

Mangal Singh and ors. Vs. State

Mangal Singh and ors. Vs. State

SooperKanoon Citation : sooperkanoon.com/711596

Court : Delhi

Decided On : Dec-20-2005

Reported in : 2006CriLJ1198; 126(2006)DLT406; 2006(86)DRJ420

Judge : J.P. Singh, J.

Acts : Bare Act; Code of Criminal Procedure (CrPC) - Sections 31, 122, 427(1) and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 71, 302, 304(1), 307 and 308

Appeal No. : Crl. M.C. No. 2010/2004 and Crl. M. No. 6561/2004

Appellant : Mangal Singh and ors.

Respondent : State

Advocate for Def. : M.N. Dudeja, Adv.

Advocate for Pet/Ap. : C.M. Sanon, Adv

Disposition : Petition dismissed

Judgement :

ORDER

J.P. Singh, J.

1. In this petition under Section 482 of Code of Criminal Procedure the petitioner prays that sentences given to the petitioner for two offences should be ordered to be run concurrently.

2. I have heard Mr. C.M. Sanon, learned counsel for the petitioner and Mr. M.N. Dudeja learned counsel for the State on the point of admission and have gone through the copies of the documents placed on the file. Briefly the facts are that Lakhi son of Radhey Shyam and Madan son of Lakhi were neighbours of the petitioners (convicts). Some dispute between them was pending in the court. There was a confrontation on 9.8.1986 at about 9.00 P.M. when Lakhi (deceased) pleaded with the 3 accused persons that his son had been falsely implicated in the case at which accused Mangal Singh exhorted to kill Lakhi. Bhagwan Dass and Mangal Singh secured (caught) Lakhi while third accused Vinod @ Binna @ Dada assaulted him with a knife (dagger) on his back (spinal cord), left thigh and left leg. Meanwhile, Madan reached the spot. He was also secured (caught) by accused Mangal and Bhagwan Dass while accused Vinod @ Binna @ Dada gave a knife (dagger) blow even to Madan (PW-2). Lakhi died on 13.8.1986 after giving statement to the police. Accused Vinod @ Binna @ Dada after disclosure statement got the knife (dagger) recovered. The blows were so forceful that a piece of knife (dagger) was found in the spinal cord of the deceased. Madan Lal was stabbed on the left side of the neck. Madan Lal however managed to run away to save his life and survived.

3. Three eyewitnesses have given a graphic account. Bhagwan Dass exhorted Vinod @ Binna @ Dada to stab even the intervener Madan Lal. The case was proved beyond a shadow of doubt byocular, Medical and forensic evidence. Lakhi was given several injuries. The main injury was on the spine. It appears that the learned Additional Sessions Judge showed leniency to the accused persons and instead of convicting them under Section 302/307 read with Section 34 IPC held them guilty under Section 304(1) and 308 read with Section 34 IPC.

4. After hearing the convicted persons on sentence again the learned Additional Sessions Judge showed leniency and benevolence, so accused Vinod @ Binna @ Dada was sentenced to 7 years RI, (though the imprisonment as prescribed could

be imprisonment for life or up to 10 years with fine) and to pay a fine of Rs. 2000/- for offence punishable under Section 304(1)/34 IPC and in default of payment of fine further SI for 6 months. He was also sentenced to undergo RI for three years and to pay a fine of Rs. 1000/- and in default of payment of fine further 3 months SI for the offence punishable under Section 308/34 IPC (though the imprisonment as prescribed could be 7 years with fine because hurt was caused). The number of injuries show that the accused had repeatedly assaulted in a very cruel manner.

5. Accused Mangal Singh and Bhagwan Dass are sentenced to RI for 5 years and to pay fine of Rs. 2000/- under Section 304/34 IPC and in default SI for three months (though the imprisonment as prescribed could be imprisonment for life or up to 10 years with fine). They were further sentenced to undergo RI for 3 years and to pay fine of Rs. 3000/- each for offence punishable under section 308/34 IPC and in default to undergo SI for three months (though the imprisonment as prescribed could be 7 years with fine because hurt is caused).

6. The convicted persons preferred an appeal to the High Court of Delhi which was dismissed. Then they filed an SLP before the Supreme Court of India which also was dismissed.

7. Now this petition under Section 482 Cr.P.C. has been filed to review the order on sentence and reliance has been placed on Section 427(1) of Cr.P.C. which is reproduced as under:-

427. Sentence of 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.

8. Learned counsel for the petitioner has vehemently argued that the matter is covered under Section 427(1) of the Cr.P.C. On the other hand learned Additional Public Prosecutor for the State has emphasized that a mere reading of the Bare Act leaves no doubt that this section is not attracted because this section can be invoked when a person is already a convict and undergoing sentence and during the course of that period of earlier sentence he is convicted again in some other offence and is also sentenced in the second offence. therefore, any judgment on Section 427(1) Cr.P.C. is not attracted in the facts and circumstances of this case.

9. Then the learned counsel for the petitioner has submitted that under section 482 Cr.P.C. the High Court has ample powers. The said section is reproduced as under:-

482. Saving of inherent power 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.

10. By now it is established law that this power can be exercised sparingly and only if there is a glaring and manifest illegality or injustice. In the case before us the petitioners have exhausted their remedies up to the Supreme Court of India. Neither the High Court nor the Supreme Court apparently deemed it fit to direct that the sentences should run concurrently.

11. Learned Additional Public Prosecutor for the state has referred to Section 31 Cr.P.C. which is reproduced as under:-

31. Sentence in cases of conviction of several offences at one trial.-

(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments, prescribed therefore which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the other in such order as the Court may

direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that:

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

12. Perusal of this section shows and it is established law that if the court does not direct that the sentences shall run concurrently the second sentence shall start after expiry of the first sentence. As already discussed the petitioners have been given much less than the adequate imprisonment. Considering all the facts and circumstances of this case and especially the gravity of the offence, I do not find it a fit case for interference under Section 482 Cr.P.C. The petition is, therefore, dismissed.