

Mohd. YasIn Vs. State

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Court : Delhi

Decided On : Feb-14-1986

Reported in : 1986(10)DRJ320

Judge : G.R. Luthra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 427

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 127 of 1986

Appellant : Mohd. Yasin

Respondent : State

Advocate for Pet/Ap. : C.M. Sanan and; B.T. Singh, Advs

Judgement :

G.R. Luthra, J.

(1) The present petition under Section 482 Cr. P.C. is for setting aside an order dated October 3, 1985 of Shri Y.S. Jonwal, Metropolitan Magistrate, Delhi.

(2) The petitioner was convicted by different courts in respect of five offences committed at different times and was sentenced to undergo rigorous imprisonment of different periods. The contention of the petitioner is that after setting off under Section 428 Cr. P.C. of the period already spent by him as under-trial, he is

entitled to release. The petitioner says that he was arrested on November 7, 1984, that all the sentences of imprisonment expired on August 7, 1985 and that he is wrongly being kept in jail. He applied to the learned magistrate for his release. The learned magistrate obtained report of the Superintendent Jail according to whose calculations, the terms of imprisonment expired on 20th May, 1985. On the basis of the said report, the learned magistrate rejected the application of the petitioner and directed that he shall remain in jail for undergoing the unexpired portion of sentence.

(3) Learned counsel for the petitioner relies upon a judgment of the Division Bench of this court in K.C. Das v. State, 1979 CrL J. 362. It was held that the principle of Section 428 Cr. P.C. for setting off the pre-conviction detention period of an accused against the sentence applied in all cases whether the accused was convicted in one case or many and whether simultaneously or at different times. Some further observations are contained in para 13 of the judgment which reads as under :

'IF the sentences awarded on conviction are to run concurrently Section 427 applies. If sentences in the two cases of our illustration are not ordered to run concurrently, the remainder of the term of imprisonment, after adjustment of the pre-trial period already undergone in the second case, shall commence at the expiry of the term of imprisonment in the first case after setting off the pretrial detention period. In both cases he will be entitled to set off.'

(4) It is apparent from the above judgment that The pre-conviction or under-trial period is to be deducted from every sentence. Such pre-conviction period means the period between the date of arrest and the date of awarding of sentence. This principle applies irrespective of the fact whether the sentence, in different cases, are to run concurrently or consecutively. The only difference in respect of sentences directed to run consecutively is that after the pre-conviction period is deducted from every period of sentence, remainders or balances are to be added together to arrive at the total sentence to be undergone. That is so because consecutive sentences are to run one after the other. In the case of concurrent sentences all the aforesaid remainders or balances of the sentences (after

deducting pre-conviction period) start running simultaneously

(5) Now, we are to apply the aforesaid principle in the present case. The petitioner was convicted and sentenced in five cases. A chart showing different sentences awarded by different courts on different dates was filed by the Superintendent Jail in the court of the magistrate. A copy of the said chart has been placed on the record of this court. The dates of conviction and the term of sentence taken out of the said chart read as under :

Srl. No.	date of sentence	Term of sentence
1.	21-3-1985	One year w.e.f. 21-3-1985
2.	28-3-1983	6 months
3.	28-3-1985	1 month
4.	30-5-1985	11/2 months
5.	16-7-1985	9 months

(6) The allegation of the petitioner is that he was arrested on November 7, 1984. The learned co-unset for the State told that as per his information, the date of arrest was December 7, 1984. We can make calculation separately while taking the date of arrest as November 7, 1984 as well as December 7, 1984.

(7) The sentences mentioned at Serial No. 3 and 4 were for such a small period that they expired during the pre-conviction or under-trial period. therefore, we have to find out 'remainders or balances' of sentences mentioned at Serial No. 1, 2 and 5, after deducting the under-trial period. the calculations are as under :

1. After deducting the period from November 7, 1984 till 21st March, 1985 from the sentence of one year, the balance comes to 7 months and 16 days. 2. After deducting period from November 7, 1984 till March 28, 1985 from the sentence of six months, the balance comes to one month and 9 days. 3. After deducting the period from November 7, 1984 to July 16, 1985 from the period of sentence of 9 months, the balance comes to- 21 days.

(8) By adding the balances of 7 months 16 days, one month 9 days and 21 days, the aggregate comes to 9 months and 16 days. therefore, after making adjustment of the pre-conviction period as required by Section 428 Cr. P.C. the petitioner had to undergo sentence of 9 months and 16 days from March 21, 1985 which was the date of the first conviction, and up to which date we have already

given set off in respect of the first term of sentence.

(9) The sentence of 9 months 16 days expired on January 6, 1986. If we take December 7, 1984 as the date of his arrest, the sentence of the petitioner expired on February 6, 1986. Both ways the sentence has already expired and that being so, the petitioner is entitled to immediate release.

(10) Under the above circumstances I accept the petition, set aside the order of the learned magistrate and direct the release of the petitioner immediately in respect of the sentences in the five cases, some particulars of which are mentioned above and complete particulars of which are mentioned in the chart at page 15 of the file of this court.

(11) A copy of this order shall be sent to the learned magistrate for information.

(12) Criminal Misc. (Main) 127 of 1986 stands disposed of.

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