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Arjun Ram Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : Jan-19-2016

Appellant : Arjun Ram

Respondent : State and Ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

ORDER

(1)DB Criminal Misc. Petition No.1912/2013 (Arjun Ram v. State of Raj. & Ors.) (2)DB Criminal Misc. Petition No.1913/2013 (Sharwan Ram v. State of Raj. & Ors.) (3)DB Criminal Misc. Petition No.2583/2014 (Sadhu Ram v. State of Raj.) (4)DB Criminal Misc. Petition No.2224/2015 (Ramesh Kumar Gupta v. State of Raj.) Date of Order ::

19. h January, 2016 HON'BLE MR. JUSTICE GOVIND MATHUR HON'BLE MISS JUSTICE JAISHREE THAKUR Mr. D.N.Yadav]. Mr. Amit Sharma]. Mr. K.R.Bhati]. for the petitioners. Mr. H.S.Sandhu]. Mr. JPS Choudhary, Public Prosecutor. ..... BY THE COURT : (PER HON'BLE GOVIND MATHUR,J.) REPORTABLE This reference is before us to adjudicate the following question :- WHETHER, the High Court exercising powers under Section 482 Cr.P.C., invoke Section 427 Cr.P.C. and order that sentences awarded in two different cases shall run concurrently.

. While making reference of the question to Larger Bench, the learned Single Bench observed as under :- The Hon'ble Supreme Court in the case of M.R. Kudva Vs. State of Andhra Pradesh [2007 R.Cr.D. 236 (SC)]. held that the High Court cannot exercise its inherent jurisdiction under Section 2 482 Cr.P.C. To order that sentences awarded in two different cases shall run concurrently under Section 427 Cr.P.C. It was also held that power under Section 427 Cr.P.C. can only be exercised by the Court, while exercising jurisdiction, as Appellate Court or revisional Court. Relying upon judgment of M.R. Kudva [supra]. a Full Bench of the High Court of Punjab & Haryana in the case of Jang Singh Vs. State of Punjab, decided on 18.10.2007, reported as 2008 (1) RCR (Criminal) 323, held that the power to make sentences concurrent under Section 427 Cr.P.C. cannot be exercised by the Court under Section 482 Cr.P.C. A Single Bench of this Court [Hon'ble Mr. Justice Atul Kumar Jain]. in S.B. Criminal Miscellaneous Petition No.3014/2013, decided on 03.09.2013, relying upon a Division Bench judgment of this Court in Pyari Devi Vs. State of Rajasthan, 2003 Cr.L.J.

4599 (Raj.) and in M.R. Kudva [supra]. also held as under :- It has been admitted by the learned Advocate for the accused-petitioner in this Court that in all the four cases appeals of accused-petitioner Rocky have either been dismissed or he has not appealed against the judgment of the trial Court. In such a case benefit of concurrent sentences under the provisions of Section 427 Cr.P.C. cannot be ordered by this Court at this stage even with the help of Section 482, Cr.P.C. looking to the specific mandate of law propounded in the cases of M.R. Kudva [By Supreme Court]. and Pyari Devi [Division Bench judgment of Rajasthan High Court (supra)]..

. On citing a view different taken in eight other cases by different Single Benches of this Court, learned Single Bench considered it appropriate to have opinion of Larger Bench. 3 While adjudicating the issue, at the first, we deem it appropriate to look at the view taken by a Division Bench of this Court in the case of Pyari Devi (supra) on basis of which SB Cr. Misc. Petition No.3014/2013 was decided on 3.9.2013. In the case aforesaid the Division Bench was examining an issue with regard to modification in a judgment that acquired finality upto the Apex Court, wherein a trial Judge ordered that the sentence shall run consecutively which

implied incarceration of the convict for a period of 27 years. By a parole petition a prayer was made to convert the consecutive sentence in concurrent one. While dismissing the parole petition the Division Bench found it unable to exercise inherent powers.. No reason is given to show that inability, but from perusal of the given facts, it appears that the court was convinced that the trial court passed the order by adequate application of mind and no error was committed while exercising discretion as per Section 427 Code of Criminal Procedure. In any case the Division Bench has shown its inability in exercising its inherent powers but has not clipped authority to exercise such power in each and every case of such nature. Shri Amit Sharma, learned counsel appearing on behalf of the petitioners submits that the reference made deserves to be answered in the terms that the powers under Section 482 Cr.P.C. are quite wide and a High Court is having ample power to invoke the same to prevent the abuse of the process of any court or otherwise to secure the ends of justice. According to learned counsel the courts while passing sentence may not be aware of the sentence awarded 4 earlier and may also be ignorant about mentioning the mode of undergoing sentence, hence, by exercising powers under Section 482 Cr.P.C. a court may examine effect and impact of the sentences which are to be served consecutively, and pass an appropriate order to secure the ends of justice. Heard learned counsels. Before coming to other merits, we deem it appropriate to understand the powers of a High Court under Section 482 Code of Criminal Procedure, which reads as under:-

482. Saving of inherent powers of High Court.-- 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.

. A plain reading of this provision discloses that it is a clause saving powers of High Court necessary to be invoked to prevent abuse of the process of any court and also to secure the ends of justice. The Supreme Court examined scope and amplitude of this provision in several cases. In Gian Singh v. State of Punjab & Anr., reported in 2012 Cr.L.J.

4934 (1), the Apex Court held as under:-

49. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of 5 justice. It begins with the words, nothing in this Code which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

50. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non.

51. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found 6 impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do

real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

52. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided.

. In Surya Baksh Singh v. State of U.P. (2013 AIR SCW5976, also the Apex Court examined the provisions of Section 482 Code of Criminal Procedure and held as under :-

6. Last, but not least in our appreciation of the law, Section 482 of the Cr PC stands in solitary splendour. It preserves the inherent power of the High Court. It enunciates that nothing in the Cr PC shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary, firstly, to give effect to any order under the Cr PC, words which are not to be found in the Code of Civil Procedure, 1908 (hereafter referred to as CPC). Ergo, the High Court can, while exercising inherent powers in its criminal jurisdiction, take all necessary steps for enforcing compliance of its orders. For salutary reason Section 482 makes the criminal Court much more effective and all pervasive than the civil Court insofar as 7 ensuring obedience of its orders is concerned. Secondly, Section 482 clarifies that the Cr PC does not circumscribe the actions available to the High Court to prevent abuse of its process, from the inception of proceedings till their culmination. Judicial process includes compelling a respondent to appear before it. When the Court encounters a recalcitrant Appellant/convict who shows negligible interest in prosecuting his appeal, none of the Sections in Chapter XXIX of the Cr PC dealing with appeals, precludes or dissuades it from dismissing the appeals. It seems to us that passing such orders would eventually make it clear to all that intentional and repeated failure to prosecute the appeal would inexorably lead not merely to incarceration but more importantly to the confirmation of the conviction and sentence consequent on the dismissal of the appeal. Thirdly, none

of the provisions of the Cr PC can possibly limit the power of the High Court to otherwise secure the ends of justice. While it is not possible to define the concept of justice, suffice it to say that it encompasses not just the rights of the convict, but also of victims of crime as well as of the law abiding section of society who look towards the Courts as vital instruments for preservation of peace and the curtailment or containment of crime by punishing those who transgress the law. If convicts can circumvent the consequence of their conviction, peace, tranquility and harmony in society will be reduced to a chimera. Section 482 emblazons the difference between preventing the abuse of the jural process on the one hand and securing of the ends of justice on the other. It appears to us that Section 482 of the Cr PC has not been given due importance in combating the rampant malpractice of filing appeals only for scotching sentences imposed by criminal Courts.

. 8 In State of Maharashtra & Ors. v. Arun Gulab Gawali & Ors., reported in 2010(9) SCC701 the Apex Court held that the inherent power is to be exercised ex debito justitiae, to do real and substantial justice for administration of which alone courts exist. Whenever any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent the abuse. In B.S.Joshi & Ors. v. State of Haryana & Anr., reported in AIR 2003 SC1386 it was held that inherent power must be utilised with the sole purpose of preventing the abuse of the process of court or to otherwise serve the ends of justice. In exercise of inherent powers proper scrutiny of facts and circumstances of the case concerned are absolutely imperative. In State of Karnataka v. L. Muniswamy & Ors., reported in AIR 1977 SC1489 it was held that saving of the High Court's inherent powers under Section 482 Code of Criminal Procedure is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The ends of justice are higher than the ends of mere law though justice has got to be administered according to the laws made by the legislature. Without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction. 9 In Madhu Limaye v. State of Maharashtra, reported in AIR 1978 SC47 the Apex Court laid down certain governing principles to exercise authority under Section

482 Code of Criminal Procedure by High Courts and those can be summarised as under:- 1.Power is not to be resorted, if there is a specific provision in the Code of Criminal Procedure for redressal of grievances of the person aggrieved; 2.It should be exercised sparingly only to prevent abuse of process of any Court or otherwise to secure the ends of justice; and 3.It should not be exercised against the express bar of law. With these checks, it can be said that the High Court may invoke its inherent jurisdiction saved under Section 482 Code of Criminal Procedure to give effect to an order under Code of Criminal Procedure to prevent abuse of process of the court and to secure the ends of justice. The jurisdiction available is quite wide and it demands that a Constitutional Court of law must keep in mind that it is also a Court of Justice and must exercise its inherent powers to remove injustice or to secure the ends of justice and a High Court while exercising these powers may make such order or orders as may be necessary to prevent miscarriage of justice. By keeping in mind these parameters to exercise the inherent jurisdiction of High Court saved under Section 482 Code of Criminal Procedure, the issue under consideration deserves to be examined. 10 The issue under consideration before us is whether the High Court can invoke its inherent powers to invoke Section 427 Code of Criminal Procedure and order that the sentences awarded in two different cases shall run concurrently. The reference so made is essentially based on the judgment given by Hon'ble Supreme Court in the case of M.R.Kudva v. State of Andhra Pradesh (2007 Cr.L.J.

763). Hon'ble Supreme Court in this case was adjudicating an order passed by the High Court on an application preferred under Section 427 Code of Criminal Procedure, 1973. In the case aforesaid a bank employee was subjected to trial for two criminal cases and was convicted for the offences punishable under Sections 120-B/420, 468 and 471 Indian Penal Code read with Section 5(1) of the Prevention of Corruption Act, 1947. In both the cases learned trial court opined that the accused did not deserve any sympathy and deserves to undergo sentence consecutively. This fact indicates that the trial court examined the issue with regard to exercise of discretion as per Section 427 Code of Criminal Procedure and further the conviction recorded and sentence imposed remained intact uptil the highest court. An application subsequently was preferred to have an order for undergoing sentence concurrently. In such circumstances the Apex Court while

rejecting such application held as under :- The High Court could not have exercised its inherent jurisdiction in a case of this nature as it had not exercised such jurisdiction while passing the judgments in appeal. Section 482 of the Code was, therefore, not an appropriate remedy having regard to the fact that neither the Trial Judge, nor the High Court while passing the judgments of conviction and sentence indicated 11 that the sentences passed against the appellant in both the cases shall run concurrently or Section 427 would be attracted. The said provision, therefore, could not be applied in a separate and independent proceeding by the High Court.

. Suffice to mention that in the case of M.R.Kudva (supra) the Apex Court while examining peculiar facts of that case did not measure scope of Section 482 Code of Criminal Procedure. It was not necessary too as in that case the trial court after examining the submission relating to Section 427 Code of Criminal Procedure arrived at the conclusion that the accused does not deserve any sympathy, meaning thereby, the court considered that aspect of the matter by due application of mind and that order acquired finality being affirmed by Supreme Court. No occasion, as such was there to reexamine the issue. The other judgment on which learned Single Bench while making reference relied upon is Jang Singh v. State of Punjab. In this case accused Jang Singh was convicted for several offences in two different trials. He preferred a criminal miscellaneous petition under Section 482 Code of Criminal Procedure to have direction to run the sentences concurrently. A Division Bench before which the application came up sought guidance from Larger Bench in following terms:- It is clear from these judgments (supra), that though the Court has discretion to convert consecutive sentences into concurrent when two different offences have been committed, but the principles, method and in what manner this 12 judicial discretion is to be exercised, has not been laid down.

. The Full Bench after examining the entire issue settled the principles for exercising discretion under Section 427 Code of Criminal Procedure and those are as under:- It may, thus, emerge that discretion to make the sentences to run consecutively or concurrently would be governed by different consideration, like facts of each case, nature and character of the offences, criminal history sheet and record of the offender, his age, sex. In our view, these considerations would

appear relevant for the exercise of discretion by the courts under Section 427(1) Cr.P.C. It is not possible to exhaustively lay down all the factors that may be relevant to be taken into consideration and basically it would depend upon facts of each case to be so noted by the Court while exercising its discretion in this regard. It may, however, need to be noted that normal rule under Section 427 Cr.P.C. appears to be consecutive sentences. It is thereafter discretion is given to the sentencing Court to direct concurrency. It may also have to be kept in view that if principle of concurrency is applied in case where the offender is habitual, it may repel the very basic and the normal rules as laid down in Section 427 Cr.P.C. If such principles are universally applied unmindful to such consideration of the offender being habitual, then it may lead to hostile discrimination negatively because then it would amount to giving similar treatment to a normal as well as a habitual offender. Accordingly, segregation of the habitual offender by making them to undergo sentences consecutively can also be accepted as principle.

. 13 The Full Bench as a matter of fact found itself bound by the view taken by the Hon'ble Apex Court in the case of M.R.Kudva (supra) without taking notice of the fact that in that case Apex Court was examining peculiar facts without examining the scope of the inherent powers of High Court saved under Section 482 Code of Criminal Procedure. The Full Bench while laying down the principles to exercise discretion under Section 427 Code of Criminal Procedure, while relying upon the observations made in M.R.Kudva's case (supra), held that the discretion as per Section 427 Code of Criminal Procedure is available with the trial court, appellate court or the revisional court, but not to the High Court while exercising powers under Section 482 Code of Criminal Procedure. A Full Bench of Allahabad High Court in Mulaim Singh v. State, reported in 1974 Cr.L.J.

1397, examined the issue in question in detail and arrived at the conclusion as under:-

12. .... whether as an original court or as an appellate court, it is the duty of the Court dealing with the subsequent trial to apply its mind to the question whether the sentence on subsequent conviction should be made concurrent with the previous sentence and if the Court for one reason or the other fails to apply its

mind to that, question, it would be in the interest of justice that the High Court rectifies that mistake under its inherent power. In such a situation the Court 14 would not be acting contrary to any provision of the Code or against any express or implied prohibition contained in it. (Emphasis given by us.) 13. It would be an exercise in futility to lay down exhaustively the situations and circumstances in which the exercise of inherent power would be justified. However, it must be borne in mind that the general scheme of the Code is that the sentence awarded at a subsequent trial shall commence at the expiration of the imprisonment to which the accused has been previously sentenced. The discretion conferred on the Court under Section 397(1) has to be exercised on some judicial principle. If a situation arises, for invoking the inherent power of the Court under Section 561-A of the Code, the Court has to see whether the circumstances and the object for which the inherent power is to be exercised are in existence and can be achieved. It is equally well established that the inherent power is to be exercised to do the right and to undo a wrong in the course of administration of justice and this power ought to be exercised sparingly only when the Court feels that the ends of justice require it and not as a matter of routine.

. A Division Bench of Madras High Court in Sundaram alias Vellian v. The Secretary, State of T.N., Home Department, Chennai, reported in 2014 Cr.L.J.

2140, by keeping in mind the law laid down by Apex Court in M.R.Kudva (supra) and also by taking into consideration the Full Bench judgment of Punjab & Haryana High Court in the case of Jang Singh (supra), held as under:- 15

4. It is the grievance of the petitioner [detenu]. that the two life sentences should have been directed to run concurrently in terms of Section 427[2]. Cr.P.C. It appears from the records that this petitioner had made a similar request by filing an application by invoking the jurisdiction of this Court u/S. 482 Cr.P.C., in Crl.MP.No.170/2009 in Crl.A.No.142/1996, before this Court, which came to be dismissed on 15.03.2010. This Court had relied upon the judgment of the Hon'ble Apex Court in M. R. Kuduva v. State of Andhra Pradesh [2007 [1]. SCC [Cri.]. 648]. : (AIR 2007 SC568 and had dismissed the prayer on the ground that this plea should have been taken only before the trial court and cannot be taken up by

way of a petition u/S. 482 Cr.P.C. It may be relevant to state here that a three Judges Bench of the Hon'ble Apex Court in State of Punjab v. Madhanlal [2009 (5) SCC238 : (AIR 2009 SC (Supp) 2836) has refused to interfere with an order of Punjab and Haryana High Court passed under Section 482 Cr.P.C., whereby the sentences were directed to run concurrently under Section 427 Cr.P.C., in a matter relating to an accused who was convicted and sentenced for offences under Section 138 of the Negotiable Instruments Act in three different cases. The conflicting views between the judgment in Kuduva's case [which is by a two Judges Bench]. and Madhanlal's case (AIR 2009 SC (Supp) 2836) [which is by a three Judges Bench]. was considered by a Division Bench of this Court in K. Arasan v. State of Tamil Nadu [2012 (6) CTC510 and this Court held that a prisoner can invoke the jurisdiction of this Court under Section 482 Cr.P.C. in a case where both the trial Court and the First Appellate Court or the Revision Court, as the case may be, had failed to give the benefits under Section 427(1) Cr.P.C. in the judgment. Had, either the trial Court, appellate Court or revisional Court, consciously applied its mind under Section 427(1) Cr.P.C. and denied 16 the benefits to a prisoner, then the prisoner cannot invoke Section 482 Cr.P.C. to once again review that portion in the judgment, for, that would be a bar under Section 362 Cr.P.C. This Court further held that, while granting the discretionary relief, the Court should bear in mind the gravity of the charge levelled against the accused in each case. In the present case, Section 427(1) Cr.P.C. will have no application and therefore, neither Kuduva's case nor Madhanlal's case will have any bearing. In the facts of this case, Section 427(2) Cr.P.C. will apply. Section 427(2) Cr.P.C. reads as under: "427.Sentence on offender already sentenced for another offence:- [1]..... [2].When 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."

This Section, in no uncertain terms shows that a prisoner will be entitled to have two life sentences, imposed on him in different cases, to run concurrently. This provision stands to common sense and logic. There is a subtle distinction between section 427(1) and 427(2), Cr.P.C. Under section 427(1), Cr.P.C., if the life sentence is awarded to a prisoner already undergoing a lesser sentence, then the

subsequent life sentence will start running only after the expiry of the lesser sentence unless directed by the Court otherwise. Under section 427(2), Cr.P.C., if the life sentence or lesser sentence is awarded to a person who is already undergoing life sentence, then the subsequent sentence, be it life or lesser, shall run concurrently with the earlier life sentence. In Gopal Vinayak Gotse v. State of 17 Maharashtra [AIR 1961 SC600 the Constitution Bench of the Supreme Court held that a sentence for imprisonment for life means imprisonment for the whole of the remaining period of the convicted person's natural life. The concept of consecutive running of two or more life sentences has received judicial imprimatur at the hands of the Supreme Court of India in Kamalananda and others v. State of Tamil Nadu [AIR 2005 SC2132, where the consecutive life sentences awarded on the accused by the trial court was confirmed by this Court in appeal as well by the Apex Court. That was a case where, in the same trial the accused therein were charged for various offences like sections 376 and 302, IPC and were awarded life imprisonment, which were directed to run consecutively under section 31, Cr.P.C. In this case, the prisoner herein, was awarded life imprisonment by two different Courts in two different cases and therefore, section 31, Cr.P.C. will not apply.

5. Section 427(2), Cr.P.C. is a direction to the prison authorities to treat two life imprisonments as concurrent and there is no scope for Court's charity here, because it is a legislative guarantee. The Courts cannot take away this right nor the jail authorities deny the prisoner this right. It is manifestly clear that the prisoner need not have to invoke any jurisdiction, be it under Section 482, Cr.P.C. or under Article 226 of the Constitution of India, and cringe for mercy to have two life sentences run concurrently. Unfortunately in this case, the prisoner filed application in M.P.No.170/2009 in Crl.A.No.142/1996 without understanding the scope of Section 427(2), Cr.P.C., and obtained negative order from this Court on 15.03.2010. One can understand that the detenu may not be conversant with the nuances of law. Ignorantia juris non excusat [Ignorance of law is not an excuse]. applies rigorously to the learned than to the 18 lay. Even the prison authorities, who would have otherwise given the benefits of Section 427(2), Cr.P.C. automatically, will now remain hands tied and will be wondering as to when and where the prisoner will be undergoing the second life sentence after completing the first stint.

6. We ask this question to ourselves as to how we can now cut the Gordian knot to release the prisoner from this legal mess?. In our opinion, the order dated 15.03.2010 passed by this Court in M.P.No.170/2009 in Crl.A.No.142/1996 is per incuriam, because it has ignored the mandates of Section 427(2), Cr.P.C. and had relied upon the Apex Court judgment in Kuduva's case, which was one under Section 427(1), Cr.P.C. In A.R.Antulay v. R.S.Nayak and another, reported in [(1988) 2 SCC602 : (AIR 1988 SC1531 the Constitution Bench of the Supreme Court explained the concept in the following words: "'Per incuriam' are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong."

7. The maxim Actus Curiae Neminem Gravabit [An act of the Court shall prejudice no man]. will surely come to our rescue in this case. Section 362, Cr.P.C. will not hinder us, because we are not in any way altering the substantive portion of the trial Court judgment or the appellate Court judgment that imposed the second life sentence on the prisoner. Sitting in the HCP jurisdiction, we have as our hand tool Article 226 of the Constitution of India with which we propose to do justice to the prisoner by simply saying that he will be entitled to the benefits 19 of Section 427(2), Cr.P.C. We are not conferring any new benefit on him and we are only re-stating the legal position in order to dispel confusion in the minds of the prison authorities on account of the order dated 15.03.2010 passed by this Court.

. True it is, in the case of Sundaram alias Vellian (supra) the Division Bench of Madras High Court held that the order passed by Single Bench of that Court was per incuriam because that ignored the mandate of Section 427(2) Code of Criminal Procedure, but at the same time invoked inherent powers of High Court to meet the ends of justice and also to untied the Gordian knot to release the prisoner from a legal mess. The court while doing so also observed about availability of remedy under Article 226 of the Constitution of India for redressal of the grievances of aggrieved person and to secure ends of justice. Reference of the judgment given by the Hon'ble Apex Court in V.K.Bansal v. State of Haryana & Ors., reported in 2013 Cr.L.J.

3986, is also desirable here, wherein the court examined the question that whether the High Court was right in declining the prayer made by the appellant for a direction in terms of Section 427 read with Section 482 Code of Criminal Procedure for the sentences awarded in connection with the cases under Section 138 of the Negotiable Instruments Act. In the case aforesaid the Punjab & Haryana High Court dismissed the miscellaneous applications moved under Section 482 Code of Criminal Procedure which were filed alongwith the revision petitions questioning correctness of the conviction recorded and sentence imposed. Hon'ble Supreme Court concluded that the 20 legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction, no matter different complaints in relation thereto may have been filed. The Supreme Court in this case though did not examine the authority available to High Court under Section 482 Code of Criminal Procedure, but certainly interfered with the order rejecting the miscellaneous criminal petition preferred under the provision aforesaid. As per Section 427 Code of Criminal Procedure, in normal course a person already undergoing a sentence of imprisonment, if sentenced on a subsequent conviction to imprisonment, such imprisonment commence at the expiration of the imprisonment to which he has been previously sentenced, but the court in its discretion based on settled principles may direct that the subsequent sentence shall run concurrently with previous sentence. While exercising such discretion, the trial court, appellate court or revisional court, as the case may be, keeps in mind several factors. While examining such factors, the possibility of some error cannot be ruled out. Not only the error, but absolutely non-consideration of the issue about invoking this discretion, may also be there and that may cause great injustice. In general, it can be said that every provision of law is meant to impart justice and to ensure fair and objective treatment with every subject, but while doing so, the chances of causing injustice or failure in extending complete justice cannot be denied. To meet such an eventuality the inherent powers like Section 482 Code of Criminal Procedure are meant and those are always open to 21 be invoked to prevent abuse of process of court and secure the ends of justice. The inherent jurisdiction is having a very large amplitude but should always be exercised cautiously and only to prevent miscarriage of justice. While keeping in mind that the inherent powers

must be exercised sparingly, the court should not restrain itself to invoke the same if any injury is caused to the justice. We are of considered opinion that to meet the ends of justice and to rectify the gross error the powers under Section 482 Code of Criminal Procedure can be exercised, if court arrives at a conclusion that the trial court, appellate court or the revisional court, as the case may be, failed in completing the circuit of justice while invoking/not invoking the discretion vested with it as per Section 427 Code of Criminal Procedure. The court while doing so must keep in mind all necessary ingredients and precedents which are to be taken into consideration to exercise the discretion as per Section 427 Code of Criminal Procedure. The reference made by learned Single Bench is answered accordingly. Let the Criminal Miscellaneous Petitions be listed before learned Single Bench for their adjudication on merits. (JAISHREE THAKUR),J.

(GOVIND MATHUR),J.

Mathuria KK/PS.

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