

**Rakesh Vs. State of Rajasthan**

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**SooperKanoon Citation :** [sooperkanoon.com/769310](http://sooperkanoon.com/769310)

**Court :** Rajasthan

**Decided On :** Jul-14-2008

**Reported in :** 2008CriLJ4416; RLW2008(4)Raj3304

**Judge :** Prakash Tatia and; C.M. Totla, JJ.

**Appellant :** Rakesh

**Respondent :** State of Rajasthan

**Disposition :** Petition allowed

**Judgement :**

**Prakash Tatia, J.**

1. Petitioner's grievance is that he is not being released by jail authorities, even after his serving the sentence of total period for which he was sentenced under Section 376 IPC in Sessions Case No. 119/01 vide judgment and order dated 17.5.02 passed by the Court of Additional Sessions Judge (Fast Track) No. 2, Kota. He is not being released on parole for the reason that petitioner was subjected to proceedings under Section 110/41 Cr.P.C. wherein, he was required to furnish the bail bonds which he did not furnish and therefore, the learned Executive Magistrate vide order dated 29.3.2000, sentenced the petitioner to three years imprisonment. Petitioner is denied release on completion of sentence in Sessions Case No. 119/01 on the ground that petitioner can be released after

serving complete three years more sentence which was awarded in Criminal Case under Section 110/41 Cr.P.C. decided on 29.3.00 as the two sentences did not run concurrently.

2. Learned Counsel for the petitioner vehemently submitted that sentence in two matters can run concurrently and there is no need for separate order in subsequent conviction and sentence order making two sentences concurrent. Learned Counsel for the petitioner relied on judgment of this Court in the case of Vimal Mehra v. State of Rajasthan 2008(1) Cr.L.R. (Raj.) 789 : 2008(4) RLW 3062 wherein, Division Bench of this Court considered Sub-section (2) of Section 427 Cr.P.C .

3. Learned Public Prosecutor submitted that unless there is an order of Court to run sentence concurrently, the sentences cannot run concurrently. For this learned Public Prosecutor placed reliance on decision of Kerala High Court reported in the case of Sukumaran v. State of Kerala and Anr. reported in 2008 CRI.L.J 2297 wherein, Division Bench of Kerala High Court held that sentencing should be done normally consecutively and only in appropriate cases, Court can make sentence concurrently with an earlier sentence imposed.

4. We considered the submissions of learned Counsel for the petitioner and learned Public Prosecutor.

5. Section 122 Cr.P.C. provides for imprisonment in default of furnishing security when a person ordered to give security under Section 106 or Section 117 and he does not give such security on or before the date on which the period for which security is to be given commences. As per Sub-section (4) of Section 122, maximum period for which such person can be imprisoned is upto the period for which he was ordered to give security. Chapter 8 of the Code of Criminal Procedure provides the provisions for security for keeping peace and good behaviour of the persons. Under Section 106 Cr.P.C, when a Court of Session or Court of a Magistrate of the first class convicts a person of any of the offences specified in Sub-section (2) or of abetting any such offence and is of opinion that it is necessary to take security from such person for keeping the peace, the Court may, at the time of passing sentence on such person, order him to execute a

bond, with or without sureties, for keeping the peace for such period, not exceeding three years. The offences referred to in Sub-section (1) are enumerated under Sub-section (2) of Section 106 Cr.P.C.

6. Under Section 117 Cr.P.C, after completion of inquiry, under Chapter 8, if it is found that it is necessary for keeping the peace or maintaining good behaviour of a person, that person should execute a bond, with or without sureties, he can be directed to execute a bond with or without sureties. Proviso (a) of Section 117 Cr.P.C. Provides that no person shall be. ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under Section 119. Proviso (b) further provides that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive.

7. In view of the above reasons, it is clear that the provisions under Chapter 8 are to bound down the person from whom security is required for keeping peace and good behaviour. It is also clear from above provisions that maximum period for which security for peace and good behaviour can be demanded is upto three years. In default of furnishing the security and surety, the person against whom order has been passed, can be sentenced to undergo three years imprisonment which is the maximum period for which one can be bound down to keep peace and good behaviour.

8. In the present case, the petitioner did not furnish the bond as ordered by the Executive Magistrate under Section 110 read with Section 117 Cr.P.C. as ordered vide order dated 29.3.2000 and therefore, he was undergoing sentence for three years. During his sentence, in Sessions Case No. 119/01, he was sentenced for ten years imprisonment vide judgment and order dated 17.5.02.

9. As per reply filed by the State, petitioner has already served sentence of 9 years, 9 months and 27 days including remission in Sessions Case No. 119/01. The question of law raised before this Court is whether sentence awarded to the petitioner under Section 122 Cr.P.C. shall run concurrently with the sentence awarded in Sessions Case No. 119/01 even when in the order of subsequent sentence, the Court has not ordered running two sentences concurrently and

whether the petitioner is required to serve the remaining period of sentence awarded under the provisions of Section 122 Cr.P.C. after completion of his sentence awarded subsequently by the Court of Sessions Judge in the case under Section 376, I.P.C.

10. Section 427 Cr.P.C. which has been relied upon by the learned Public Prosecutor reads as under:

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.

11. According to learned Public Prosecutor, as per provisions of Section 427 Cr.P.C, 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, meaning thereby, according to learned Public Prosecutor, latter sentence started and commenced immediately and therefore, former sentence which the petitioner was undergoing, stand suspended to give way to the subsequent sentence and therefore, from the plain reading of proviso to Sub-section (1) of Section 427, it clear that two sentences in such circumstances cannot run concurrently.

12. The contention of learned Public Prosecutor cannot be accepted in view of the fact that Sub-section (1) of Section 427 Cr.P.C. is very specific which provides for running of two sentences consecutive that is, one after another which is clear from the language of Sub-section (1) of Section 427, Cr.P.C. that 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. However, it has been conditioned by making provision that Court may direct otherwise i.e., the Court may direct that subsequent sentence shall run concurrently with such previous sentence. Because of this reason i.e. because of Sub-section (1) of Section 427 Cr.P.C, two sentences in given circumstances run separately and one after another as it is provided by Statute.

13. Contrary to above, as per proviso to Sub-section (1) of Section 427 Cr.P.C, in a case where person is serving sentence under Section 122 Cr.P.C is convicted for any offence subsequently and sentenced to undergo imprisonment, the subsequent sentence is to commence immediately. The proviso only provides that 'the latter sentence shall commence immediately' meaning thereby, the sentence in latter conviction and sentence will start immediately, irrespective of the fact that the accused is serving sentence in another case and that means that the two sentences shall run concurrently because there is no provision of suspension of earlier sentence because of conviction in subsequent case wherein, the accused has been sentenced. Neither earlier sentence stand deferred nor subsequent sentence can be postponed in view of clear language of the provision that the 'subsequent sentence is to commence immediately.' The order of Court to run sentences concurrently needed only in cases covered under Sub-section (1) of Section 427 because so is provided specifically by Sub-section (1) of Section 427 Cr.P.C that two sentences will run consecutively unless ordered by the Court to run it concurrently. Exception to that statutory running of two sentences separately and one after another depends upon the judicial order of the Court or when case falls under proviso to Sub-section (1) of Section 427 Cr.P.C.

14. Sub-section (1) of Section 427 Cr.P.C. is also a special provision made for special purpose and looking to the gravity of the offence and to make clear that normally rule is to run two sentences consecutively whereas, the proviso has been made under Sub-section (1) of Section 427 Cr.P.C purposefully because of the reason that a person can be sentenced under Section 122 Cr.P.C. only for non-furnishing of security for his keeping peace and good behaviour and the maximum period for which he can be bound down is for three years, then he can be asked to either give security for three years or can be detained in prison upto three years.

15. The Division Bench of Kerala High Court in case of 'Sukumaran v. State of Kerala and Anr.' after considering various earlier judgments held that normally sentence imposed in different crime cases shall run consecutively, one after another and not concurrently. That is the legislative mandate. But the Court has power to make it concurrent in appropriate circumstances. The concerned Court which convicts an accused has to decide the appropriate sentence to be imposed, whether the right of set off should be give and whether the sentence should be imposed concurrently to the earlier sentence (if any) imposed. If nothing is stated it is presumed that Court intends that accused shall suffer the sentence consecutively. The said is the position as given in Section 427 Cr.P.C. The proviso to Sub-section (1) of Section 427 Cr.P.C. was not under consideration before the Division Bench of Kerala High Court nor the case in hand is falling under Sub-section (1) of Section 427 Cr.P.C.

16. We would like to reiterate that in the present case, the accused was sentenced to imprisonment under Section 110 Cr.P.C read with Section 117 and 122 Cr.P.C. which is a sentence awarded in default of furnishing security and as such, offence of convict is of non-furnishing of security for his good behaviour and for keeping peace. Therefore, the judgment of Kerala High Court has no application to facts of this case.

17. The judgment relied by learned Counsel for the petitioner in the case of 'Vimal Mehra v. State' also has no application to facts of this case because of reason that in Vimal Mehra's case, Sub-section (2) of Section 427 Cr.P.C. was under consideration which is also a provision applicable to particular sentence i.e. for

person already undergoing sentence of imprisonment for life and there is a subsequent conviction to a term or imprisonment for life. Here the case is quite different.

18. In the present case, admittedly the accused was sentenced by order dated 29.3.2000 for imprisonment under Section 110/41 Cr.P.C. with Section 117 read with Section 122 Cr.P.C. and the petitioner had already served more than 3 years 01 month and 18 days sentence for that act of accused. Thereafter, he remained and continued behind the bars because of his subsequent conviction for more than nine years. The accused yet has not been released, therefore, by this time period of three years of his sentence has completed long ago.

19. In view of the above reason, the petition deserves to be allowed and it is held that petitioner cannot be detained beyond the period for which he has been sentenced in Sessions Case No. 119/01 and his detention cannot continue on the basis of sentence under Section 110/41 Cr.P.C. read with Section 122 Cr.P.C nor his sentence stand deferred from his conviction in Sessions Case No. 119/01.

20. Accordingly, the petition is allowed and we direct the authorities that in case the petitioner has completed his sentence in Sessions Case No. 119/01, irrespective of his sentence passed by Additional District Magistrate (City), Kota under Section 110/41 Cr.P.C. read with Section 122 Cr.P.C. vide order dated 29.3.2000, he shall be released forthwith, if not required in any other case.

A copy of this order may be sent to the convict through jail authorities.

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