

[2022] 16 S.C.R. 51

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v.

THE STATE OF UTTAR PRADESH & ORS

(Criminal Appeal No. 2319 of 2022)

DECEMBER 16, 2022

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**[DR DHANANJAYA Y CHANDRACHUD, CJI AND
PAMIDIGHANTAM SRI NARASIMHA, J.]**

Criminal Procedure Code, 1973 – s. 427 – Sentences in multiple trials – Appellant sought concurrent running of sentences – The appellant was charged and put to trial in respect of the nine distinct FIRs relating to incidents involving theft of electricity equipments – Nine Session trials were conducted and consequently the accused was convicted by nine separate judgments – No specific direction was issued by the trial Court as to allow the subsequent sentences to run concurrently – Net consequence of the position emerged that appellant had to undergo a total term of imprisonment of 18 years – Writ petition before the High Court – The High Court held that in view of the s.427 of Cr.P.C each subsequent term of conviction has to commence at the expiration of imprisonment currently undergone by the appellant – On appeal, held: s. 427 confers a discretion on the court to direct that the subsequent sentence following a conviction shall run concurrently with the previous sentence – The High Court ought to have noticed the serious miscarriage of justice which would occur consequent upon the trial court not having exercised specifically its discretion within the ambit of s.427(l) – The right to personal liberty is a precious and inalienable right recognized by the Constitution – The High Court ought to have intervened by setting right the miscarriage of justice which would occur in the above manner, leaving the appellant to remain incarcerated for a period of 18 years – Sentences directed to be run concurrently – Impugned judgment of the High Court set aside – Electricity Act.

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*Mohd Zahid v. State through NCB 2021 SCC OnLine
SC 1183 – relied on.*

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.
2319 of 2022.

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A From the Judgment and Order dated 24.03.2022 of the High Court of Judicature for UP at Allahabad in Habeas Corpus Writ Petition No. 460 of 2021.

Md. Anas Chaudhary, Ms. Shehla Chaudhary, Ansar Ahmad Chaudhary, Advs. for the Appellant.

B Sarvesh Singh Baghel, Divyanshu Sahay, Advs. for the Respondents.

The Judgment of the Court was delivered by

DR DHANANJAYA Y CHANDRACHUD, CJI

C 1. Leave granted.

2. The facts of the present case provide another instance, a glaring one at that, indicating a justification for this Court to exercise its jurisdiction as a protector of the fundamental right to life and personal liberty inhering in every citizen. If the Court were not to do so, a serious miscarriage of

D justice of the nature which has emerged in the present case would be allowed to persist and the voice of a citizen whose liberty has been abrogated would receive no attention. The history of this Court indicates that it is in the seemingly small and routine matters involving grievances of citizens that issues of moment, both in jurisprudential and constitutional

E terms, emerge. The intervention by this Court to protect the liberty of citizens is hence founded on sound constitutional principles embodied in Part III of the Constitution. The Court is entrusted with judicial powers under Article 32 and Article 136 of the Constitution of India. The right to personal liberty is a precious and inalienable right recognised by the Constitution. In attending to such grievances, the Supreme Court performs

F a plain constitutional duty, obligation and function; no more and no less.

3. The appellant was charged with and put to trial in respect of nine distinct first information reports relating to alleged incidents involving the theft of electricity equipment belonging to the Electricity Department of the State of Uttar Pradesh.

G 4. Nine sessions trials were conducted by the Additional District and Sessions Judge-I, Hapur¹. The number of accused in each of the sessions trial varies. The appellant was the constant feature in all the nine trials.

H ¹ SST Nos 441, 442, 443, 444, 445, 446, 447, 448 and 467 of 2020

5. The appellant agreed to a plea bargain. The Additional District and Sessions Judge, Hapur by nine separate judgments dated 5 November 2020, convicted the accused. The appellant was convicted of an offence under Section 136 of the Electricity Act. The accused had been confined in jail as under-trials for varying periods. The Additional Sessions Judge sentenced the appellant to two years' simple imprisonment together with a fine of Rs 1000/- in each of the nine cases. The Sessions Judge, however, directed that the period of custody as an under-trial shall be set off against the period of sentence. Where the conviction was of an offence under Section 136 of the Electricity and Section 411 of the Indian Penal Code, the trial Judge directed that the sentence shall run concurrently.

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6. The appellant is in jail for a period of three years. The appellant moved a petition under Article 226 of the Constitution of India, being Habeas Corpus Writ Petition No 460 of 2021, before the High Court of Judicature at Allahabad. The High Court noted that the writ petition was filed on the premise that the sentences of the appellant in nine separate and distinct cases should run concurrently. The grievance of the appellant was that the jail authorities were not justified in treating the sentences to be consecutive.

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7. The Division Bench of the High Court has come to the conclusion that in view of the provisions of Section 427 of the Code of Criminal Procedure 1973², each subsequent term of conviction has to commence at the expiration of the imprisonment currently being undergone by the appellant.

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8. The net consequence of the position, as it emerges, is that the appellant would have to undergo a total term of imprisonment of 18 years in respect of the nine convictions for offences under Section 136 of the Electricity Act and cognate provisions.

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9. The plea bargain was with reference to the provisions of Chapter XXI-A of the CrPC. Section 265-G stipulates that the judgment delivered by the Court shall be final and no appeal (except a Special Leave Petition under Article 136 and a Writ Petition under Articles 226 and 227 of the Constitution) shall lie in any court against such a judgment.

10. Section 427 provides that when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to

² "CrPC"

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- A 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. In other words, sub-section (1) of Section 427 confers a discretion on the court to direct that the subsequent sentence following a conviction shall run concurrently with the previous sentence.
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11. In *Mohd Zahid Vs State through NCB*³, this Court interpreted the provisions of Section 427 of CrPC after duly considering the precedents in the following terms :

- C “**33.** Thus from the aforesaid decisions of this Court, the principles of law that emerge are as under:
 - (i) 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;
 - (ii) ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the court directs the subsequent sentence to run concurrently with the previous sentence;
 - (iii) the general rule is that where there are different transactions, different crime numbers and cases have been decided by the different judgments, concurrent sentence cannot be awarded under Section 427 Cr.P.C.;
 - (iv) under Section 427(1) of Cr.PC the court has the power and discretion to issue a direction that all the subsequent sentences run concurrently with the previous sentence, however discretion has to be exercised judiciously depending upon the nature of the offence or the offences committed and the facts in situation. However, there must be a specific direction or order by the court that the subsequent sentence to run concurrently with the previous sentence.”
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12. The Trial judge, in the present case, granted a set off within the ambit of Section 428/Section 31 CrPC. No specific direction was

H ³2021 SCC OnLine SC 1183

issued by the trial court within the ambit of Section 427(1) so as to allow A
the subsequent sentences to run concurrently. All the convictions took
place on the same day.

13. Once the petitioner espoused the remedy of moving a Writ Petition under Article 226 of the Constitution, the High Court ought to have noticed the serious miscarriage of justice which would occur consequent upon the trial court not having exercised specifically its discretion within the ambit of Section 427(1). When the appellant moved the High Court, he was aggrieved by the conduct of the jail authorities in construing the direction of the trial court to mean that each of the sentences would run consecutively at the end of the term of previous sentence and conviction. The High Court ought to have intervened in the exercise of its jurisdiction by setting right the miscarriage of justice which would occur in the above manner, leaving the appellant to remain incarcerated for a period of 18 years in respect of his conviction and sentence in the nine sessions trials for offences essentially under the Electricity Act. D

14. In view of the above discussion, we allow the appeal and set aside the impugned judgment of the High Court dated 24 March 2022. We order and direct that the sentences which have been imposed on the appellant in the nine sessions trials noticed in the earlier part of this judgment shall run concurrently. E

15. The jail authorities shall now act immediately on the production of a certified copy of this order.

16. Pending applications, if any, stand disposed of.

Ankit Gyan
(Assisted by : Rahul Rathi, LCRA)

Appeal allowed.