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ANIL KUMAR

v.

STATE OF PUNJAB

(Criminal Appeal No. 77 of 2017)

B

JANUARY 17, 2017

[DIPAK MISRA AND R. BANUMATHI, JJ.]

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Code of Criminal Procedure, 1973: s.427 – Exercise of power under, scope – In terms of sub-section (1) of s.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 – Only in appropriate cases, the court can make the sentence run concurrently with an earlier sentence imposed – The investiture of such discretion, presupposes that such discretion be exercised by the Court on sound judicial principles and not in a mechanical manner – Whether or not the discretion is to be exercised in directing sentences to run concurrently would depend upon the nature of the offence/offences and the facts and circumstances of each case – In the instant case, the appellant was earlier convicted u/s.22 NDPS Act and subsequently convicted u/s.27(b)(ii) and s.28 of the Drugs and Cosmetics Act, 1940 – In view of nature of the offences for which the appellant was convicted and the facts and circumstances of the case, the sentence imposed on the appellant in the two offences to run concurrently – However, the fine amount and the default sentence or sentences are maintained – If the fine amount is not paid, the default sentence will run consecutively and not concurrently – Appeal allowed.

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V. K. Bansal v. State of Haryana and Anr. (2013) 7 SCC 211 : [2013] 7 SCR 617; Benson v. State of Kerala (2016) 10 SCC 307 – relied on.

Case Law Reference

[2013] 7 SCR 617	relied on	Para 6
(2016) 10 SCC 307	relied on	Para 7

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A
No. 77 of 2017.

From the Order dated 12.07.2016 by the High Court of Punjab and Haryana at Chandigarh in CRM No. 19868 of 2016 in CRR No. 308 of 2016.

Aman Preet Singh Rahi, Raghav Chadh, A. Venayagam Balan, B
Adv. for the Appellant.

Jayant K. Sud, Ajay P. Tushir, Umang Singh, Jagjit Singh Chhabra,
Adv. for the Respondent.

The Judgment of the Court was delivered by C

R. BANUMATHI, J. 1. This appeal arises out of the order dated
12.07.2016 passed by the High Court of Punjab and Haryana at
Chandigarh in CRM No.19868 of 2016 in CRR No.308 of 2016, whereby
the application filed by the appellant seeking direction to treat sentence
imposed on him in Complaint No.638 dated 24.08.2009 and that in FIR
No.37 dated 19.04.2009 to run concurrently, was declined. D

2. Brief facts are as follows. By judgment dated 23.07.2014 in
FIR No.37 dated 19.04.2009 PS Longowal, the appellant was convicted
under Section 22 of Narcotic Drugs and Psychotropic Substances Act,
1985 (NDPS Act) and sentenced to undergo rigorous imprisonment for
ten years and pay fine of rupee one lakh and in default to undergo
imprisonment for two years. By the judgment dated 25.08.2014, in the
Complaint No.638 dated 24.08.2009, the appellant was convicted under
Section 27(b)(ii) and Section 28 of the Drugs and Cosmetics Act, 1940
and was sentenced to undergo rigorous imprisonment for one year and
pay fine of Rs.5,000/-(rupees five thousand). The appellant preferred
appeal against the said conviction and the same was dismissed by the
Appellate Court. The revision preferred by the appellant before the High
Court was also dismissed by the judgment dated 24.05.2016 in CRR
No.308 of 2016. The appellant filed miscellaneous application, CRM
No.19868 of 2016 seeking clarification of the order dated 24.05.2016
and further direction to treat the sentences of the appellant as concurrent
in terms of Section 427 (1) and (2) Cr.P.C. The said application was
dismissed by the High Court by the impugned order. E F G

3. We have heard the learned counsel appearing for the parties.

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A 4. The power conferred on the Court under Section 427 Cr.P.C. to order concurrent sentence is discretionary. Section 427 Cr.P.C. reads as under:-

B "S.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:

C *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.

D (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."

E 5. 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. Only in appropriate cases, considering the facts of the case, the court can make the sentence run concurrently with an earlier sentence impose I. The investiture of such discretion, F presupposes that such discretion be exercised by the Court on sound judicial principles and not in a mechanical manner. Whether or not the discretion is to be exercised in directing sentences to run concurrently would depend upon the nature of the offence/offences and the facts and circumstances of each case.

G 6. In *V.K. Bansal v. State of Haryana and Anr.* (2013) 7 SCC 211, it was held by this Court as under:

H "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

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“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

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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.”

This Court then went on to club various crimes in respect of which sentences were imposed upon the appellant therein in three groups.

7. After referring to *V.K. Bansal's case*, in *Benson v. State of Kerala* (2016) 10 SCC 307; 2016 (9) SCALE 670, this Court directed the substantive sentences imposed on the appellant Benson to run concurrently. The appellant therein was convicted for the offences punishable under Section 379 and Section 414 read with Section 34 IPC in at least eleven cases. By a separate judgment, the appellant was convicted and sentenced in each of the aforesaid cases and total length of sentences in aggregate was around nineteen years.

8. In the present case, the appellant was earlier convicted under Section 22 NDPS Act and subsequently convicted under Section 27(b)(ii) and Section 28 of the Drugs and Cosmetics Act, 1940. Considering the nature of the offences for which the appellant was convicted and the facts and circumstances of the case, we deem it appropriate to direct that the sentences imposed on the appellant in FIR No.37 and Complaint No.638 shall run concurrently. However, the fine amount and the default sentence or sentences are maintained. If the fine amount is not paid, the default sentence will run consecutively and not concurrently.

9. The substantive sentences imposed on the appellant are ordered to run concurrently and the appeal is thus allowed.

Devika Gujral

Appeal allowed.

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