers cannot be invoked under Section 482 when there is a specific provision under Section 427(1) and since the applications are frequently made in this Court even long after dismissal of appeals or revisions against subsequent convictions, therefore, the question is of great public importance and it has to be decided by Full Bench.

3. Section 427(1) provides as under:

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.

Therefore, under this sub-section when a person is already undergoing a sentence of imprisonment, is sentenced on a subsequent conviction to imprisonment, such imprisonment shall commence at the expiry of imprisonment for which he has been previously sentenced unless the court directs that subsequent sentence shall run concurrently with such previous sentence. So in the absence of a specific order by the court in the subsequent case, normally both the sentences are to run consecutively. It is also settled that power under this Sub-section can be invoked in appeal or revision against the conviction and sentence. However, it may be mentioned that the Supreme Court has recently in *Mohd. Akhtar Hussain v. Asst. Collector of Customs* : 1989 CriLJ283 , has held that when the second offence is distinct and different from the first one, the subsequent sentence should normally run consecutive to the first one. Therefore, if the two offences are distinct and separate, then normally the sentences have to run consecutively as they are not covered under Section 427(1).

4. Section 482 of the Code provides:

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

The Privy Council in *Emperor v. Nazir Ahmad* AIR 1945 PC 18 : 1945-46 Cri LJ 413, held:

It is not correct to say that Section 561A has given increased powers to the Court which it did not possess before that section was enacted. The section gives no

new powers, it only provides that those which the Court already inherently possess shall be preserved and is inserted, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Criminal Procedure Code and that no inherent power had survived the passing of the Criminal Procedure Code.

The Supreme Court in *R. P. Kapur v. State of Punjab* : 1960 CriLJ1239 , has held that while exercising inherent powers it has to be borne in mind that this power cannot be exercised in regard to matters which are specifically covered by other provisions of the Code. This has been reiterated by the Supreme Court in *Palaniappa Gounder v. State of Tamil Nadu* : 1977 CriLJ992 . The Supreme Court in *Madhu Limaye v. State of Maharashtra* : 1978 CriLJ165) has held that the following principles would govern the exercise of the inherent jurisdiction of a High Court given by Section 482 : (i) the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party : (ii) it should be exercised very sparingly to prevent abuse of the process of any Court or otherwise to secure the ends of justice; (iii) it should not be exercised as against the express bar of the law engrafted in any other provision of the Code. However, the Supreme Court in *Lalit Mohan Mondal v. Benoyendra Nath Chatterjee* : 1982 CriLJ625 has held that the inherent power overrides the express bar against revision provided under Section 341 of the Code against the decision in appeal. The Supreme Court has further held in *Raj Kapoor v. State (Delhi Administration)* : 1980 CriLJ202 that similarly the power under Section 482 is not subject to the limitation imposed on the power of revision conferred by Section 397. But the Supreme Court in *T. H. Hussain v. M.P. Mondkar* : 1958 CriLJ701 held that inherent power has to be exercised sparingly, carefully and with caution only where such exercise is justified by the tests laid down in the section itself. It is also settled that no limitation is prescribed for invoking the inherent powers to prevent abuse of the process of any court or to secure the ends of justice.

5. The consensus of judicial opinion of different High Courts seems to be that inherent powers of the High Court can be invoked under section 482 even if the trial court or the appellate or revisional court has not exercised its discretion under Section 427(1) of the Code. The inherent powers of the High Court is not in any

way fettered by the provisions of Section 427(1) and it can be invoked at any stage even if there is no such order passed under Section 427(1) by the trial Court or appellate or revisional court and even though the conviction has become final, A Division Bench of the Calcutta High Court in *J. K. Banerjee v. The State* : AIR1955 Cal632 , has held 'with regard to sentences passed on different dates in respect of different convictions of the accused by Courts other than the High Court, the High Court has power under Section 561-A to order that they may run concurrently.' Section 561-A of the old Code of 1898 is identical to Section 482 of the present Code. The Patna High Court in *Bajinath v. State* : AIR1961 Pat138 , has held that High Court can later direct sentences to run concurrently under Section 561-A but not under Section 397. Section 369 is no bar. The Andhra Pradesh High Court in *Venkanna v. State of Andhra Pradesh* : AIR 1964 AP449 , has held that High Court can order sentences to run concurrently in two different cases against the same accused by invoking inherent powers under section 561A read with Section 435 and 397(1) of the Code. A Full Bench of the Allahabad High Court in *Mulaim Singh v. State* 1974 Cri LJ 1397, held that High Court is competent under Section 561-A to direct that the sentence of imprisonment under a subsequent conviction shall run concurrently with a previous sentence. A Division Bench of this Court in *A. S. Naidu v. State of M.P.* 1975 Cri LJ 498, has held that the power to make the two sentences run concurrently under Section 397(1) of the old Code (S. 427 of the present Code) could, be exercised at any time when the matter was brought to the notice of the Court by an application or otherwise, since no modification of the judgment itself was involved, in the exercise of such a power, though it further held that the question of exercising the power under its inherent jurisdiction in such a case does not arise, meaning thereby that power under Section 427(1) could be exercised at any time and not necessarily while deciding the case on merits as the Court does not become functus officio. Considering the aforesaid decision of this Court, a Full Bench of the Delhi High Court in *Gopal Dass v. State* : AIR1978 Delhi138 , held that the decision of this Court in *A. S. Naidu's* case is no longer good law in view of the judgment of the Supreme Court in *Bijli Singh v. State Cr. A. No. 2/64* decided on 20-10-1964, though the judgment passed in *Bijli Singh's* case is not available but the ratio of the judgment seems to be that after delivering the judgment or order, criminal court becomes functus officio and cannot review its

order, so it can be said to that extent the decision of this Court in A. S. Naidu's case (supra) is incorrect, but the Division Bench decision can be upheld by saying that the power could be invoked by the High Court under its inherent jurisdiction. The Full Bench of the Delhi High Court has also held that the above-mentioned rulings of the other High Courts are also no longer good law in view of the decision of the Supreme Court in R. P. Kapur v. State of Punjab 1960 Cri LJ 1239 (supra) that inherent powers cannot be exercised in regard to the matters specifically provided under the Code i.e. when there is a specific provision under Section 427 for making subsequent sentence concurrent with the earlier sentence, this power cannot be invoked under section 482. The Full Bench, however, opined that in suitable cases the court is not precluded from treating a petition filed under Section 482 of the Code as a petition filed under Section 397 of the Code and grant necessary relief if so warranted by the exigencies and the facts of the case, thereby the Full Bench meant that though inherent powers cannot be invoked but the courts can, by invoking its revisional power, pass suitable orders for making the subsequent sentence concurrent with the earlier sentence. The Full Bench overlooked that power under Section 482 is much wider and is not subject to restrictions placed for invoking suo motu powers of revision under Section 397.

6. Subsequently, a Full Bench (Division Bench! of the Kerala High Court in Mani v. State of Kerala 1983 Cri LJ 1262, has held that when no direction is given by the trial court that the sentences were to run concurrently, direction can be issued by the High Court under inherent powers even if the stage of exercising discretion Under Section 427(1) of the Code is over, in circumstances which would serve the purposes mentioned in Section 482. Unfortunately, in this decision the Full Bench decision of the Delhi High Court was not brought to its notice. But recently a Division Bench of the Andhra Pradesh High Court in V. Venkateswarlu v. State of A.P. 1987 Cri LJ 1621 held that when two convictions and sentences are passed against accused by two different courts and orders have become final on an application by accused under Section 482 that those sentences may be run concurrently, the High Court is competent to issue such direction. It distinguished the Full Bench decision of the Delhi High Court in Gopal Dass v. State 1978 Cri LJ 961 (supra) holding that the Supreme Court neither in R. P. Kapur v. State of Punjab 1960 Cri LJ 1239 nor in Palaniappa Gounder v. State of Tamil Nadu 1977

Cri LJ 997 (SC) (supra) has gone to the extent in laying down that the inherent powers cannot be exercised at all in such circumstances. The Division Bench also mentioned that it may be that the subsequent convicting Court was not apprised about the existence of the previous sentence. At any rate ordering of sentence to run concurrently does not amount to altering the finding. It may be noted that Section 31 of the Code provides for ordering the sentences to run concurrently in a given case. Likewise, under Section 427 while awarding a sentence in a subsequent case in respect of the person who is already undergoing sentence in previous case, a discretion is given to the subsequent convicting Court to give such a direction and order the sentence to run concurrently with the previous sentence. The Division Bench also noted that the Delhi Full Bench case has laid down that even after such a sentence has become final nothing prevents the High Court from exercising suo motu revisional jurisdiction and give necessary direction as provided Under Section 427 of the Code. Therefore, in view of the overwhelming decisions that power under Section 482 can be invoked to make the subsequent sentence run concurrently with the earlier sentence, the decision of the Delhi High Court in Gopal Dass v. State (supra) does not appear to have laid down the correct law.

7. The reference is, therefore, answered by saying (i) that the decision of this Court in A.S. Naidu v. State of M.P. 1975 Cri LJ 498 (supra) is no longer good law to the extent it says that power under Section 427(1) of the Code can be exercised by the trial or appellate court at any stage at any time even after decision on merits in the case but not Under Section 482 and the court does not become functus officio. (ii) The High Court has power in appropriate cases to entertain an application under Section 482 of the Code by invoking its inherent powers at any time subsequent to the decision in a given case even if the trial court or the appellate or revisional court has failed to exercise its discretion under Section 427(1) of the Code. The case be now placed before the single Bench for decision on merits.