
Before M.M. Kumar, J

R.D. BHARTI,—*Petitioner*

versus

HOME SECRETARY, U.T., CHANDIGARH
AND OTHERS,—*Respondents*

CrI. M. No. 46827—M OF 2001

10th December, 2003

Code of Criminal Procedure, 1973—Ss.258, 427, 428 and 458—Negotiable Instruments Act, 1881—S. 138—Dishonour of cheques—Conviction of petitioner in number of cases—Award of different sentences in different cases by various Courts—Number of cases also pending against the petitioner where sentences are yet to be announced—Magistrates in separate orders of separate dates not ordering that the sentences should run concurrently as per provisions in Section 427—Magistrate has power to impose fine by way of compensation to be paid to complainants or in lieu thereof petitioner was to undergo further sentence—Petitioner does not deserve the concession of bail—Petition liable to be dismissed.

Held, that a perusal of orders passed by the Magistrates awarding sentences against the petitioner shows that the imposition of fine has been ordered to be paid to the complainants which necessarily mean that the same has been imposed as a compensation, not as a fine simplicitor. Therefore, it cannot be concluded that the Magistrate did not have the power to impose the aforesaid compensation.

(Para 7)

Further held, that this petition is liable to be dismissed because the Magistrates in separate orders of separate dates have not ordered that the sentences should run concurrently as per the provisions made in Section 427 Cr.P.C. nor any such prayer appears to have been made by the petitioner before the Magistrates.

(Para 9)

S.S. Narula, Advocate, *for the Petitioner.*

Tarundeep Kumar, Advocate, *for the respondent.*

Ajai Lamba, Advocate, *for Union Territory, Chandigarh.*

JUDGMENT

M.M. KUMAR, J.

(1) This petition prays for interm bail for 90 days to enable the petitioner to seek bail in numerous registered against him under Section 138 of the Negotiable Instruments Act, 1881 and other offences, as well as stay of this arrest during the period of interim bail in any other case. By later applications *viz* Cr Misc, No. 48549/02 and Cr. Misc, 39926/03 supplementary prayer were made seeking release claiming that the petitioner is entitled to be released from the jail as he completed even the sentences as undertrail which he might be required to undergo in case of his conviction in those cases.

(2) Brief facts of the case are that the petitioner is Chairman-cum-Managing Director of N.I.T.L Mutual Benefit (India) Limited. with its head office at 9-A, DG-1, Vikaspuri, New Delhi. The company invited investments from general public in a number of projects assuring it maximum return. Various complainants from various parts of the country filed complaints, alleging that they invested different amounts in the company of the petitioner. In repayment and discharge of its enforceable liability, the petitioner had issued cheques which have been dishonoured, resulting into conviction of the petitioner in number of cases. An affidavit has been filed by Mr. D.S. Rana, Superintendent, Model Jail, Chandigarh showing that the petitioner has been convicted in nine cases and different sentences have been awarded. The detail of the same as given in the affidavit reads as under:—

“(1) **Simardeep Kaur versus NITL** : In this case the petitioner was convicted and sentenced to undergo R.I. for one year, —*vide* order dated 4th September, 2001 by the Court of Mrs Jitinder walia, Judicial Magistrate Ist Class, Chandigarh. The under-trail period in this case was determined as one year, as such, the sentence has been considered as already undergone.

(2) **Dilbagh Singh versus NITL** : In this case the petitioner was convicted and sentenced to one year's R.I. ,--*vide* order dated 4th September, 2001 passed by Mrs. Jitinder Walia, Judicial Magistrate Ist class,

Chandigarh. In this case the under trail period was 5th months and 17 days and the remaining sentence of 6th months 13 days was completed on 17th March, 2002.

- (3) **Pawandeep versus NITL** : In this case the petitioner was convicted and sentenced to undergo R.I. for one year,--*vide* order dated 4th September, 2001 passed by Mrs Jitinder Walia, Magistrate Ist Class, Chandigarh. the under trail period in this case was 9th months and 26 days and the remaining sentence comes to 2 months and 4 days which was concluded being concurrent sentence.

Subject : Clarification of sentence awarded to accused R.D. Bharti in complaint cases titled Dilbagh Singh, Pawandeep Singh and Simardeep Kaur *versus* NITL Mutual Benefits Fund.

Please refer to the subject cited above.

With reference to your letter No. 2741 dated 13th September, 2001, it is made clear that the sentences of the accused shall run concurrently and the benefit of under trial period under Section 428 cr. P.C. is to be given from 4th September 2000 up to the date on which production warrants were received in the jail for the production of the accused R.D. Bharti.”

- (4) **Ankush Garg versus NITL** : In this case the petitioner was convicted and sentenced to undergo one year's R.I. under orders of Shri K.K. Goyal, Judicial Magistrate Ist Class, Chandigarh dated 13th October, 2001 and a fine of Rs. 5000 or on default, R.I. for one month. The under trail period in this case come to 7 months and 17 days and the remaining sentence of 4 months and 13 days concluded on 30th July, 2002. Since the fine was not deposited, therefore, the peetitioner chose to undergo sentence in lieu thereof i.e. one month, which also concluded on 30th August, 2002.

- (5) **Sukhbir *versus* NITL** : In this case, the petitioner was directed to undergo sentence for 7 months and pay a fine of Rs. 5,000 and in default thereof to undergo simple imprisonment for one month, under the order of Shri Phalit Sharma, Judicial Magistrate, Ist Class, Chandigarh, dated 3rd November, 2001. The under trial period in this case was more than the sentence, as such, the sentence was considered to be undergone. The remaining sentence of one month's simple imprisonment for non-payment of fine concluded on 30th September, 2002.
- (6) **Abhilash Shanker *versus* R.D. Bharti** : In this case the petitioner was convicted and sentenced to already undergone period which came to 9 month's and 4 days, -*vide* judgment and sentence dated 1st March, 2002 passed by Shri Phalit Sharma, Judicial Magistrate, Ist Class, Chandigarh. A fine of Rs. 5,000 was also imposed and in default simple imprisonment for one week. One week's simple imprisonment has already been undergone by the petitioner.
- (7) **H.S. Bedi *versus* NITL** : In this case the petitioner was convicted and sentenced to undergo R.I. for one year, -*vide* orders dated 19th March, 2002. The under trial period in this case was more than one year and hence the sentence is already undergone by the petitioner.
- (8) **Vidya Wati *versus* NITL** : In this case the petitioner was convicted and sentenced to the period already undergone, -*vide* order of Shri Pushwinder Singh, Judicial Magistrate Ist Class, Chandigarh, dated 19th March, 2002.
- (9) **Neeta Pathania *versus* NITL** : In this case the petitioner has been convicted and sentenced to already undergone period, -*vide* order passed by Mr. Gurvinder Kaur, Judicial Magistrate Ist Class, Chandigarh, dated 2nd March, 2002.

(3) Apart from the aforementioned conviction ordered by various Courts, the petitioner has been convicted by Delhi Consumer Forum in which he has been awarded various sentences as per the list shown furnished by learned counsel for Union Territory, Chandigarh. The same read as under :—

- “1. Complain No. M—1538/99 Date of sentence : 7th April 2000.

M—1539/99

One year R.I.

2. Complain No. 2100/99 Date of sentence : 7th April, 2000

M—1405/99

One year R.I.

3. Complain No. M.—1400/99 Date of sentence : 7th April, 2000.—

M—1405/99

M—1538/99

M—1539/99

M—1773/99

M—1774/99

M—1775/99

M—1776/99

M—1777/99

M—1778/99

One year R.I.

4. Shivan Restogi and Shiva Rastogi Case complain No. 1211/97 Date of sentence : 19th February 1999.

Two years R.I.

5. Complain No. M—2139—2000 1020/98

Harjinder Gautam *versus* R.D. Bharti

Date of Sentence : 17th June, 2000

One year R.I.

6. Complain No. 2139/2000 Date of sentence : 4th July,
2001.

2342/2000

One year R.I.

7. Complain No. 1659 Date of sentence : 23rd
October, 1998.

One year R.I.

(4.) In addition to the above, five cases have been registered against the petitioner at Patna (Bihar), Delhi, Bombay and Chandigarh. The detail of the same is as under : —

“1. F.I.R. No.— 42/98

U/s— 420, 406, 120B I.P.C.

P.S.— Central Chandigarh

2. F.I.R. No.— 156/98

U/s 420/34 I.P.C.

P.S. Gandhi Maidan, Patna (BIHAR)

3. F.I.R. No.— 555/97, 574/97, 585/97, 644/97

U/s 420, 406/34 I.P.C.

P.S. Vikas Puri,

New Delhi.

4. F.I.R. No. 56/97

U/s 420, 406, 120B I.P.C.

P.S. G.B.C.B.C.T.D. Mumbai

Maharashtra.

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5. F.I.R. No. 265/97
U/s 406, 420, 120B I.P.C.
P.S. Vasi Mumbai
Maharashtra.
6. F.I.R. No. 431/97
U/s 420, 406/34 I.P.C.
P.S. Jahu, Mumbai
Maharashtra.

(5) According to the detail furnished on 12th July, 2002, the Superintendent, Model Jail, Chandigarh had also supplied a list of nine cases where the petitioner has been convicted with detail of the sentence awarded to him, five cases where the sentence has been awarded to him by the Courts at Patiala and seven cases where he has been awarded different sentences by the Consumer Court, Delhi. The list further disclosed various pending cases at Patiala, Chandigarh, Delhi, Faridabad, Mumbai and Bihar.

(6) Mr. S.S. Narula, learned counsel for the petitioner has submitted that the petitioner has undergone substantive sentence for a period more than the sentences awarded by various Courts as the sentences were to run concurrently. According to the learned counsel even in cases where the petitioner is facing trial and has been in detention under section 258 of the Code of Criminal Procedure, 1973 (for brevity, Cr. P.C.), he should be discharged by the Magistrates by applying a deeming fiction that he has already undergone that sentence. The learned counsel has placed reliance on Section 428 and 458 Cr.P.C. to argue that he cannot once again be further sentenced by the Magistrates on the basis of the trials pending elsewhere like Mumbai, Patna, Faridabad and Delhi. In support of his submission, the learned counsel has placed reliance on a judgment of the Supreme Court in the case of **State of Maharashtra and another versus Najakat Alia Mubarak Ali, (1)**. He has also placed reliance on another judgment of the Supreme court in the case of **Husainara Khatoon and others versus Home Secretary, State of Bihar, Patna, (2)**. The learned counsel has further argued that under section

(1) (2001) 6 S.C.C. 311

(2) AIR 1979 S.C. 1377

138 read with Section 142 of the Act and Sections 29(2) and 357 Cr.P.C., the Magistrate has no power to impose fine beyond Rs. 5,000. Therefore, the imposition of fine for lacs of rupees by the Magistrate would not stand in the way of the petitioner from being released on bail. For the aforementioned proposition, the learned counsel has placed reliance on a judgment of the Supreme Court in the case of **Pankajbhai Nagjibhi Patel versus State of Gujarat and another (3)**. The learned counsel has also submitted that the sentences should be deemed to be running concurrently and cannot be taken to be running consecutively. The learned counsel has also argued that the petitioner is admittedly in custody since 19th February and has already served sentences for more than 4½ years. Merely because there are production warrants issued against the petitioner for his trial by some other Courts, it will not be proper to continue his detention. In support of his submission, the learned counsel has relied upon the judgements of the Supreme Court in the cases of **Ram Dass Ram versus State of Bihar and another (4)** and **Manoj versus State of Madhya Pradesh, (5)**.

(7) The petitioner has also placed on record copies of some judgments passed by the Magistrates awarding sentences against him. A perusal of those orders shows that the imposition of fine has been ordered to be paid to the complainants which necessarily would mean that the same has been imposed as a compensation, not as a fine simplicitor. Therefore, it cannot be concluded that the Magistrate did not have the power to impose the aforesaid compensation. The judgement in **Pankajbhai Nagjibhai Patel's case (supra)** on which reliance has been placed by learned counsel for the petitioner would not be of any assistance to him because under Section 357 Cr.P.C., there is adequate power given to the Magistrate to pass an order in favour of the complainant to compensate him. There is ample support for the aforementioned view in section 357 Cr. P.C. which has been interpreted by the Supreme Court in **K. Bhaskaran versus Sankaran Vaidhyan Balan, (6)** The Supreme Court in **Hari Singh versus Sukhbir Singh and others, (7)** has emphasized the need for making liberal use of that provision. It is further pertinent to notice

(3) 2002 (1) All India Criminal Reporter 80

(4) AIR 1987 S.C. 1333

(5) 1999 CrL. L.J. 2095

(6) (1999) 7 S.C.C. 510

(7) (1988) 4 S.C.C. 551

that no limit has been placed under Section 357 Cr.P.C. on the power of the Magistrate to fix the quantum of such compensation. Accordingly, I do not find any ground to hold that the Magistrate did not have the jurisdiction to impose the fine by way of compensation which was to be paid to the complainants in various cases or in lieu thereof, the petitioner was to undergo further sentence.

(8) Learned counsel for Union Territory, Chandigarh has argued that the petitioner does not deserve the concession of bail or the enlarged relief of releasing him as the sentence in lieu of non payment of compensation awarded to the complainants is yet to be completed. According to the learned counsel, there are number of pending cases where the petitioner is facing trial and the sentences are yet to be announced. The learned counsel has argued that the law laid down by the Supreme Court in **Najakat Alia Mubarak Ali's case** (*supra*) would not be attracted to the present case as the conviction in some other cases is yet to be recorded and he is merely an under trial. The learned counsel has further emphasized that no benefit of the judgment in **Hussainara khatoon's case** (*supra*) could be given to the petitioner.

(9) After hearing learned counsel for the parties, I am of the view that this petition is liable to be dismissed because the Magistrates in separate orders of separate dates have not ordered that the sentences should run concurrently as per the provisions made in Section 427 Cr. P.C. nor any such prayer appears to have been made by the petitioner before the Magistrates. Section 427 and 428 Cr. P.C. read 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 sentenced 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 of 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.— When 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.”

(10) Both these provisions came up for consideration before the Supreme Court in the case of **Najakat Alia Mubarak Ali's case** (*supra*). The view of the Supreme Court on Sections 427 and 428 Cr. P.C. reads as under.—

“The placement of that section just below Section 427 of the Code tempts us to have a peep into the preceding section, which deals with instances wherein one person is sentenced in a case when he has already been undergoing the sentence in another case. The first subsection of Section 427 says that the sentence in the second conviction shall commence at the expiration of the imprisonment to which the accused has been previously sentenced, “unless the court directs that the

subsequent sentence shall run concurrently with such previous sentence'. The second sub-section to Section 427 of the Code says that 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.

Thus the sentence of life imprisonment imposed on the same person in two different convictions would converge into one and thereafter it would flow through one stream alone. Even if the sentence in one of those two cases is not imprisonment for life but only a lesser term the convergence will take place and the post-convergence flow would be through the same channel. In all other cases, it is left to the Court to decide whether the sentences in two different convictions should merge into one period or not. If no order is passed by the Court the two sentences would run one after the other. No doubt, Section 427 is intended to provide amelioration to the prisoner. When such amelioration is a statutory operation is a statutory operation in cases falling under the second sub-section it is a matter of choice for the court when the cases fall within the first sub-section. Nonetheless, the entire section is aimed at providing amelioration to a prisoner. Thus a penumbra of the succeeding section can be glimpsed through the former provision."

(emphasis added)

(11) Referring to the report of a committee for introducing Section 428 Cr.P.C., their Lordships have further laid down two requisites before the benefit of Section 428 Cr.P.C. could be given, namely, (1) during the stage of investigation, enquiry or trial of a particular case the prisoner should have been in jail atleast for a certain period; and (2) he should have been sentenced to a term of

imprisonment in that case. It is further clear that the sentences are to Dove-tail in cases where a person is already convicted and while serving sentence he is further convicted. In such cases from the date of order of subsequent conviction, the convict is to undergo the balance sentence, not the whole sentence. However, if he is required in any other case, then it is entirely a different matter. A reading of paragraphs 16, 17 and 18 of the judgement in **Najakat Ali's case** (*supra*) makes the aforementioned position further clear which read as under.

“If the above two conditions are satisfied then the operative part of the provision comes into play i.e. if the sentence of imprisonment awarded is longer than the period of detention undergone by him during the stages of investigation, enquiry or trial, the convicted person need undergo only the balance period of imprisonment after deducting the earlier period from the total period of imprisonment awarded. The words “if any” in the section amplify that if there is no balance period left after such deduction the convict will be entitled to be set free from jail, unless he is required in any other case. In other words, if the convict was in prison, for whatever reason, during the stages of investigation, enquiry or trial of a particular case and was later convicted and sentenced to any term of imprisonment in that case the earlier period of detention undergone by him should be counted as part of the sentence imposed on him.”

(Emphasis added)

In the above context, it is apposite to point out that very often it happens, when an accused is convicted in one case under different counts of offences and sentenced to different terms of imprisonment under each such count, all such sentences are directed to run concurrently. The idea behind it is that the imprisonment to be suffered by him for one count of offence will, in fact and in effect be imprisonment for other counts as well.

Reading Sections 428 of the Code in the above perspective, the words "of the same case" are not to be understood as suggesting that the set-off is allowable only if the earlier jail life was undergone by him exclusively for the case in which the sentence is imposed. The period during which the accused was in prison subsequent to the inception of a particular case, should be credited towards the period of imprisonment awarded as sentence in that particular case. It is immaterial that the prisoner was undergoing sentence of imprisonment in another case also during the said period. The words "of the same case" were used to refer the pre-sentence period of detention undergone by him. Nothing more can be made out of the collocation of those words."

(12) In view of the above . I am of the view that the petitioner cannot be released from prison even if it is presumed that he has undergone the sentences awarded on account of conviction in various cases because firstly there are number of cases pending against the petitioner and secondly he is yet to complete his sentence in lieu of non payment of compensation/fine. This is the precise ratio of the judgement in **Najakat Alia mubarak Ali's case** (*supra*) as the underlined portion shows. Moreover, there is no order by the Magistrates passed under Section 258 Cr.P.C. discharging the petitioner nor there is any order passed by any Magistrate under Section 427 Cr.P.C. directing that the sentence shall run concurrently with any previous sentence. There is no material on record to show that any superior court on appeal or revision has directed the sentences to run concurrently. Therefore, there is no substance in this petition and the same is liable to be dismissed.

13. For the reasons stated above, this petition fails and the same is dismissed.

R.N.R.