

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 12.05.2020

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1 OP(MD)No.18030 of 2019

Sheik Madhar

... Petitioner / Accused

Vs.

- 1.The State of Tamil Nadu,
rep.by its Principal Secretary
to the Government,
Home Prohibition and Exercise
Department, Secretariat, Chennai – 8.
- 2.The Superintendent of Central Prison,
Trichy Central Prison, Trichy.
- 3.The Inspector of Police,
Palakkarai Police Station,
Trichy District.

... Respondents

Prayer : This Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to direct the petitioner to undergo the sentences in concurrent manner relating to the punishment imposed against the petitioner in the judgments in C.A No.110 of 2019 dated 07.01.2019, C.A No.111 of 2019 dated 07.01.2019, C.A No.112 of 2019 dated 07.01.2019, C.A No.113 of 2019 dated 07.01.2019 and C.A No.114 of 2019 dated 07.01.2019 on the file of the Sessions Judge, Tiruchirappalli Division, Tiruchirappalli District in accordance with law within the time stipulated by this Court.

For Petitioner : Mr.R.Alagumani
For Respondents : Mr.A.Robinson,
Government Advocate (crl.side)

ORDER

The petitioner is aged about 60 years. He was charged with having committed the offences of house breaking and theft in as many as five cases. He pleaded guilty. He was sentenced to three years simple imprisonment and to pay a fine of Rs.5,000/- for each of the offences in each case. Even though an appeal will not lie when an accused person has pleaded guilty and has been convicted on such plea, Section 375 of Cr.Pc permits an appeal as regards the extent or legality of the sentence. The petitioner citing his old age and ill-health filed appeals and sought modification and reduction of the sentences. The Sessions Judge accepting the grounds pleaded by the petitioner modified the sentence of imprisonment and fine for each offence from three years to two years and from Rs.5,000/- to Rs.100/- respectively. However, both the trial court as well as the appellate court did not pass any direction as to whether the sentences in all the cases are to run consecutively or concurrently. Therefore, this petition has been filed under Section 482 of Cr.Pc for directing that the sentences in all the five cases shall run concurrently.

2.The learned counsel appearing for the petitioner reiterated the contentions set out in the affidavit filed in support of the petition and placed particular reliance on the decision reported in *2018 2 L.W (crl.) 773 (Selvakumar @ Jeyakumar vs. The Inspector of Police, Seidhunganallur Police Station)*. Per contra, the learned Government Counsel (crl.side) submitted that the proper course open to the petitioner is to file revision cases under Section 397 of Cr.Pc and not invoke Section 482 of Cr.Pc. He also would contend that the petitioner having been found guilty in five different cases cannot seek the benefit of concurrent running of sentences.

3.I carefully considered the rival contentions. Of course, the petitioner could have filed revision cases and sought the very same relief now prayed in this O.P. But then, the inherent powers of this Court can also be invoked where there is an abuse of the process of any Court.

4.The petitioner was implicated as an accused in as many as five cases. All of them were registered by the Sub Inspector of Police, Palakarai Police Station, Trichy. Interestingly, they have been registered successively(Crime Nos.48/2017, 49/2017, 50/2017, 51/2017 and 52/2017). They involved house breaking and committing of theft. The

defacto complainants were five in number. Each one of them was running an optical shop. On 09.01.2017, after the day's business was over, they downed the shutters and went home. According to the police version, the petitioner was waiting in the vicinity. He first broke open the shop of Adbul Rahman (A.S Optical) at about 00.30 hrs and took Rs. 7300/- kept in the drawer of the shop. He thereafter broke open the shop of Ashiq Hussain (Eye Point Optical) at about 00.45 hrs and took Rs.6400/-. At 01.00 A.M, he broke open the shop of Riyas (Vision Care Optical) and pocketed Rs.2,000/-. At about 01.15 hrs, he entered Babu Optical and took away Rs.1,000/-. J.E.M Optical was the next target. At 01.30 A.M, he broke open the said shop. But then, the proprietor Mohammed Sulthan was smart and he did not leave any cash behind in the shop. Since in the last crime committed by the petitioner no money was lost, the charge was limited to house breaking and attempt to commit theft.

5.I find it impossible to believe that within a span of one hour, the petitioner managed to break open and enter as many as five shops which were located in the bazaar. All the five cases were registered successively and the petitioner also pleaded guilty in all the five. I find the entire story a little dramatic. The cases appear to have been put up. It is true that

the premises that were broken into were optical shops. But that does not mean that judicial vision must be surrendered. Section 241 of Cr.Pc clearly states that if the accused pleads guilty, the magistrate shall record the plea and may, in his discretion convict him thereon. The trial magistrate ought not to be in a hurry to convict the accused who had pleaded guilty. In this case, for each of the offence, the magistrate had sentenced the accused to three years imprisonment. The judicial magistrate must satisfy his conscience that there are materials indicating the commission of the offence and the culpability of the accused. Only thereafter, he can convict and sentence the accused. There must be deliberation on the part of the magistrate before passing an order of conviction particularly when he intends to pass a stiff sentence also. The magistrate must not be mechanical in his approach. Conducting a trial and passing a judgment after contest can be cumbersome. But in matters concerning personal liberty, the court ought not to short circuit the process. Article 21 of the Constitution permits deprivation of personal liberty only by a due process of law. This mandate has to be borne in mind by the presiding Judge when acting on the plea of guilty by the accused.

6.I feel tempted to dig a little deeper into the facts. I wanted to find out if these five have been falsely slapped against the petitioner. But then, I refrain from doing so only for the reason that the petitioner himself does not seek any declaration of innocence in these proceedings. All that he wants is that the sentences should run concurrently.

7.The relevant provision is Section 427 (1) of Cr.Pc. It reads as under :

“Sentence on offender already sentenced for another offence. 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 :...”

Let me now parse the provision and break it into its component parts.

- (i) A person is already undergoing a sentence of imprisonment.
- (ii) he is sentenced on a subsequent conviction to imprisonment or imprisonment for life.

(iii) such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced.

(iv) unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.

The aforesaid provision states that if the sentencing court fails to give a specific direction that the subsequent sentence shall run concurrently with the previous sentence, it would run only consecutively.

8.The question is whenever the sentencing court failed to pass any direction in terms of Section 427 of Cr.Pc, will the effect of consecutiveness kick in automatically ?. A closer reading of the provision would indicate that the condition precedent for the application of Section 427 of Cr.PC is that the person must be already undergoing a sentence of imprisonment when he is convicted on a subsequent occasion and sentenced. The whole issue turns on the expression “already undergoing a sentence of imprisonment”. “Already” means “before a particular time in the past or before now”. “Undergoing” means “experiencing something” (Oxford Advanced Learner's Dictionary, New 9th Edition). One cannot be said to be undergoing a sentence of imprisonment unless

warrant for its execution had been issued under Section 425 of Cr.Pc and it had taken effect. Only if the convict had been physically detained pursuant to such warrant, he can be said to be undergoing a sentence of imprisonment and not otherwise.

9. Thus, for Section 427 (1) of Cr.Pc to apply, the condition precedent must be that the person convicted and sentenced on the subsequent occasion was already undergoing a sentence of imprisonment in the previous case. If he was not so undergoing a sentence in the previous case, Section 427 (1) will not apply at all. I must emphasize that Section 427 of Cr.PC does not talk of a person already sentenced to a term of imprisonment being sentenced on a subsequent conviction to a term of imprisonment. The legislature has carefully added the words "already undergoing". This is significant. No word occurring in a statutory provision can be ignored. Each expression has to be given its full effect.

10. The expression "undergoing" is also found in Section 426 of Cr.PC dealing with sentence on escaped convict. Only a person undergoing sentence in a prison can escape and that would be an independent offence by itself. Section 428 of Cr.Pc is about setting off

the period of detention already undergone by the accused against the sentence of imprisonment.

11. Suppose on a single day, an accused is found guilty in more than one case and sentenced. It is for the court concerned to clarify as to when the sentence in the subsequent case will take effect. If the court is silent on this aspect, the sentences will start running from the date when they were given effect to. Section 427 (1) has prescribed the manner in which the sentence will run. It states that if the court is silent and had not given any direction that the sentence given in the subsequent case will run concurrently, it will run only consecutively. Such an adverse consequence emanating from the silence of the court has a serious implication for personal liberty. The Constitution attaches a very high value to personal liberty. Therefore, such a provision must be construed in a manner that is at once fair, just and reasonable. Only by giving full effect to the expression "already undergoing" such a result can be obtained.

12. The case on hand is a classic proof. The petitioner was accused in five successive but different occurrences. The final reports were taken on file in C.C Nos.296 of 2017 to 300 of 2017 by the learned Judicial

Magistrate No.V, Tiruchirappalli. In all the cases, the petitioner pleaded guilty. Judgment of conviction and sentence was imposed in all the cases on a single day ie., 30.01.2018. Even according to the prosecution, the total amount involved is Rs.16,700/-. Both the trial court as well as the appellate court failed to give the direction contemplated in Section 427(1) of Cr.Pc. If Section 427(1) is not understood as interpreted above, the result will be that the petitioner will rot in prison for ten long consecutive years. In my view, it would be a monstrous situation.

13. When the petitioner was convicted and sentenced in C.C No.297 of 2017 on the file of the Judicial Magistrate No.V, Tiruchirappalli, he had already been convicted and sentenced in C.C No.296 of 2017. But then, he had only been convicted and sentenced. He was not undergoing any sentence of imprisonment. The same logic and reason will govern the sentences in the subsequent cases in C.C Nos.298 to 300 of 2017. Therefore, even if no specific direction had been passed that the subsequent sentence shall run concurrently with the previous sentence, in view of the construction now placed on Section 427 of Cr.Pc, they will necessarily run only concurrently. In any event, considering the overall facts and circumstances, I have no hesitation to direct that the sentences imposed on the petitioner will run concurrently.

14.This Criminal Original Petition stands allowed.

12.05.2020

Index : Yes / No
Internet : Yes / No
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Note : The soft copy of the order as uploaded in the website can be acted upon and there is no need for obtaining a certified copy.

To

- 1.The Principal Secretary to the Government,
Home Prohibition and Exercise Department,
Secretariat, Chennai – 8.
- 2.The Superintendent of Central Prison,
Trichy Central Prison, Trichy.
- 3.The Inspector of Police,
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G.R.SWAMINATHAN, J.

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