

**Chacko Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Apr-09-2003

**Reported in :** 2004CriLJ481; 2003(2)KLT964

**Judge :** J.B. Koshy and; A. Lekshmikutty, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 427, 427(1), 427(2), 427(7) and 428; [Indian Penal Code \(IPC\), 1860](#) - Sections 57

**Appeal No. :** Cri. M.C. No. 1486 of 2003

**Appellant :** Chacko

**Respondent :** State of Kerala

**Advocate for Def. :** P.V. Madhavan Nambiar, Director of Public Presecutions

**Advocate for Pet/Ap. :** M.M. Mathew, Amicus Curiae

**Judgement :**

ORDER

**J.B. Koshy, J.**

1. The petitioner herein, who is undergoing imprisonment in Central Prison, Kannur is sentenced to life imprisonment in 3 separate cases and acquitted in one case after undergoing punishment for some period, pleads in this case to allow

him the benefit of Section 427(2) of Cr. P.C. by ordering to undergo imprisonment concurrently in all the three cases and also the benefit of set off under Section 428 as the period he was in jail in connection with the case wherein he was acquitted finally. He was convicted on 29.9.1996 for offences punishable under Sections 302, 457 and 392 IPC in SC 74 of 1995 by the Sessions Court, Kozhikode. The following sentences were awarded to him.

1) To undergo life imprisonment and to pay fine of Rs. 50,000/- in default for 10 years under Section 302 I.P.C.

2) Rigorous imprisonment for 10 years and fine of 10,000 in default Rigorous Imprisonment for 5 years under Section 452 I.P.C.

There was also a direction that the substantive sentence of imprisonment to run concurrently with life imprisonment already awarded in view of Section 427(2) Cr.P.C. In appeal (Crl.A. 681/96) this Court has set aside the order of imposition of fine but the conviction and substantive sentence imposed on the appellant are confirmed on 30.8.98. He was also convicted for life imprisonment in S.C. No. 77/1993 and in S.C. No. 26/ 93 by the Sessions Court, Kottayam. In S.C. 77/93 of the Sessions Court, Kottayam, the petitioner was convicted and sentenced on 2.4.1996 to undergo imprisonment for life under Section 302 I.P.C. Rigorous imprisonment for 7 years each under Sections 449 and 457 I.P.C., rigorous imprisonment for one year under Section 461 I.P.C., rigorous imprisonment for 6 years under Section 397, rigorous imprisonment for 5 years each under Sections 356 and 307 I.P.C. as regards Pws.3 to 6. The sentences under Sections 449, 457 and 461 I.P.C. was directed to run concurrently and further directed the sentences under Sections 302, 342 and 307 shall run consecutively. In appeal (Crl.A. 264/96) the conviction and sentences were confirmed but directed that all the sentences awarded shall run concurrently. Again the petitioner was convicted in SC 26/93 by the Sessions Court, Kottayam on 3.12.96 to undergo life imprisonment under Section 302 I.P.C. and directed that the sentence will run concurrently with the earlier life sentences. But if the Government passed orders under Sections 432 or 433 Cr.P.C. in the earlier cases, life sentence passed in this case shall run consecutively, to undergo rigorous imprisonment for 5 years under Section 449

IPC 5 years under Section 457, one year under Section 461, rigorous imprisonment for 7 years under Section 461, rigorous imprisonment for 7 years under Section 392, rigorous imprisonment for 10 years each under Section 307 IPC. The offence under Sections 397 and 307 (total 27 years) will run consecutively. In appeal (Crl.A. 153/97) this Court had modified the direction of the Sessions Judge and directed that the sentences under Sections 449, 457, 461, 392 and 307 to run concurrently with the sentence of imprisonment for life imposed upon the petition under Section 302.

2. In S.C. 26/93 it was held by the Sessions Court as follows:

'86. I am not convinced that the occurrence in this case comes within the category of rarest of rare cases. The accused is sentenced to undergo imprisonment for life for the offence under Section 302 of the I.P.C. and it is made clear that the said sentence will run concurrently with the earlier life sentences unless the Government passed orders under Sections 432 or 433 of the Cr. P.C. If, however, any such orders are passed, the life imprisonment passed in this case will run consecutively.'

3. He was arrested by Goodelloor Police, Tamil Nadu State in connection with a murder case (S.C. No. 2/92) and the Sessions Court, Nilagiri sentenced him for life imprisonment under Section 302 IPC by judgment dated 24th February 1993. He was also convicted under Sections 449 and 392 IPC and sentenced to undergo rigorous imprisonment for 5 years and 10 years respectively, but he was allowed to run the sentences concurrently. But the Chennai High Court acquitted him in the said case in Crl. Appeal No. 530/1993. According to the petitioner he has suffered already 11 years imprisonment in connection with S.C. No. 2/1992 on the file of the Sessions Court, Nilagiri. He filed two petitions herein. In the first petition he prayed that he may be allowed to suffer the sentences in S.C. 74/95, 77/93 and 26/93 concurrently. In the 2nd petition dated 14.11.2002, he also wanted to set off 11 years imprisonment he has already suffered in connection with S.C. No. 2/1992 of the Sessions Court, Nilagiri.

4. Our request to assist the Court was accepted by Sri. M.M. Mathew, Former Director of Public Prosecution and he was appointed as Amicus Curiae. We have

heard him as well as the Director of Public Prosecution Sri. P.V. Madadhavan Nambiar. We have also gone through the opinion of Mr. K. Ethirajalu, Additional Central Government Standing Counsel, High Court of Madras which was forwarded to us along with the petition.

5. Sentences of life imprisonment awarded to the petitioner in three cases were confirmed by this Court. The above were confirmed by the Apex Court also. According to the opinion of Mr. K. Ethirajalu in view of Section 55 of the I.P.C., life imprisonment is 20 years imprisonment. But life sentences awarded in different case will run consecutively unless this Court directed that the subsequent sentence shall run concurrently and by invoking power under Section 482, such a direction can be given by the High Court now. The relevant portion of the opinion is as follows:

'Thus the reading of Sections 45, 55 and 57 of I.P.C., will make as to say that any person to life imprisonment shall be imprisoned for twenty years, unless the appropriate Government commute the said punishment for a term not exceeding fourteen years.'

He further opined as follows :

'Here in this case, either the Court of Sessions or High Court at Kerala did not direct that the subsequent sentence shall run concurrently with that sentence of life imprisonment in S.C. No. 2/1992. In the absence of such specific direction, the applicant Chacko herein has to undergo sentence of life in all the subsequent three cases consecutively. If the applicant wants to get all these three life sentences in S.C. No. 74/95, S.C. No. 77/93 and S.C. No. 26/93 to run concurrent with that of life sentence in S.C. No. 2/92, then the proper remedy would be to file three separate applications in S.C. Nos. 74/95, 77/93 and 26/93 before the Hon'ble High Court, Kerala under Section 482 of Cr. P.C. invoking the inherent powers of the Hon'ble High Court for direction that the subsequent sentences passed in the aforesaid Sessions case to run concurrent with that of sentence in S.C. No. 2/92. In the absence of such specific direction, all the three life sentences will be treated as consecutive with that of respective previous sentences.

Under these circumstances, I therefore advise the applicant Chacko to approach the Hon'ble High Court, Kerala for appropriate remedy.'

On the basis of the above legal opinion, these petitions were filed before this Court.

6. Now we will deal with statutory provisions necessary for decision of this matter. Sections 427 and 428 of the Cr. P.C. reads as follows:

427. Sentence on 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.

(2) When a 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.

428. Period of detention undergone by the accused to be set off against the sentence of imprisonment - Where an accused person has, on conviction, been sentenced to imprisonment for a term (not being imprisonment in default of payment of fine) the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.

Section 57 of Indian Penal Code reads as follows:

'57. Fractions of terms of punishment.- In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.'

7. First point to be decided is whether a Court order is necessary for application of Section 427(2). Section 427 is positive that when a person is undergoing a sentence for life is sentenced subsequently for life imprisonment, subsequent sentence shall run concurrently. No separate order is necessary. Normally when a person is undergoing imprisonment as substantive punishment imposed in a case, is subsequently sentenced for imprisonment in another case, subsequent sentence of imprisonment shall commence at the expiration of the previous sentence for imprisonment. In other words convict has to undergo imprisonment consecutively and not concurrently unless Court specifically direct so as can be seen from Section 427(1) Cr. P.C. But in the case of life imprisonment specific direction is not necessary in view of Section 427(7) as well as the nature of punishment. Imprisonment for life means imprisonment till the end of life, unless the remaining sentence is commuted or remitted by the competent authority. See *Gopal Vinayak Godse v. State of Maharashtra* (AIR 1981 SC 600) and *Maru Ram v. Union of India* (AIR 1980 SC 2147). A person is having only one life span and if he is already undergoing a sentence on a subsequent conviction of imprisonment for a term or imprisonment for life, can only be superimposed to the earlier life sentence. Therefore, for a prisoner undergoing imprisonment for life, no Court direction is necessary that subsequent sentence for life imprisonment shall run concurrently as it is automatic. Supreme Court considered the matter in *Ranjit Singh v. Union Territory of Chandigarh* (AIR 1991 SC 2296) and observed as follows:

'the earlier sentence of imprisonment for life being understood to mean as sentence to serve the remainder of life in prison unless commuted or remitted by the appropriate authority and a person having only one life span, the sentence on a subsequent conviction of imprisonment for a term or imprisonment for life can only be superimposed to the earlier life sentence and certainly not added to it

since extending the life span of the offender or for that matter anyone is beyond human might. It is this obvious situation which is stated in Sub-section (2) of Section 427 since the general rule enunciated in Sub-section (1) thereof is that without the Court's direction the subsequent sentence will not run concurrently but consecutively. The only situation in which no direction of the Court is needed to make the subsequent sentence run concurrently with the previous sentence is provided for in Sub-section (2) which has been enacted to avoid any possible controversy based on Sub-section (1) if there be no express direction of the Court to that effect. Sub-section (2) is in the nature of an exception to the general rule enacted in Sub-section (1) of Section 427 that a sentence on subsequent conviction commences on expiry of the first sentence unless the Court directs it to run concurrently. The meaning and purpose of Sub-sections (1) and (2) of Section 427 and the object of enacting Sub-section (2) is, therefore, clear.'

8. As far as the petitioner is concerned, sentences of life imprisonment awarded to him in S.C. 74/95, 77/93 and 26/93 are not so far commuted or remitted. Therefore, he has to undergo imprisonment till the end of life. Even though he is automatically entitled to the benefit of Section 427(2) as his punishment of imprisonment ends with his death only, petitioner will not get any practical benefit.

9. Next issue to be considered is if his sentence of life imprisonment is remitted or commuted, will he get the benefit of Section 427(2) of Cr. P.C. The Sessions Court in S.C. No. 26/93 at paragraph. 86 clearly held that life sentence awarded to him will run concurrently but in case, earlier sentence to undergo life imprisonment is commuted or remitted, period of life imprisonment passed in the case will run consecutively. The above judgment was not interfered by the High Court or Supreme Court in appeals. The decision has become final. In criminal case Court cannot review the order in view of Section 362 of Cr. P.C. Section 362 reads as follows:

'Court not to alter judgment - 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.'

Section 392 also supports this view. Even if the view of the Sessions Judge which was affirmed by this Court in appeal is erroneous, it cannot be corrected by a petition under Section 482. In *Sooraj Devi v. Pyare Lal* (AIR 1981 SC 736) the Apex Court held that the inherent power under Section 482 cannot be invoked for reviewing an earlier order as it is specifically prohibited under Section 362. (See: *State of Orissa v. Ram Chander* (AIR 1979 SC 87), *Hari Singh Mann v. Harbhajan Singh Bajwa* ((2001) 1 SCC 169) and *State of Kerala v. MM. Manikandan Nair* (2001 AIR SCW 1847)). In any event since the petitioner was convicted for life imprisonment in three separate cases and in none of the cases, his sentence was remitted or commuted, this question need not be considered now. Even if his sentence of life imprisonment in two cases are commuted or remitted, but in one case it is not commuted or remitted, he has to undergo imprisonment till the end of his life and the petitioner will not get any practical benefit.

10. Next point to be considered is whether Section 57 of the Indian Penal Code provides that a sentence of life imprisonment is to be treated as imprisonment for life. The above question was considered by the Constitution Bench of the Supreme Court in *Gopal Vinayak Godse v. State of Maharashtra* (AIR 1961 SC 600) and it was held that the above section is not laying down that imprisonment or transportation for life is only for 20 years and once a person is sentenced to undergo life imprisonment unless imprisonment for life is commuted by the competent authority, he has to undergo imprisonment for the whole of his life. The Court held as follows:

Section 57 of the Indian Penal Code has no real bearing on the question raised before us. For calculating fractions of terms of punishment the section provides that transportation for life shall be regarded as equivalent to imprisonment for twenty years. It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes, not does the amended section which substitutes the words 'imprisonment for life' for 'transportation for life' enable the drawing of any such all embracing fiction. A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life.'

11. Next contention raised is whether he is entitled to set off under Section 428 of the Cr. P.C. the entire period of imprisonment undergone by him in S.C. 2/92. He had undergone imprisonment at Tamil Nadu jail in view of the sentence in S.C. 2/92 of the Sessions Court, Nilgiri. But he was acquitted by the Madras High Court on 21.3.2002 in CrI. Appeal No. 530/96. Section 428 is very clear. The set off allowed in the above section is the period of detention he has undergone prior to the conviction in the same case. If a person had undergone detention during investigation, inquiry or trial in a particular case and he was awarded sentence of imprisonment, he need undergo imprisonment for the balance period, after deducting the actual period of detention he had undergone at pre-conviction stage in the very same case. The set off is allowed only to the period before conviction and not to period of imprisonment after conviction. Further set off period under Section 428 of Cr. P.C. is applicable only against substantive sentence awarded to him in a particular case to the pre-conviction detention period undergone by the prisoner in the very same case. In *Government of Andhra Pradesh and Anr. v. Anne Venkateswara and Ors.* (1997 (3) SCR 298) it is held as follows:

'It is true that section speaks of the 'period of detention' undergone by an accused person but it expressly says that detention mentioned refers to the detention during the investigation, enquiry or trial of the case in which the accused person has been convicted. The section makes it clear that the period of detention which it allows to be set off against the term of imprisonment imposed on the accused on conviction must be during the investigation, enquiry or trial in connection with the 'same case' in which he has been convicted. We, therefore, agree with the High Court that the period during which the writ petitioners were in preventive detention cannot be set off under Section 428 against the terms of imprisonment imposed on them.'

In *Abdul Azeez v. Assistant Collector* (2003 (1) KLT 557 (SC)) the same view was reiterated and held that even though the period of detention undergone under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ('COFEPOSA') cannot be set off under Section 423 Cr. P.C. against the sentence imposed after conviction under Section 135(1) of the Customs Act, even when preventive detention order was quashed by the High Court, as the above

detention period was not during investigation, inquiry or trial in connection with the same case which he has been convicted. Therefore, preconviction detention period in S.C. 2/92 cannot be set off against the substantive sentence ordered in S.C. 26/93, S.C. 74/95 and S.C. 77/93.

12. The period after conviction in one case also cannot be set off against the sentence awarded in another case as Section 428 applies only to a stage before conviction.

In *Ragbir Singh v. State of Haryana* (1984 SCC (Cri.) 616) the Apex Court held as follows:

'Hence in order to secure the benefit of Section 428 of the Code, the prisoner should show that he had been detained in prison for the purpose of investigation, inquiry or trial of the case in which he is later on convicted and sentenced. It follows that if a person is undergoing the sentence of imprisonment imposed by a Court of law on being convicted of an offence in one case during the period of investigation, inquiry or trial of some other case, he cannot claim that the period occupied by such investigation, inquiry or trial should be set off against the sentence of imprisonment to be imposed in the latter case even though he was under detention during such period. In such a case the period of detention is really a part of the period of imprisonment which he is undergoing having been sentenced earlier for another offence. It is not the period of detention undergone by him during the investigation, inquiry or trial of the same case in which he is later on convicted and sentenced to undergo imprisonment. He cannot claim a double benefit under Section 428 of the Code i.e. the same period being counted as part of the period of imprisonment imposed for committing the former offence and also being set off against the period of imprisonment imposed for committing the latter offence as well.'

If the life imprisonment awarded is commuted or remitted, benefit of Section 482 is available only against the pre-conviction detention period undergone in that particular case where life sentence commuted subject to the provisions of Section 433A of Cr. P.C. that a life convict has to undergo the maximum 14 years imprisonment. See: *Bhagirath v. Delhi Administration* (AIR 1985 SC 1050) and

Suo Motu Proceedings under Section 482 Cr. P.C. v. State of Kerala (2002 (2) KLT 695).

13. Unless the petitioner is given the benefit of remission or commutation by the competent authority in all the three cases where he was sentenced to life imprisonment, he will not get any practical benefit, even though under Section 427(2) a person undergoing sentence of imprisonment for life when sentenced on a subsequent conviction to imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence under Section 427(2). Since sentences of life imprisonment awarded to the petitioner are not commuted by the Government, he will have to undergo imprisonment till the end of his life. In this connection we also referred to the decision in *Zahid Hussein v. State of W.B.* (2001 (3) SCC 750).

14. We place on record our appreciation for the valuable help rendered in this case by Sri. P.V. Madhavan Nambiar, Director of Public Prosecutions and Sri. M.M. Mathew, Former Director of Public Prosecutions.

The CrI. M.C. is disposed of as above.

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