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BENSON

v.

STATE OF KERALA

(Criminal Appeal No. 958 of 2016)

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OCTOBER 03, 2016

**[DIPAK MISRA AND UDAY UMESH LALIT, JJ.]**

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*Code of Criminal Procedure, 1973 – s.427 – Concurrent running of subsequent sentence with previous sentence – Appellant charged of having committed various offences – Tried separately and sentenced in each of the offences – Plea of appellant for concurrent running of sentences – Held: Court has the power and discretion to issue a direction that the subsequent sentence shall run concurrently with the previous sentence – Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed and the fact situation – On facts, sentence imposed on appellant in each of the present cases to run concurrently with the sentence imposed upon the appellant in another crime committed by him which is currently operative – However, this benefit limited in respect of substantive sentences and not on default sentences and sentences of fine.*

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**Partly allowing the appeals, the Court**

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**HELD: 1. In terms of sub-section (1) of Section 427 of Cr.P.C., if a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced. Going by this normal principle, in the instance case the sentence chart indicated in communication mentioned is quite correct. However this normal rule is subject to a qualification and it is within the powers of the Court to direct that the subsequent sentence shall run concurrently with the previous sentence. [Para 6][174-G-H; 175-A]**

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**2. In the present case, the appellant stands convicted and sentenced in 12 different matters including the present 4 matters. The maximum sentence in respect of the present crimes is two**

years' rigorous imprisonment. As per the record, these crimes were committed on the same day. Having considered the matters, the sentences imposed in each of the present 4 cases (which appear at serial nos.9, 10, 11 and 12 of the chart/communication received from the Director General of Prisons & Correctional Services) shall run concurrently with the sentence imposed in crime no.8 which is currently operative. This benefit is granted in respect of substantive sentences to the appellant but the sentences of fine and the default sentences are maintained. If the fine as imposed is not deposited, the default sentence or sentences are to run consecutively and not concurrently. [Paras 4, 9]174-A; 176-B-D]

*V.K. Bansal v. State of Haryana* (2013) 7 SCC 211 : 2013 (7) SCR 617 – referred to.

Case Law Reference

2013 (7) SCR 617 referred to Para 7

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 958 of 2016.

From the Judgment and Order dated 16.09.2015 of the High Court of Kerala at Ernakulam in Criminal Appeal No. 808 of 2015

WITH

Criminal Appeal Nos. 957, 959 & 960 of 2016.

Ranjith B. Marar, Ms. Lakshmi N. Kaimal and T. K. Babu, Advs. for the Appellant.

G. Prakash, Jishnu M. L., Ms. Priyanka Prakash, Ms. Beena Prakash, Manu Srinath and Ramesh Babu M. R., Advs. for the Respondent.

The Judgment of the Court was delivered by

**UDAY UMESH LALIT, J.** 1. Leave granted. These appeals by Special Leave arise out of judgments and orders passed by the High Court of Kerala in Criminal Revision Petition Nos. (i) 808 of 2015 on 16.09.2015, (ii) 859 of 2015 on 16.09.2015, (iii) 858 of 2015 on 14.09.2015 and (iv) 670 of 2015 on 17.09.2015.

- A 2. On the allegation that the appellant was involved in committing thefts he was charged of having committed offences on different occasions and was separately tried in i) CC No.158 of 2004 before Judicial Magistrate First Class, Chavakkad for offences punishable under Section 379, 414 read with 34 IPC, ii) CC No.1039 of 2003 by Judicial Magistrate First Class, Chavakkad for offences punishable under Section 379, 414 read with 34 IPC, iii) CC No.390 of 2004 by Judicial Magistrate First Class, Chavakkad for offences punishable under Section 379, 414 read with 34 IPC and (iv) CC No.1168 of 2006 by Judicial Magistrate First Class, Kunnamkulam. By separate judgments, the appellant was convicted and sentenced in each of the aforesaid crimes. The respective appeals preferred by the appellant were dismissed by the Sessions Judge, Thrissur. The appellant filed Criminal Revision Petitions in the High Court which were also dismissed. The following chart would disclose the relevant details:-

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C.C.No./ Offence	Date of occurrence	Date of Conviction and Sentence by Judicial Magistrate First Class	Crl. Appeal No.	Crl. R.P. No. in the High Court	SLP No.
158/2004 in the Court of Judicial Magistrate First Class (in short JMFC), Chavakkad/ U/s 379, 414 r/w 34 of IPC	03.06.2003	28.06.06, RI for 2 years and fine of Rs.1,000/- for offence u/s 379 IPC and RI for 2 years u/s 414 ID RI for 3 months	533/2012 decided on 15.11.2012 by Sessions Judge, Thrissur	808/ 2015	SLP (Crl.) 3757/ 2016

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1039/2003 in the Court of JMFC, Chavakkad/ U/s 379, 414 r/w 34 of IPC	03.06.2003	28.06.06, RI for 2 years and fine of Rs.1,000/- for offence u/s 379 IPC and RI for 2 years for offence u/s 414 IPC, ID RI for 3 months.	759/2011 decided on 17.09.2012 by Sessions Judge, Thrissur	859/ 2015	SLP (CrI.) 3759/ 2016
390/2004 in the Court of JMFC, Chavakkad/ U/s 379, 414 r/w 34 of IPC	03.06.2003	28.06.06, RI for 2 years and fine of Rs.1,000/- for offence u/s 379 IPC and RI for 2 years u/s 414 ID RI for 3 months	761/2011 decided on 04.08.2012 by Sessions Judge, Thrissur	858/ 2015	SLP (CrI.) 3758/ 2016
1168/2006 in the Court of JMFC, Kunnankulam/ U/s 379 r/w 34 of IPC	03.06.2003	31.12.08, RI for 1 year and fine of Rs.1,000/- ID SI for 6 months	461/2011 decided on 30.09.2011 by Sessions Judge, Thrissur	670/ 2005	SLP (CrI.) 3756/ 2016

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3. These matters came up on 22.04.2016 when this Court noted the submissions of the learned counsel for the appellant regarding concurrent running of sentences and issued notice to the State. The learned counsel appearing for the State has produced before us communication dated 27.05.2016 from the Director General of Prisons and Correctional Services, which is as under:-

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“PRISONS HEADQUARTERS,  
THIRUVANANTHAPURAM

Dated: 27.05.2016

WP1-9606/2016

From

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The Director General of Prisons &  
Correctional Services.

To

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The Law Officer,  
Office of the Resident Commissioner,  
Travancore Palace,  
Kasturba Gandhi Marg,  
New Delhi – 110 001.

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Sir,

Sub: Prisons – Prisons Headquarters, Kerala - Supreme  
Court case – SLP (Crl) CRLMP No.6727/2016/Benson  
vs. State of Kerala – reg.

Ref: Lr. No.38749/B1/2016/Home dtd.19/05/2016

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Attention is invited to the subject & reference cited.

I may furnish the details called for vide reference is noted  
below:

Conviction Details

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Sl. No.	Case No., Court and Warrant Date	Sentence Details
1	CC 613/03 JFCM I, Thrissur Wdt.20-11-2003	Sentenced to undergo RI for 3 years u/s 379 IPC Set off 97 days. At large bail period -153 days.
2	CC 533/04 JFMC II, Thrissur Wdt.8-6-2005	Sentenced to undergo RI for 2 years u/s 392 IPC Set off 521 days.
3	CC 529/04 JFMC II, Thrissur Wdt.18-6-2005	Sentenced to undergo RI for 3 years u/s 392 IPC, Set off 493 days

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4	CC 1270/13 JFCM Changanassery Wdt.18-6-2005	Sentenced to undergo RI for 2 years + fine Rs.5000/- i/d SI for 1 month u/s 380 IPC, RI for 2 years + fine Rs.5,000/- i/d SI for 1 month u/s 457 IPC (Concurrently) Set of 348 days
5	CC 1115/03 JFCM Irinjalakkuda Wdt. 4-7-2005	Sentenced to undergo RI for 2 years + fine Rs.2,000/- i/d SI for 2 months u/s 379 IPC Set off 402 days
6	CC 932/05 JFCM Irinjalakkuda Wdt.4-7-2005	Sentenced to undergo RI for 2 years + fine Rs.2,000/- i/d SI for 2 months u/s 379 IPC Set off 465 days
7	CC 171/05 ADSJ Adhoc II Kottayam Wdt.25-11-2005	Sentenced to undergo RI for 5 years u/s 392 IPC, RI for 3 years u/s 120(B) IPC (Concurrently) Set off 418 days.
8	CC 274/06 JFCM Kodungallur Wdt.30-9-2008	Sentenced to undergo SI for 3 years u/s 205 IPC Set off 414 days
9	CC 158/04 JFCM Chavakkad Wdt.28-6-2006	Sentenced to undergo RI for 2 years + fine Rs.1,000/- i/d SI for 3 months u/s 379 IPC, RI for 2 years u/s 414 IPC (Concurrently) Set off 347 days
10	CC 1039/03 JFCM Chavakkad Wdt. 28-6-2006	Sentenced to undergo RI for 2 years + fine Rs.1,000/- i/d SI for 3 months u/s 379 IPC, RI for 2 years u/s 414 IPC (Concurrently) Set off 240 days
11	CC 390/04 JFCM Chavakkad Wdt.28-6-2006	Sentenced to undergo RI for 2 years + fine Rs.1,000/- i/d SI for 3 months u/s 379 IPC, RI for 2 years u/s 414 IPC (Concurrently) Set off 141 days
12	CC 1168/06 JFCM Kunnamangalam Wdt.31-12-2008	Sentenced to undergo RI for 1 year + fine Rs.1,000 i/d SI for 2 months u/s 379 r/w 34 IPC Set off 14 days

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		Sentence Calculation	
S. No.	Case No.	Sentence Calculation	
1	CC 613:03 JFCM I, Thrissur	1 <sup>st</sup> Sentence Started	20-11-2003
		Sentence 3 years	19-11-2006
		Set Off 97 days	14-08-2006
		At large 153 days	14-01-2007
2	CC 533:04 JFCM II, Thrissur	2 <sup>nd</sup> Sentence Started	14-01-2007
		Sentence 2 years	14-01-2007
		Set off 521 days	12-08-2009
3	CC 529:04 JFCM II, Thrissur	3 <sup>rd</sup> Sentence Started	12-08-2009
		Sentence 3 years	12-08-2010
		Set off 493 days	06-04-2009
4	CC 1270:13 JFCM Changanassery	4 <sup>th</sup> Sentence Started	06-04-2009
		Sentence 2 years	06-04-2011
		Set off 348 days	23-04-2010
5	CC 115:03 JFCM Irinjalakkuda	5 <sup>th</sup> Sentence Started	23-04-2010
		Sentence 2 years	23-04-2012
		Set off 402 days	18-03-2011
6	CC 932:05 JFCM Irinjalakkuda	6 <sup>th</sup> Sentence Started	18-03-2011
		Sentence 2 years	18-03-2013
		Set off 465 days	09-12-2011
7	SC 171:05 ADSJ Adhoc II, Kottayam	7 <sup>th</sup> Sentence Started	09-12-2011
		Sentence 5 years	09-12-2016
		Set off 418 days	18-10-2015
8	CC 274:06 JFCM Kodungallur	8 <sup>th</sup> Sentence Started	18-10-2015
		Sentence 3 years	18-10-2018
		Set off 414 days	30-08-2017
9	CC 158:04 JFCM Chavakkad	9 <sup>th</sup> Sentence Started	30-08-2017
		Sentence 2 years	30-08-2019
		Set off 347 days	17-09-2018

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10	CC 1039/03 JFCM Chavakkad	10 <sup>th</sup> Sentence Started	17-9-2018
		Sentence 2 years	17-09-2020
		Set off 240 days	21-01-2020
11	CC 390/04 JFCM Chavakkad	11 <sup>th</sup> Sentence Started	21-01-2020
		Sentence 2 years	21-01-2022
		Set off 141 days	02-09-2021
12	CC 1168/06 JFCM Kunnamangalam	12 <sup>th</sup> Sentence Started	02-09-2021
		Sentence 1 year	02-09-2022
		Set off 14 days	19-08-2022
	Fine Sentence Details		19-10-2022 (F4) 19-12-2022 (F5) 19-02-2023 (F6) 19-05-2023 (F9) 19-08-2023 (F10) 19-11-2023 (11) 19-05-2024 (F12)

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As per the records, he will spend 12 years 3 months and 8 days in prison as on 31/07/2016.

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His date of expiry of substantive sentence falls on 19-08-2022 without any remission. He has already earned 3 years 10 months 27 days remission as on 26-05-16. He has to pay fine of Rs. 18,000/- in various cases in default he has to undergo 1 year 5 months in Jail.

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Yours faithfully,  
Sd/-

Director General of Prisons &  
Correctional Services"

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A 4. According to the aforesaid communication, the appellant stands convicted and sentenced in 12 different matters including the present matters which appear at Serial Nos.9, 10, 11 and 12 in the chart. Going by the sentence calculation, the sentence in the 9<sup>th</sup> case would begin on 30.08.2017 and finally, the sentence in the 12<sup>th</sup> case, after getting all benefits of set off, would be over on 02.09.2022.

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.5. Section 427 of the Code of Criminal Procedure, 1973 is as under:-

C **“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:**

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E 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.

F (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.”

G 6. In terms of sub-section (1) of Section 427, if a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced. Going by this normal principle, the sentence chart indicated in the communication dated 27.05.2016 is quite correct. However this normal rule is subject to a qualification and it is within the

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powers of the Court to direct that the subsequent sentence shall run concurrently with the previous sentence. A

7. In *V.K.Bansal v. State of Haryana and Another*<sup>1</sup> it was stated by this Court:

“It is manifest from Section 427(1) that the Court has the power and the discretion to issue a direction but in the very nature of the power so conferred upon the Court the discretionary power shall have to be exercised along the judicial lines and not in a mechanical, wooden or pedantic manner. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. There is no cut and dried formula for the Court to follow in the matter of issue or refusal of a direction within the contemplation of Section 427(1). Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed, and the fact situation in which the question of concurrent running of the sentences arises.” B  
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This Court then went on to club various crimes in respect of which sentences were imposed upon the appellant therein in three groups; i) the first having 12 cases, ii) the second having 2 cases and iii) the third having a single case. This Court directed that substantive sentences within first two groups would run inter se concurrently and the substantive sentences in first two groups and that in respect of the case in the third group would run consecutively. The benefit was confined only in respect of substantive sentences and no qua sentences in default. E

8. We have gone through the record and considered rival submissions. We do not find anything incorrect in the assessment made by the Courts below and in our view the orders of conviction recorded against the appellant in the present cases are quite correct. We also do not find anything wrong in the quantum of sentence imposed in respect of the respective crimes. However going by the sentence calculation, the sentence imposed in respect of the first crime started with effect from 20.11.2003 and the last sentence would be over by 19.08.2022, which would effectively mean that the total length of sentences in aggregate would be around 19 years. We are not concerned with first F  
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<sup>1</sup> (2013) 7 SCC 211

A eight matters and sentences imposed in respect of those crimes. The sentence in respect of 8<sup>th</sup> crime is presently running against the appellant and would be over on 30.08.2017.

9. The maximum sentence in respect of the present crimes is two years' rigorous imprisonment. As per the record, these crimes were committed on the same day. Having considered the matters, we deem it appropriate to direct that the sentences imposed in each of the cases, i.e. (i) CC No.158 of 2004, (ii) CC No. 1039 of 2003, (iii) CC No. 390 of 2004 and (iv) CC No. 1168 of 2006 namely those at Sl.Nos.9 to 12 respectively as indicated in the sentence chart in the communication dated 27.05.2016 shall run concurrently with the sentence imposed in Crime No.8 which is currently operative. We grant this benefit in respect of substantive sentences to the appellant but maintain the sentences of fine and the default sentences. If the fine as imposed is not deposited, the default sentence or sentences will run consecutively and not concurrently.

D 10. The appeals are thus allowed in part and the orders of sentences stand modified accordingly.