

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

FRIDAY, THE 20TH DAY OF MARCH 2020 / 30TH PHALGUNA, 1941

Cr1.MC.No.2367 OF 2020(E)

AGAINST THE JUDGMENT IN ST 68/2019 OF JUDICIAL MAGISTRATE OF  
FIRST CLASS ,NADAPURAM

PETITIONER/ACCUSED :

C.T.K.CHANDRAN  
AGED 50 YEARS  
S/O. CHATHU, CHALIL THAZHEKUNI (H)  
KADAMEREI AMSOM DESOM, NADAPURAM.

BY ADV. SRI.K.B.ARUNKUMAR

RESPONDENTS/STATE, DEFACTO COMPLAINANT:

- 1 STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT  
OF KERALA, ERNAKULAM PIN 682 031
- 2 THE SUB INSPECTOR OF POLICE,  
NADAPURAM POLICE STATION, NADAPURAM, KOZHIKODE  
DISTRICT PIN 673 504
- 3 THE MANAGING DIRECTOR,  
ISHANA GOLD AND PRECIOUS PVT. LTD COMPANY,  
ADUKKALIL (H), BATHERI, WAYANAD DISTRICT, PIN 673  
592
- 4 CHALIL KANNAN,  
AGED 58 YEARS  
S/O. POKKAN, CHALIL (H), VALAYAM AMSOM DESOM,  
VATAKARA TALUK, PIN 673 101
- 5 BABU,  
AGED 39 YEARS  
S/O. KANNARAN, KUNHIPARAMBIL (H), VELLIYODE  
AMSOM, KODIYOORAM DESOM, VATTAKARA TALUK,  
KOZHIKODE DISTRICT PIN 673 101

R1 & SRI C K PRASAD-PP

R2

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
18.03.2020, THE COURT ON 20.03.2020 PASSED THE FOLLOWING:

**"C.R"**

**R. NARAYANA PISHARADI, J**

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**CrI.M.C No. 2367 of 2020**  
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Dated this the 20<sup>th</sup> day of March, 2020

**ORDER**

The question that arises for consideration in this petition is, whether imprisonment in default of payment of fine awarded on an accused in a case can be ordered to run concurrently with imprisonment in default of payment of fine awarded on him in other cases.

2. The petitioner is the accused in the cases S.T Nos.68/2019, 69/2019 and 70/2019 on the file of the Court of the Judicial First Class Magistrate-I, Nadapuram.

3. The aforesaid cases were instituted upon the complaints filed against the petitioner by different persons for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

4. The petitioner was absconding in the aforesaid cases. The cases had been entered into the register of long pending cases. On 24.01.2019, the petitioner appeared in the trial court and he pleaded

guilty to the offence alleged against him in all the three cases. The learned Magistrate found that the plea was voluntarily made by the petitioner and accepted it.

5. Learned Magistrate convicted the petitioner for the offence under Section 138 of the Negotiable Instruments Act in all the three cases. In the case S.T No. 68/2019, the petitioner was sentenced to imprisonment till the rising of the court and to pay a fine of Rs.1,90,000/- and in default of payment of fine, to undergo simple imprisonment for a period of three months. In the case S.T No. 69/2019, the petitioner was sentenced to imprisonment till the rising of the court and to pay a fine of Rs.26,000/- and in default of payment of fine, to undergo simple imprisonment for a period of one month. In the case S.T No. 70/2019, the petitioner was sentenced to imprisonment till the rising of the court and to pay fine of Rs.1,50,000/- and in default of payment of fine, to undergo simple imprisonment for a period of three months. In all the three cases, learned Magistrate directed that, if the fine amount was realised, it shall be paid as compensation to the complainant.

6. This petition is filed under Section 482 Cr.P.C by the accused praying that the imprisonment awarded to him in the three cases, in default of payment of fine, may be ordered to run

concurrently.

7. Heard learned counsel for the petitioner and also the learned Public Prosecutor.

8. Section 427(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') provides 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, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.

9. Sub-section (1) of Section 427 of the Code provides for the situation when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment. Then, ordinarily, the subsequent sentence of imprisonment would commence at the expiration of the first term of imprisonment, unless the Court directs the subsequent sentence to run concurrently with the previous sentence.

10. It is manifest from Section 427(1) of the Code that the Court has the power and the discretion to issue a direction that the subsequent sentence of imprisonment shall run concurrently with the

previous sentence of imprisonment. But, in the very nature of the power so conferred upon the Court, the discretionary power shall have to be exercised along judicial lines and not in a mechanical or pedantic manner. The legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction.

11. In the case of the petitioner, the three cases arise out of three different transactions. The complainant in the three cases are also different persons.

12. The more important question is whether the provision contained in Section 427(1) of the Code has application to imprisonment in default of payment of fine awarded to an accused.

13. Section 30(1) of the Code provides that, the court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law. Section 30(2) of the Code provides that the imprisonment awarded under Section 30 may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under Section 29.

14. Section 64 of the Indian Penal Code provides that, in every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without

imprisonment, and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine, it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, in which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

15. Section 68 of the Indian Penal Code provides that the imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

16. Imprisonment in default of payment of fine cannot be deemed to be a sentence. It is a penalty which is incurred on account of non- payment of fine. A sentence is something which must be undergone unless it is set aside or remitted in part or in whole in appropriate proceedings. However, in case of imprisonment awarded in default of payment of fine, the accused may avoid it, by payment of the fine.

17. In **Shanti Lal v. State of M.P: (2007) 11 SCC 243**, the Apex Court has held as follows:

“The term of imprisonment in default of payment of fine is not a sentence. It is a penalty which a person incurs on

account of non-payment of fine. The sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole either in appeal or in revision or in other appropriate judicial proceedings or 'otherwise'. A term of imprisonment ordered in default of payment of fine stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. He, therefore, can always avoid to undergo imprisonment in default of payment of fine by paying such amount".

18. In **Shahejadhkan Mahebubkhan Pathan v. State of Gujarat : (2013) 1 SCC 570**, the Apex Court reiterated the principle that imprisonment in default of payment of fine is not a sentence. It was held as follows:

"It is clear and reiterated that the term of imprisonment in default of payment of fine is not a sentence. To put it clear, it is a penalty which a person incurs on account of non-payment of fine".

19. Since imprisonment in default of payment fine is not a sentence, Section 427(1) of the Code can have no application to such imprisonment awarded on an accused.

20. In **V.K.Bansal v. State of Haryana : AIR 2013 SC 3447**, the Supreme Court has observed as follows:

"We make it clear that the direction regarding concurrent running of sentence shall be limited to the

substantive sentence only. The sentence which the appellant has been directed to undergo in default of payment of fine/compensation shall not be affected by this direction. We do so because the provisions of Section 427 of the Cr.P.C do not, in our opinion, permit a direction for the concurrent running of the substantive sentences with sentences awarded in default of payment of fine/compensation”.

21. In the light of the discussion above, the prayer made in this petition cannot be allowed. The petition is liable to be dismissed.

Consequently, the petition is dismissed.

**Sd/- R. NARAYANA PISHARADI  
JUDGE**

