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*Before K.S. Garewal, J.*

BAGHAIL SINGH,—Appellant

*versus*

STATE OF PUNJAB,—Respondent

CrI. M. No. 17093 of 2003 in

CrI. A. No. 663/SB of 2000

29th April, 2003

*Code of Criminal Procedure, 1973—S. 427—Appellant convicted and sentenced to undergo rigorous imprisonment for life for committing murder—Subsequently appellant convicted for offence of culpable homicide and sentenced to undergo imprisonment for 10 years—No orders to run the sentence concurrently with the previous sentence—Sub Section (1) of S. 427 provides that subsequent sentence shall commence at the expiration of previous sentence unless the Court directs the sentence to run concurrently with previous sentence—Sub Section (2) of S. 427 provides that all subsequent sentences must run concurrently with imprisonment for life—Interpretation—Whether the appellant is entitled to be released on completion of his previous sentence—Held, no—Sentence of imprisonment for life means sentence shall continue till life ends—If first sentence of life imprisonment is remitted or commuted it becomes imprisonment for a term and the case must be taken out of sub-section (2) and put in sub-section (1)—Appellant not entitled to the benefit of Section 427(2) of the Code—Sentence imposed on the appellant in subsequent case shall be consecutive and not concurrent—Petition liable to be dismissed.*

*Held*, that interpretation of Section 427(2) Cr. P.C. has to be done in such a way that it harmonises with the intention of the Legislature and with the true meaning of the words used therein. When a person is undergoing a sentence of imprisonment for life, it means that his sentence shall continue till his life ends. It is only on the basis of remission of sentence or a commutation of sentence that convicts undergoing imprisonment for life are released without completing their whole life in custody. When courts award imprisonment for life it means just that imprisonment for life nothing less. Therefore, the remissions or commutations under Sections 432 to 433 are not judicial verdicts in

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the true sense. A sentence of imprisonment for life may be reduced to a sentence for a term of 10 years or 14 years as the case may be, by remission or commutation. Nevertheless, imprisonment for life remains an imprisonment for life. It is actually stating the obvious that all subsequent sentences shall run concurrently with a previous imprisonment for life because subsequent sentences can never be consecutive with a previous imprisonment for life there cannot be more than one life, even for cats.

(Para 5)

*Further held*, that u/s 427(2) Cr.P.C. a Court passing the subsequent sentence on a person undergoing imprisonment for life is not required to give any direction regarding consecutive or concurrent operation. Can it be said that at all times and under every situation the subsequent sentence shall be concurrent as provided by sub-section (2) irrespective of how serious or grave the second or subsequent offence is. The petitioner—applicant is seeking to derive benefit from this anomalous situation. This simply cannot be permitted. Therefore, it would be better to hold that the cases which fall under sub-section (2) are only those very rare cases where the first sentence is well and truly imprisonment for life. The moment the first sentence is remitted or commuted it becomes imprisonment for a term and the case must be taken out of sub-section (2) and put in sub-section (1).

(Para 8)

R.S. Bains, Advocate, *for the appellant*.

S.S. Randhawa, Deputy Advocate General, *for the State*.

#### JUDGMENT

*K.S. GAREWAL, J.*

(1) This application under Section 427 (2) of the Code of Criminal Procedure has been filed by Baghail Singh appellant in Cr. Appeal 663—SB of 2000. The said appeal has been filed against the judgment of learned Sessions Judge, Gurdaspur dated December 14, 1999 whereby the appellant was found guilty of offence under Section 304 Part II IPC for culpable homicide of Paramjit Singh on February 19, 1994. The appellant was convicted to undergo rigorous imprisonment for 10 years, pay a fine of Rs. 5000 in default of payment of fine to further undergo rigorous imprisonment for six months.

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(2) Earlier to this the appellant had been tried by the learned Additional Judge, Designated Court, Amritsar for committing the murder of Swaran Singh on January 26, 1992. The appellant and his co-accused were found guilty under Section 302 read with section 34 IPC and both were sentenced to undergo rigorous imprisonment for life and to fine—*vide* judgment of conviction and sentence pronounced on March 3, 1997.

(3) According to the counsel the appellant was already undergoing imprisonment for life when he was convicted and sentenced in the present case to undergo imprisonment for 10 years. Therefore, the appellant was entitled to the benefit of section 427(2) Cr.P.C. which provided that when a person already undergoing a sentence of imprisonment for life sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence. According to the counsel the appellant has completed his previous sentence after having secured remissions and if Section 427(2) Cr. P.C. is enforced then his subsequent sentence of 10 years must run concurrently with his previous sentence.

(4) The submission of the learned counsel is an attractive one on the face of it but the appellant can get whatsoever no benefit therefrom. The appellant has undergone detention as an under trial from March 7, 1994 to December 13, 1999 (5 years 9 months and 6 days) and after conviction he has been in custody since December 14, 1999. The appellant was ordered to be released on bail on October 18, 2001 but was not released. Counsel contends that the appellant has completed his sentence but is not being released because the judgment does not state sentence was to run concurrently with the previous one. The appellant would complete 10 years on March 6, 2004 but if his period of detention under the previous conviction is taken into account and sentence is directed to be concurrent with such previous sentence, the appellant's sentence is over and he would become entitled to be released. Such could never have been the intention of law.

(5) Interpretation of Section 427(2) Cr.P.C. has to be done in such a way that it harmonises with the intention of the Legislature and with the true meaning of the words used therein. When a person is undergoing a sentence of imprisonment for life, it means that his

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sentence shall continue till his life ends. It is only on the basis of remission of sentence or a commutation of sentence that convicts undergoing imprisonment for life are released without completing their whole life in custody. When courts award imprisonment for life it means just that imprisonment for life nothing less. Therefore, the remissions or commutations under Sections 432 to 433 are not judicial verdicts in the true sense. A sentence of imprisonment for life may be reduced to a sentence for a term of 10 years or 14 years as the case may be, by remission or commutation. Nevertheless, imprisonment for life remains an imprisonment for life. It is actually stating the obvious that all subsequent sentences shall run concurrently with a previous imprisonment for life because subsequent sentences can never be consecutive with a previous imprisonment for life there cannot be more than one life, even for cats.

(6) If the interpretation advanced by the learned counsel for the appellant is accepted then it would permit persons undergoing imprisonment for life to commit crime after crime, robbery, rape or murder in the firm knowledge that all subsequent sentences would run concurrently with their imprisonment for life which, after remissions, may get reduced to 10 or 14 years. Such a macabre scenario could never have been the intention of the Legislature.

(7) This consecutive-concurrent conundrum deserves to be examined in detail with the help of illustrations in order to fully grasp its implications. S. 427(1) and (2) provide for two different situations. Sub-section (1) operates where the first or previous sentence is of imprisonment (for a term). Sub-section (2) operates where the first or previous sentence is of imprisonment for life. It would be at the time of consideration of the second or subsequent sentence that the sentencing court must consider whether sentence should be consecutive or concurrent in relation to the first. Sub-section (1) provides that the subsequent sentence shall commence at the expiration of the previous sentence unless the Court directs the sentence to run concurrently with the previous sentence. Sub-section (2) leaves no choice with the Court because all subsequent sentences must run concurrently with imprisonment for life. Difficulty arises only in cases where the previous sentence is imprisonment for life but the sentence is suspended or remitted by the Government under Section 432 Cr.P.C. or commuted under Section 433 Cr.P.C.

(8) Under Section 427(2) Cr.P.C. a court passing the subsequent sentence on a person undergoing imprisonment for life is not required to give any direction regarding consecutive or concurrent operation. Can it be said that at all times and under every situation the subsequent sentence shall be concurrent as provided by sub-section (2) irrespective of how serious or grave the second or subsequent offence is. Let us by way of illustration presume that a person undergoing imprisonment for life for murder, while on parole commits an offence and compare this case with that of a robber who is undergoing imprisonment for 5 years and who escapes and commits a series of robberies. In the event of the murderer and the robber earning subsequent conviction and sentences, the sentences of the murderer shall run concurrently with his previous sentence while the sentences of the robber shall, unless otherwise stated, run consecutively with the previous sentence. If the murderer earns remission or commutation of his previous sentence then he would get off lightly as subsequent concurrent sentences may also come to an end when the previous sentence ends. No such benefit would be available to the robber who would continue to serve consecutive sentences. Does not this example illustrate a strange contradiction in terms. The petitioner-applicant herein is seeking to derive benefit from this anomalous situation. This simply cannot be permitted. Therefore, it would be better to hold that the cases which fall under sub-section (2) are only those very rare cases where the first sentence is well and truly imprisonment for life. The moment the first sentence is remitted or commuted it becomes imprisonment for a term and the case must be taken out of sub-section (2) and put in sub-section (1).

(9) A similar question had come up for decision before the Hon'ble Supreme Court of India in **Ranjit Singh versus Union Territory of Chandigarh and another (1)**. The accused who was earlier convicted for murder and awarded life imprisonment, committed a second murder while he was released on parole. On appeal against his conviction under Section 303 of the Penal Code for the second murder, the Supreme Court altered the conviction to one under Section 302, Penal Code and sentenced him to life imprisonment. The Court was of the view that since the second murder was committed by the accused within a span of one year of his earlier conviction and that too when he was released on parole, the second sentence of imprisonment

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for life awarded to him should not run concurrently with his earlier sentence of life imprisonment. The Court, therefore, directed that in case any remission or commutation in respect of his earlier sentence was granted to him the later sentence should commence thereafter.

(10) The direction of the court was challenged through a writ petition and it was held that "the direction has to be construed so as to harmonise with Section 427(2) Cr.P.C. which is the statutory mandate apart from being *the obvious truth*. It was clarified that any remission or commutation granted in respect of the earlier sentence of life imprisonment alone then the benefit of the remission or commutation will not *ipso facto* be available in respect of the subsequent sentence of life imprisonment which would continue to be unaffected by the remission or commutation in respect of the earlier sentence alone. The intended consequence was that the accused would not get any practical benefit of any remission or commutation in respect of his earlier sentence because of the superimposed subsequent life sentence unless the same corresponding benefit in respect of the subsequent sentence is also granted to the accused. It was in this manner that the direction was given for the two sentences of life imprisonment not to run concurrently."

(11) Therefore, the conclusion that is reached is that the sentences imposed on the petitioner/appellant shall be consecutive and not concurrent. In view of the above this petition is without merit and is dismissed. The appellant must await the decision of his appeal which shall be decided without being influenced by the decision of this petition.

(12) However, there remains a lingering suspicion that Trial Courts and Jail Superintendents have been giving too liberal an interpretation to Section 427(2) Cr.P.C. and may be construing subsequent sentences to run concurrently with the earlier sentence of imprisonment of life. Therefore, Advocate Generals of Punjab and Haryana and standing counsel for Union Territory, Chandigarh should examine all cases where benefit of Section 427(2) Cr.P.C. has been extended in the past 10 years in order to determine whether or not subsequent sentences have run concurrently or consecutively with the previous sentence of imprisonment for life. If there has been an deviation from the above view suitable corrective should be applied and, if necessary, further direction be obtained from this court.