

Jiwan and ors. Vs. the State

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Court : Rajasthan

Decided On : Jan-29-1970

Reported in : AIR1970Raj243; 1970CriLJ1558; 1970(3)WLN449

Judge : S.N. Modi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 397 and 561A

Appeal No. : Criminal Misc. Application No. 486 of 1969

Appellant : Jiwan and ors.

Respondent : The State

Advocate for Def. : Mool Chand Bhati, Adv.

Advocate for Pet/Ap. : N.L. Tibrewal, Adv.

Disposition : Application allowed

Judgement :

ORDER

S.N. Modi, J.

1. This application under Section 561-A of the Code of Criminal Procedure has been filed by convict Lalia,, Jagan Nath and Jiwan praying that the sentences imposed upon them in the three cases be ordered to run concurrently. In Sessions

case No. 55 of 1964 decided on 27-11-65 the petitioners have been convicted under Section 396 IPC by the learned Sessions Judge, Alwar and each of them has been sentenced to undergo rigorous imprisonment for ten years. In Criminal case No. 18/897 of 1966 decided on 23-9-66, they have been convicted under Sections 224, 332 and 379 IPC by the Sub-Divisional Magistrate, Alwar and each of them has been sentenced to undergo rigorous imprisonment under each count for one year, six months and six months respectively. All the three sentences have been made to run concurrently. In Criminal Case No. 18/230 of 1965 decided on 3-2-68, the petitioners have been convicted under Section 3/25 of the Indian Arms Act by the First Class Magistrate Rajgarh (Alwar) and each of them has been sentenced to undergo simple imprisonment for one year.

2. The application is opposed on behalf of the State.

3. The question arises whether this Court can exercise its inherent power to make the aforesaid sentences to run concurrently. Section 561-A Cr. P. C. is to the following effect:--

'Section 561-A. Nothing in this Code shall be deemed to limit or affect the inherent power 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.'

The true scope and extent of Section 561-A have now been authoritatively laid down by their Lordships of the Supreme Court in two cases -- Khushiram v. Hashim, AIR 1959 SC 542 and Rule P. Kapur v. State of Punjab, AIR 1960 SC 866. It is now well settled that the inherent power under Section 561-A Cr. P. C. can be exercised by the High Court when there is no specific provision to the contrary in the Code. The inherent jurisdiction can also be exercised in a proper case either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It is not disputed that except under Section 397 Cr. P. C. there is no other provision in the Code which would apply to the facts of the present case. Under this Section, where several sentences are passed against the same person, such sentences should ordinarily run concurrently (consecutively?) that is, one after the expiration of the other, unless the Court directs that they should run

concurrently. It does not lay down that the order about the running of sentences concurrently with the previous- 'sentences must be a part of the subsequent judgment. It can be made by the Court even after the subsequent judgment has been given. In this view of the matter, it cannot be said that there is any specific provision in the Code to the contrary which debars this Court to exercise inherent power under Section 561-A Cr. P. C.

4. Reliance was placed on the decision of the Madras High Court in *Re Nachimuthu*, AIR 1958 Mad 452 wherein Rasheer Ahmad Sayeed J. sitting singly, held that when all the remedies available under the law have been exhausted, an application to the High Court asking the sentences passed in different cases to be made to run concurrently, is not maintainable, because such a petition is in fact for a review of the order already passed by the trial Court as well as by the appellate Court. It appears that the learned Judge did not take into consideration Section 561-A Cr. P. C. which provides specifically for such a case. I, therefore, respectfully express my dissent to the view taken in that case. On the other hand, a Division Bench of the Calcutta High Court in *Jainta Kumar Banerjee v. The State*, AIR 1955 Cal 632 in similar circumstances, held that the High Court has power to order that the sentences passed on different dates in respect of different convictions of the accused, should run concurrently. In my opinion, the learned Judges laid down correct law in the Calcutta Case. In the present case, all the three petitioners have been sentenced separately and the courts convicting them have not invoked the provisions of Section 397 (1), Cr. P. C. The result is that the petitioners will now be required to undergo sentence for at least 12 years. In my opinion, the ends of justice require that all the sentences passed in three different cases should be ordered to run concurrently. 5. I accordingly allow the application and pass an order under Section 561-A, Cr. P. C. directing the sentences in the three aforesaid cases to run concurrently.