

**Bhaskaran, Etc. Vs. State**

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**Court :** Kerala

**Decided On :** Nov-15-1977

**Reported in :** 1978CriLJ738

**Judge :** Ku. P. Janaki Amma, J.

**Appellant :** Bhaskaran, Etc.

**Respondent :** State

**Judgement :**

ORDER

**Ku. P. Janaki Amma, J.**

1. These petitions are filed by the two accused who were convicted for counterfeiting of currency notes and other allied offences. Cri. M. P. 966/77 is by the 14th accused in S.C. 29 of 1975 of the Court of Session, Trichur. The conviction and sentence passed against the petitioner were confirmed by this Court in Cri, A. 31/76. There was another case against the same person S, C. 60 of 1975 wherein also he was convicted. The conviction and sentence were confirmed by this Court in Cri. A. 121/76. There were similar convictions and sentences in the above two cases against the petitioner in Cri. M. P. 967/77. The conviction and sentence in S.C. 29/75 were confirmed in Cri. A. 29/76 and the conviction and sentence in S.C. 60/75 were confirmed in Cri. A. 120/76, Cri. A. 120 and 121/76 were disposed of by this Court on 5th July, 1977 while Cri. A. Nos.

29 and 31/76 were disposed of on 18th August, 1977. In the present petitions filed Under Section 482 of the Code of Criminal Procedure, the petitioners pray that the inherent jurisdiction of this Court be invoked and an order passed Under Section 427 Cr.PC directing the sentences in the two cases to run concurrently.

2. The relevant portion of Section 427 Cr.PC reads :

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.

3. There is no doubt that under the above provision the Court is competent to direct that the sentences of imprisonment awarded in two separate cases should run concurrently. The learned Public Prosecutor appearing for the State would, however, argue that the occasion for the exercise of such power is when the court disposes of the two cases or when the last case is disposed of. In case the court omits to make the direction then, there is the bar of Section 362 Cr.PC to make a subsequent exercise of the power Under Section 427 Cr.PC Section 362 Cr.PC reads :

Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same, except to correct a clerical or arithmetical error.

4. The argument is that a subsequent exercise of the power would amount to an alteration or review of the judgment already passed.

5. The question as to whether the Court is competent to issue directions of the type mentioned in Section 427 Cr. P. C. (corresponding to Section 427(1) of the Cr.P.C. 1898) after the disposal of the cases has been the subject-matter of decision in a Full Bench case decided by the Allahabad High Court in *Mulaim Singh v. State* 1974 Cri LJ 1397. The High Court overruling an earlier decision of a single Judge in *Ulfat v. State* (1970 Cri LJ 767) (All) held as follows: (at p. 1398):

Obviously the stage for exercising the discretion is when the Court records the conviction and inflicts punishments on the accused. The discretion Under Section 427(1) can also be exercised at the stage when the court records the subsequent conviction. The language employed in S, 397 does not indicate that the discretion to direct that the sentence under the subsequent conviction shall run concurrently with the previous sentence can be exercised at any subsequent stage.' On the question whether a subsequent direction that the sentences shall run concurrently would amount to review or alteration of the judgment, the Full Bench observed (at p. 1399):It is not only the order of conviction but also the sentence awarded and the directions given in that behalf that constitute integral parts of the judgment and cannot be reviewed or altered after the judgment has been pronounced. The direction contained in a judgment with regard to the sentences imposed on the accused, i.e. whether they shall run concurrently or consecutively is as much an integral part of' the judgment as his conviction consequent upon a finding regarding the guilt of the accused. In a case where there is no such specific direction, the law would take its course and, as pointed out earlier, the general rule embodied in the Code is that the sentences would run consecutively. This principle is applicable both in the case of trial and appellate courts. The prohibition against reviewing or altering the judgment is equally applicable to both trial and appellate courts. The word 'alter' means 'to cause to become different in some particular characteristic (as measure, dimension, course, arrangement, or inclination) without changing into something else.' A change in the 'course' or 'arrangement' of the sentence would certainly amount to an alteration of the sentence which forms a part of the judgment. We are of the opinion that neither the trial court nor the appellate court is competent to exercise the discretion conferred Under Section 427(1) of the Code after the judgment has been signed.

6. On the question whether the High Court is competent to direct a subsequent term of imprisonment to run concurrently with an earlier term under its inherent powers, the Court held:.it would be competent for the High Court in exercise of its inherent power to direct that the sentence under a subsequent conviction, to imprisonment may run concurrently with the previous sentence even if the stage for exercise of discretion Under Section 427(1) of the Code is over in circumstances, where it would serve any of the three purposes mentioned in the

section i.e. to give effect to any order under the Code or to prevent the abuse of the process of the court or otherwise to secure the ends of justice.

7. A single Judge of the Patna High Court held, following an unreported Division Bench decision of the same court that it is for the Court dealing with the subsequent case, if it feels called upon to do so to pass an order that the sentence should run concurrently with the previous sentence. (See Mahabir v. State AIR 1965 Pat 178 : 1965-1 Cri LJ 582. It was also held that the inherent power is an extra-ordinary power which ought to be exercised very rarely and only when the court feels that the ends of justice require it.

8. The Madras High Court in *In re Nachimuthu* AIR 1958 Mad 452 : 1958 Cri LJ 1197 held that the inherent power of the High Court could not be exercised for issuing direction Under Section 397 of the Cr.PC after the appeal or the revision, as the case may be, was disposed of.

9. A different note has been struck by the Andhra Pradesh High Court in *Venkanna v. State of Andhra Pradesh* AIR 1964 Andh Pra 449 : 1964-2 Cri LJ 377. It was held that a direction that a subsequent sentence should run concurrently with an earlier sentence does not amount to alteration of sentence.

10. In *A. S. Naidu v. State of Madhya Pradesh* 1974 M P LJ 769 : 1975 Cri LJ 498 a Division Bench of the Madhya Pradesh High Court held that a direction Under Section 397 of the old Code that the sentence awarded in a subsequent case should run concurrently with the sentence awarded in a previous case does not affect the quantum of sentence but only the mode of its execution and, therefore, does not amount to review of judgment. The view expressed is that since no modification of the judgment is involved, the power to direct that the sentences in two different cases may run concurrently can be exercised at any time when the matter is brought to the notice of the Court.

11. The Cr.PC 1073 contains distinct provisions as to the manner in which punishment should be undergone when a person is sentenced to imprisonment for more than one offence and they are contained in Section 31(1) and Section 427(1). Section 31(1) deals with sentences in cases of conviction at one trial of

two or more offences. Section 427(1) deals with cases where a person is sentenced to different terms of imprisonment in separate trials where the sentence in one case is in force when another term of imprisonment is imposed. Under both the above provisions, the court is competent to direct that the sentences may run concurrently. A direction that the sentences for offences tried during a single trial may run concurrently is an integral part of the judgment. If that be so, a similar direction that the sentences in a later case may run concurrently with the sentence in an earlier case is also a part of the judgment. Therefore, a direction how the sentences in the two cases should run, issued subsequent to the disposal of the cases would amount to alteration of the judgment which is barred Under Section 362 Cr.PC. If a direction Under Section 31(1) cannot be issued after the judgment is pronounced on a motion made by the accused, I fail to see how the power (sic) (direction?) Under Section 427(1) can be issued after the pronouncement of the subsequent judgment. I am, therefore, unable to adopt the reasoning in *A. S. Naidu v. State of Madhya Pradesh* 1974 M P L J 769 : 1975 Cri LJ 498 and I hold that the direction referred to should be given at the latest when the subsequent judgment is pronounced.

12. The further question is whether the inherent power of the High Court can be exercised after the disposal of the cases to direct that the terms of imprisonment in two cases may run concurrently. So far as this is concerned, it is now well-settled that inherent power is not to be invoked to serve purposes for which there are express provisions of law and also where there is an express provision barring a particular remedy. The Criminal Procedure Code forbids review or alteration of judgment once it is signed. If Section 427(1) alone stands, direction regarding mode of suffering imprisonment can be made either at the time of pronouncing the later judgment or some time afterwards. But in the latter case, it offends Section 362 of the Code. It follows that the power should be exercised at the time of pronouncing the later judgment and not on a motion made thereafter. In other words, a subsequent motion is barred Under Section 362 of the Code. A person who is afforded an opportunity to represent his case and get relief, and who omits to avail of it at the proper time should not be allowed to approach the court on a later date for the same remedy by invoking the inherent power of the High Court.

13. There is another reason also why the inherent power should not be exercised in a case like the present one. The inherent power is available only to the High Court while the directions Under Section 31(1) and 427(1) can be issued both by the trial court and also by the appellate or revisional Court. In cases where no appeals or revision petitions are filed or where the appeals and revision petitions are disposed of by courts other than the High Court, there is no question of a direction being issued Under Section 31(1) or Section 437(1) subsequent to the disposal of cases as that would amount to alteration of the judgment. It does not stand to reason that an additional privilege of approaching the Court under the inherent power should be available in cases disposed of by the High Court where the same remedy is not available when cases are disposed of under similar circumstances by the subordinate courts.

14. Assuming that a direction Under Section 427(1) can be issued in exercise of the inherent power for the purposes mentioned in *Mulaim Singh v. State* (1974 CrL. LJ 1397 (FB) (All) viz. to give effect to any order under the Code or to prevent the abuse of the process of court or otherwise to secure the ends of justice, the materials before me do not justify the exercise of such power. Counterfeiting of currency notes is a serious offence affecting the economy of the nation and something which should be stopped with a strong hand. There are no materials indicating that the materials for counterfeiting recovered in the two cases were the same. The statements of facts in the two cases show otherwise. It looks as if the accused were engaged in making blocks for counterfeiting and delivering them to different persons. They do not deserve any sympathy. The sentences passed in the two cases are lenient enough as not to call for further interference. The petitions are dismissed.