

# Girish Gautam S/O Malaram Sharma ... vs State Of Gujarat on 4 April, 2018

**Author: J.B.Pardiwala**

**Bench: J.B.Pardiwala**

R/SCR.A/1730/2018

JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 1730 of 2018  
With  
R/SPECIAL CRIMINAL APPLICATION NO. 1732 of 2018  
With  
R/SPECIAL CRIMINAL APPLICATION NO. 1733 of 2018  
With  
R/SPECIAL CRIMINAL APPLICATION NO. 1734 of 2018  
With  
R/SPECIAL CRIMINAL APPLICATION NO. 1735 of 2018

FOR APPROVAL AND SIGNATURE:  
HONOURABLE MR.JUSTICE J.B.PARDIWALA

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|---|---|-----|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ?  | YES |
| 2 | To be referred to the Reporter or not ?   | YES |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ?   | NO  |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | NO  |

Circulate this Judgment in the Subordinate Judiciary.

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GIRISH GAUTAM S/O MALARAM SHARMA (BRAHMAN)  
Versus  
STATE OF GUJARAT

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Appearance:

MR K B PATEL (7527) for the PETITIONER(s) No. 1

MR URSHIT B OZA(6490) for the PETITIONER(s) No. 1  
MR RM PARMAR(591) for the RESPONDENT(s) No. 2  
MR RAKESH PATEL, APP (2) for the RESPONDENT(s) No. 1  
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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date : 04/04/2018

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R/SCR.A/1730/2018

JUDGMENT

COMMON ORAL JUDGMENT

As the issues raised in all the captioned writ-applications are interrelated and the question of law involved in all the writ- applications is also the same, those were heard analogously and are being disposed of by this common judgment and order.

For the sake of convenience, the Special Criminal Application No.1730 of 2018 is treated as the lead matter.

By this writ-application under Article 226 of the Constitution of India, the writ-applicant (original accused) has prayed for the following reliefs :

"(a) Your Lordships be pleased to modify the impugned order dated 4.5.2017 passed by the learned 3rd Additional Chief Judicial Magistrate, Palanpur in Criminal Case No.7340/2013 and be pleased to make appropriate observations granting benefits of section 427 read with Section 428 of the Code of Criminal Procedure, 1973 by holding that the sentences in each of the cases (Criminal Cases No.7430/2013, 6769/2013, 5793/2013, 5794/2013 and 5795/2013) to run concurrently in the interest of justice;

(b) Your Lordships be pleased to dispense with filing of the affidavit since the petitioner is in judicial custody;

(c) Your Lordships be pleased to grant such other and further relief(s), as are deemed fit, in the interest of justice;"

R/SCR.A/1730/2018 JUDGMENT The case of the writ-applicant, in his own words, as pleaded in his writ-application, is as under :

"2. The petitioner is the original accused and the Respondent No.2 is the original complainant in the Criminal Case No.7340/2013, which came to be disposed of by

the conviction order dated 04.05.2017 passed by the learned 3rd Additional Chief Judicial Magistrate, Palanpur.

3. The petitioner states that the Ld. Trial Court was pleased to convict the petitioner to undergo Simple Imprisonment for a period of six months as well as compensation of cheque amount of Rs.2,63,000/- or another 6 months for default in payment. The order also reads that the accused be set off the days already spent in custody from the final punishment.

4. The petitioner states that as per the case of the Respondent no.2, the Respondent No.2 and his 4 other friends had entered into ONE TRANSACTION of purchasing 9 plots in Utvan village, District Pali, Rajasthan for which the Respondent No.2 and his friends had given a total amount of Rs.13,07,600/- for the said 9 plots. However, later on, as the said transaction was to be reversed, the petitioner had issued 5 different cheques of same amount of Rs.2,63,000/- to 5 different people including the Respondent No.2 and the said cheques upon its presentation to the Bank, came to be dishonoured and all the 5 aggrieved persons including the present respondent no. 2 were constrained to file cases against the petitioner being Criminal Case No.7340/2013, R/SCR.A/1730/2018 JUDGMENT Criminal Case No.5793/2013, Criminal Case No.5794/ 2013, Criminal Case No.5795/2013 and Criminal Case No.6769/2013. The petitioner states that one case being Criminal Case No.7340/2013 was tried first while the remaining cases were tried at the same time as all the evidences in all the cases were common. The petitioner states that all the above referred 5 cases came to be disposed of together by five separate orders i.e. Criminal Case No.7340/2013 came to be decided on 04.05.2017 and Criminal Case No.5793/2013, Criminal Case No.5794/ 2013, Criminal Case No.5795/2013 and Criminal Case No.6769/2013 came to be decided on the same date i.e. on 19.06.2017.

5. The petitioner states that he is in custody since 01.04.2017 by way of Judicial order of Ld. 3rd Additional Chief Judicial Magistrate, Palanpur in the Criminal Case No. 6769/2013.

6. The petitioner submits that at the time of orders of the said criminal cases, he did not have money and was in judicial custody and therefore, the petitioner could neither pay the fine amount of Rs.5000/- nor could he file appeal against the said orders or engage an advocate. As on today, the petitioner has missed the time limit to file the Criminal Appeal and the petitioner has no other remedy but to file the present petition.

7. The petitioner states that the present petition has been preferred by the petitioner for the very limited purpose i.e. for R/SCR.A/1730/2018 JUDGMENT claiming benefits of Section 427 of the Code of Criminal Procedure, 1973.

8. The petitioner states that the Ld. Trial Court was pleased not to pass any order specifying as to whether the sentences with respect to all the above-referred cases is to run concurrently or consecutively.

9. The petitioner states that as per the date of arrest of the petitioner, vis-a-vis, the order of conviction which is of one year (Simple Imprisonment) would get over on 01.04.2018 (the days of remission, good is behaviour are not excluded). The petitioner states that however, as there is no clarification in the order passed by the learned Courts below, it has been made to understand to the petitioner that the sentences would not run concurrently, but would run consecutively; meaning thereby, the petitioner will have to undergo imprisonment of five years in total and after completion of the sentence of the first case, the sentence awarded in the second case would started and likewise, the period of sentence would run for five consecutive years.

10. The petitioner states that as can be seen from the record that with respect to one transaction and therefore, the sentences in each of the cases would also, in respectful submission of the petitioner, would ordinarily start together on the same date i.e. on the date of arrest.

11. The petitioner states that considering the fact that all the convictions are decided for the same running transaction, the R/SCR.A/1730/2018 JUDGMENT petitioner be given the advantage of Section 427 read with Section 428 of the Code of Criminal Procedure, 1973, which speaks about concurrent running of the sentences. The petitioner states that Section 428 of the Code of Criminal Procedure, 1973 speaks about set off against the sentence of imprisonment.

14. The petitioner states that the considering the totality of facts, vis-a-vis the law on the subject, since the petitioner is arraigned as an accused in 5 different cases with respect to one common transaction, the petitioner, thus, be granted the benefits of concurrent running of sentences in each of the above-referred cases, in the interest of justice.

15. The petitioner states that the petitioner is aged 45 years and is having responsibility to maintain his family, the petitioner is having financial crunch, his father has expired, his mother is a heart patient who is also suffering with blood pressure problems and had also been contracted with breast cancer, his wife is house-wife who is suffering from asthma, he has one son who is 12th failed, and two daughters of which one is in 12th standard and the other in 6th standard. The entire family is surviving on petitioner's mother's pension of Rs. 9000/- of which Rs. 4000/- goes towards monthly rent. The petitioner states that the idea of conviction is to make a citizen more civilized and to see that he does not indulge; into any such activities again. The petitioner states that he would undertake not to indulge himself into any such activities again in the event this Hon'ble Court exercises the discretion

of granting the R/SCR.A/1730/2018 JUDGMENT benefits of Section 427 read With Section 428 of the Code of Criminal Procedure, 1973 in the interest of justice."

Thus, it appears from the above and the other materials on record that the writ-applicant had represented before the complainants that he owns a huge parcel of land with plotting done on it at village Utvan-Pali (Rajasthan). The writ-applicant, with a view to gain confidence of the complainants, also showed a layout plan as regards the plotting done on the land.

It appears that the five complainants before me decided to purchase, in all, nine plots for a total sale consideration of Rs.13,07,600=00. The amount of Rs.13,07,600=00 was paid to the writ-applicant by the five complainants towards the purchase of the nine plots. Ultimately, it came to the notice of the five complainants and the others that the writ-applicant herein had no clear title over the land in question. The writ- applicant was not in a position to handover the possession of those plots with clear title. Ultimately, all the five complainants asked the writ-applicant to return the amount of Rs.13,07,600=00. The writ-applicant issued five cheques for the amount of Rs.2,63,000=00 in favour of each of the complainants. All the five cheques came to be dishonoured. In such circumstances, five complaints came to be lodged against the writ-applicant for the offence punishable under Section 138 of the Negotiable Instruments Act. The writ-applicant came to be convicted in all the five criminal cases.

In the Criminal Case No.7340 of 2013, the writ-applicant was ordered to undergo sentence of six months simple R/SCR.A/1730/2018 JUDGMENT imprisonment and a fine of Rs.2,63,000=00. In default of payment of fine, the writ-applicant was ordered to undergo sentence of further six months simple imprisonment.

In the Criminal Cases Nos.5793 of 2013, 5794 of 2013, 5795 of 2013 and 6769 of 2013, the writ-applicant was ordered to undergo one year simple imprisonment and a fine of Rs.5,000=00, respectively. In default of payment of fine, the writ- applicant was ordered to undergo sentence of further two months simple imprisonment.

The following chart would make the picture more clear :

SCRA NO. CC.NO. Substantive Compensation/ Paid/ Not Paid Punishment in  
Punishment Fine Default 1730/2018 7340/2013 6 months simple Rs.2,63,000/-  
Compensation 6 months imprisonment Compensation not paid simple imprisonment  
1732/2018 5793/2013 1 year simple Rs.5,000/- Fine paid 2 months imprisonment  
Fine simple imprisonment 1733/2018 5794/2013 1 year simple Rs.5,000/- Fine paid  
2 months imprisonment Fine simple imprisonment 1734/2018 5795/2013 1 year  
simple Rs.5,000/- Fine paid 2 months imprisonment Fine simple imprisonment  
1735/2018 6769/2013 1 year simple Rs.5,000/- Fine paid 2 months imprisonment  
Fine simple imprisonment In none of the five criminal cases, the trial court, while  
passing the order of conviction and sentence, clarified that the sentences shall run  
concurrently.

It is the case of the writ-applicant that on account of financial crunch, he was not able to even file criminal appeals in the concerned sessions court against the judgments and orders R/SCR.A/1730/2018 JUDGMENT of conviction and sentence. The writ-applicant is in custody undergoing sentence as a convict past more than one year. He was taken in custody on 1st April 2017. If the sentence in each of the criminal cases is to run consecutively, then the writ- applicant will have to be in jail for atleast a period of five years. In such circumstances, he is here before this Court with these five petitions with a prayer for an appropriate writ, order or direction that the sentences imposed by the trial courts shall run concurrently.

Mr.Urshit B.Oza, the learned counsel appearing for the writ-applicant in all the five petitions vehemently submitted that although five different complaints were lodged with regard to the dishonour of the cheques, yet it was one single transaction which led to the drawing of five different cheques. Mr.Oza further pointed out that out of the five complainants here before this Court, three are brothers and the other two are the friends of the three brothers. They all together decided to purchase in all nine plots and for the purchase of those nine plots they paid a total sale consideration of Rs.13,07,600=00. It is submitted that applying the principle of single transaction, a direction for concurrent running of the sentences awarded in relation to the dishonour of the cheques deserves to be issued.

Mr.Oza submitted that the family circumstances of his client are pathetic. He pointed out that the father of the writ- applicant passed away recently. The mother of the writ- applicant is a heart patient and also suffering from breast cancer. The wife of the writ-applicant is a patient of chronic asthma. The son of the writ-applicant failed in the Standard-XII R/SCR.A/1730/2018 JUDGMENT examination. One daughter is in Standard-XII and the another is in Standard-VI. The entire family, as on date, is surviving on the pension of the writ-applicant's mother of Rs.9,000=00. Out of which, Rs.4,000=00 is being paid towards the rent of the house.

In such circumstances referred to above, Mr.Oza prays that there being merit in all the five writ-applications, those be allowed and the reliefs as prayed for be granted.

Mr.R.M.Parmar, the learned counsel appearing for the complainants, has vehemently opposed all the five writ- applications. He would submit that considering the manner in which the writ-applicant cheated the complainants, this Court may not show any leniency or mercy towards the writ-applicant. According to Mr.Parmar, the sentences should be allowed to run consecutively.

Mr.Rakesh Patel, the learned APP appearing for the State, has also opposed all the five writ-applications. Mr.Patel would submit that the case appears to be one of a systematic fraud. Although the writ-applicant knew that he had no clear title over the land, yet he falsely represented in that regard before the innocent purchasers and thereby lured them to part with their hard earned money. According to Mr.Patel, the

case is not one of a single transaction. The purchase of each plot would constitute a single and independent transaction. In such circumstances, the learned APP would submit that there being no merit in the writ-applications, those be rejected.

Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question R/SCR.A/1730/2018 JUDGMENT that falls for my consideration is, whether the writ-applicant is entitled to the reliefs prayed for in these writ-applications.

I would like to first address myself on the question, whether it would be competent for the High Court, in exercise of its powers under Article 226 of the Constitution of India or under Article 227 of the Constitution of India or under Section 482 of the Code of Criminal Procedure, 1973, to direct that the sentence to a subsequent conviction to imprisonment shall run concurrently with the previous sentence, if the convict has accepted the judgment and order of conviction and sentence by not filing any criminal appeal or criminal revision application, as the case may be.

I would also like to address myself on the question as regards the circumstances in which the sentence on a subsequent conviction should be made to run concurrently with the previous sentence.

Sentencing is one of the most important facets of the administration of criminal justice system. Apart from the statutory restrictions, an appropriate sentence is a matter for the discretion of the sentencing judge. The decisions of the Courts on points of substantive law are binding on the Court itself and the Courts subordinate thereto. However, the decisions on sentencing are no more than examples of how the Court has dealt with a particular offender in relation to a particular offence. In the modern times, criminal jurisprudence has developed to some extent except the principles of uniformity of sentence for a particular category of crime. But they are not authoritative in a strict sense. Limitation or curtailment of sentencing may be R/SCR.A/1730/2018 JUDGMENT regulated by legislative provisions and other modes of fettering discretion in awarding of the punishment may also result from the principles stated by judicial pronouncement. In English and American Law, the component of justice model is the constriction of judicial discretion by the promulgation of standards with which the judge must substantially comply. The main three strategies are : (a) the enactment directly by legislature of a detailed set of principles of sentencing, indicating a normal or presumptive sentence for given classes of case, with specified aggravations and mitigations, leaving the sentencing judge very limited discretion; (b) the promulgation of standards, by a Commission composed of judges and other interested persons, which would be more detailed than a direct legislative enactment, less exposed to change but at the same time more flexible and capable of amendment in the light of experience; and

(c) the evolution of guidelines based on an empirical study of the current sentencing practice within the jurisdiction concerned. In most of the systems, discretion is vested with the Courts in matters of sentencing and passing other related orders.

Continuous efforts are made to avoid disparity of sentencing as individualization of sentencing will naturally undermine the uniformity of sentencing practice and would create disharmony detrimental to public confidence. Under the penal system, discretion is exercised by the Courts awarding sentence. (Ref:

Sentencing and the Penal System Text and Materials by Christopher Harding and Laurence Koffman published by Sweet and Maxwell, (London) 1988).

The English Sentencing System points out that the aim of the penal system is to reduce the crime by making as many R/SCR.A/1730/2018 JUDGMENT people as possible to realise who want to obey criminal law. The two stated objects for general practice of punishment would justify such a policy if there is reduction of crime and promotion of respect for criminal law. Historically the instinctive reaction to criminal act is retaliation by the injured person expressing his resentment or hostility towards the criminal and his conduct. Punishment for such an offence thus became the essence of any organized state to maintain the rule of law. The notion of 'Just deserts' or the sentence proportionate to the offender's culpability was the principle which, by passage of time, became applicable to the criminal jurisprudence. For an offender to receive a sentence which adequately reflects the gravity of his offence, the punishment ought not to be so lenient and should not be heavier than that justified by the offence. The sentence must not be too long or excessive. Lord Denning, while giving evidence to the Royal Commission on capital punishment, stated:

"The ultimate justification of any punishment is not that it is deterrent but that its emphatic denunciation by the community of a crime."

The term 'Sentencing' is used in its generic sense. A criminal trial may result in either acquittal or conviction. In the event of conviction, punishment, with or without other measures, is the logical end of a criminal trial. It imposes not only a discretion but also a great responsibility on the Courts administering criminal justice system and sentencing forms one of the most important facets. Sentencing is a complex process. A proper sentence is a composite of many factors, including the R/SCR.A/1730/2018 JUDGMENT nature of the offence, the circumstances extenuating or aggravating of the offence, and in such cases whether sentences awarded should run concurrent or consecutive. The determination of the sentence within certain limits is the discretion of the trial Court and it is in many cases one of the most delicate matter with which the Courts have to deal with. An offender's previous conviction and gravity of that offence is of definite significance in subsequent proceedings or orders of sentence or conviction. An assumption is current that exemplary sentence will have a salutary effect on the minds of the potential offenders especially when a particular type of offence is very much prevalent in a community at a given time and punishment being treated as a deterrent. Therefore, while awarding consecutive and/or concurrent



sentences the Court decides and records its direction in that regard in specific terms. (Ref:

Sentencing By Courts in India by G.N. Sabhahit, First Edition - 1975 published by Dixit Publications, Bangalore.) Sentencing of convicted criminals engages the interest, and sometimes the passion, of the public at large more than anything else judges do. The requirements of deterrence, rehabilitation, denunciation, punishment and restorative justice, all of which are identified as purposes of sentencing, do not point in the same direction and requirements of justice, in the sense of 'Just deserts' and of mercy often conflict. The purpose of sentencing principles or guidelines and the appellate process is to ensure that these individual differences are kept within proper bounds. It would undermine public confidence in the administration of criminal justice if it became widely believed that the result was a lottery based on who the judge was. The need for consistency is R/SCR.A/1730/2018 JUDGMENT only one of the numerous constraints on the sentencing task. Centuries of practical experience establishes that the sentencing task is best conducted by the exercise of the broad discretion. The rigid law in some cases may leave no discretion. In all of the recorded history there has never been a time when crime and punishment has not been the subject of debate and difference of opinion. This even may not change in future. It is so because sentencing task is a process of balancing within the limitation of legislative restrictions and proper exercise of judicial discretion. (Ref: A Guide to Sentencing by J.J. Spigelman AC, Chief Justice of New South Wales, Sydney, Australia dated 5th October, 2007

- Supreme Court : Lawlink NSW.) In a Sentencing Information Package prepared jointly by Victims of Crime Bureau and Criminal Law Review Division, NSW, Australia, explaining purposes of sentencing, the basic elements of sentencing procedure and the terminology used by a Sentencing Court, also referred to cumulative and concurrent sentences. If the offences have features in common or if they happened at around the same time and are connected, the Court is more likely to decide the sentences be served concurrently. (Hammond (2002) 118 A Crim. R.66). Where there are different offences at different times against different victims, it will be an error to impose wholly concurrent sentences. (VAA (2006) NSWCCA 44).

Even in the case of People vs Laureano, 8 N.Y. 2D 640 (Mar. 26, 1996), New York Court of Appeals stated the principle that sentences must run concurrently when the act constitutes one offence and is also a material element of another offence.

R/SCR.A/1730/2018 JUDGMENT This was with reference to penal law under Section 70.25(2) while dealing with a case of manslaughter in the first degree and robbery in the first degree when the same act caused the victim serious injuries and his death. Referring to these circumstances, the Court took the view that concurrent sentence must be imposed upon the convict.

All these principles which I have referred under the different laws are not founded on any codified statutes as under

the Indian criminal jurisprudence.

The extent of judicial discretion thus could emerge from either enacted law or through the guidelines and precepts, which are recognized over a span of time. Both these sources would have a direct impact on the exercise of discretion by the Courts while imposing punishment. It could be at the stage of first conviction or at a subsequent conviction of the same accused. Besides, imposition of punishment in such cases, the Court also have an additional obligation to direct whether the sentences awarded would run concurrently or consecutively. This aspect of criminal jurisprudence has been statutorily recognized in Indian Criminal Law where the legislature has introduced Sections 31 and 427, respectively of the Code of Criminal Procedure, 1973.

Section 31(1) of the Code vests a discretion in the Court to direct that the punishment shall run concurrently when a person is convicted at one trial of two or more offences. The Court may sentence the accused for such offences to the several punishments prescribed therefor which such Court is competent to inflict. Such punishments would consist of imprisonment to R/SCR.A/1730/2018 JUDGMENT commence the one after the expiration of the other in such order as the Court may direct subject to the limitation contained in Section 71 of the Indian Penal Code.

In terms of Section 31(2) of the Code wherever the Court awards consecutive sentences, it shall not be necessary for the Court to send the offender for trial before a higher Court on the ground that the aggregate punishment for the several offences is in excess of the punishment which it is competent to inflict on conviction of a single offence. This, however, is further subject to the proviso to Section 31(2) of the Code. This discretion of the Court is, therefore, applicable only in the cases which fall in the category of at one trial of two or more offences. On a bare reading of this Section, it has no application to the cases where a person is tried and convicted under two or more different trials for different offences. This aspect is covered by Section 427 of the Code.

Section 427 of the Code of Criminal Procedure provides 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 :

R/SCR.A/1730/2018 JUDGMENT 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.

(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."

Let me analyse Section 427 of the Code. The application of this provision will be attracted :

- (i) When a person already undergoing a sentence of imprisonment is convicted;
- (ii) While undergoing such a sentence, such person is subsequently convicted and awarded a sentence of imprisonment including imprisonment for life;
- (iii) then such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced; and
- (iv) the Court directs that subsequent sentence shall run concurrently with such previous sentence.

These are the principal requirements which ought to be satisfied before the Court in a subsequent trial convicting a R/SCR.A/1730/2018 JUDGMENT person already undergoing a sentence can pass such a direction. Sub-section (2) of Section 427 by a specific legislative mandate directs that a person already undergoing a sentence of imprisonment for life, if subsequently convicted to imprisonment for a term or imprisonment for life again, the same shall 'run concurrently' with such previous sentence. In so far as the provisions of sub-section (2) are concerned, the law operates on the strength of the statutory provisions and is not dependent upon exercise of discretion by the Court which is concerned with the subsequent trial, conviction and sentence of the person already undergoing imprisonment for life. The expression 'shall' will have to be read as 'shall' and cannot be construed or implied as 'may'. It is a legislative mandate which operates on its own force. In contra-distinction to this provision, Section 427(1) of the Code vests discretion in the Court, which has to be exercised judiciously and in conformity with the settled principles, to direct whether the sentence passed on conviction in the subsequent trial will run concurrently or consecutively with the previous sentence awarded to the accused. The Legislature, thus, has made it obligatory upon the Court to exercise such discretion. A bare reading of the Section does not contemplate even an application by convict or an accused in that behalf. The legislative intent requires the Court to act on its own as sentencing is primarily the duty of the Court and it is expected to consider all facets of sentencing policy while passing an order as envisaged under Section 427(1) of the Code. It is only the subsequent conviction and sentence in case of a person already undergoing a sentence of imprisonment in a previous conviction that the provisions of this Section would operate. Expression 'the Court' appearing at the end of Section 427(1) of the R/SCR.A/1730/2018 JUDGMENT Code

obviously refers to the Court of competent jurisdiction which deals with the imposition of sentence of imprisonment in a subsequent conviction. It entirely falls within the jurisdiction of that Court as to whether the sentence awarded upon a subsequent conviction would run concurrently or consecutively with the previous sentence of imprisonment awarded to the accused by the earlier Court. While passing such an order the Court would have to consider the facts of each case, nature or character of the offence for which the accused was punished in the earlier case, prior criminal record of the offender, age, sex, impact of such sentencing on social fabric of the society, attendant circumstances and amongst others as to whether the crime committed was heinous, etc. The provisions of section 427 obviously have no application to the cases which fall under Section 31 of the Code as they are controlled by that provision. In a case where a person has committed different offences and is facing one trial for committing two or more offences, even in such cases, the sentences awarded for different offences would commence one after the expiration of the other unless the Court directs that the sentence shall run concurrently. The provisions of Section 427 would come into play obviously where the case of the convict is not covered under Section 31 and he is tried for two different offences in two different cases, one in the earlier trial and then the other in the subsequent one. The language of the Section, therefore, clearly suggests that the person for whose benefit or otherwise the Court dealing with subsequent conviction and sentence will have jurisdiction only where the accused is a person already undergoing a sentence of imprisonment. This means the person should have been tried, convicted and sentenced to undergo R/SCR.A/1730/2018 JUDGMENT imprisonment on any given offence including offence punishable with imprisonment for life. The analysis of the plain reading of the Section leaves no doubt that the discretion is vested in the Court to direct subsequent sentence to run concurrently or consecutively with the previous sentence in two different cases and even obviously for different offences.

**Restrictions on the power of Court** An ancillary but another important question that arises for consideration of the Court is whether the discretion vested in the Court under Section 427(1) of the Code has been legislatively circumscribed and, if not, can the provision be so construed so as to impose limitations on exercise of power of the Court while awarding sentence. It is a settled canon of statutory interpretation that penal statutes are to be construed strictly while the remedial statutes would receive a liberal construction. By development of law, the distinction between liberal and strict construction has very much narrowed down and is only important in resolving a doubt which other canons of construction fail to solve when two or more constructions are equally open. In case of remedial statutes, the Court ought to give widest operation which the language of the provision permits. In case of pure penal statutes, it is also an equally settled principle that in penal or procedural provisions relating to criminal jurisprudence, liability or punishment would be capable of narrower construction, but the construction which will tilt the interpretation favourable to the accused will be preferred over the interpretation which would adversely affect the right of a person/accused under trial.

R/SCR.A/1730/2018 JUDGMENT The principle of reasonable interpretation is more tilted in favour of the accused and it should preferably be adopted in contrast to narrower or strict construction. It was also said :

"All modern Acts are framed with regard to equitable as well as legal principles and where there is an enactment which may entail penal consequences, you ought not to do violence to the language in order to bring people within it, but ought rather to take care that no one is brought within it who is not brought within it by express language."

(See Craies on Statute Law, Seventh Edition).

The rule of literal, liberal or strict construction may be applied while interpreting a statute but in either of them it is hardly permissible to add or read into the provisions. The expression or the words which are non-existent in the statute cannot be read into it when the provisions on its plain reading is clear and unambiguous. Maxwell while interpreting the narrow distinction between the liberal and strict construction stated as under :-

"The tendency of, modern decisions, upon the whole, is to narrow materially the difference, between what is called a strict and a beneficial construction. All statutes are now construed with a more attentive regard to the language, and criminal statutes with a more rational regard to the aim and intention of the legislature, than formerly. It is unquestionably right that the distinction should not altogether be erased from the judicial mind, for it is required by R/SCR.A/1730/2018 JUDGMENT the spirit of our free institutions that the interpretation of all statutes should be favourable to personal liberty, and this tendency is still evinced in a certain reluctance to supply the defects of language, or to eke out the meaning of an obscure passage by strained or doubtful influences. The effect of the rule of strict construction might almost be summed up in the remark that, where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself. But it yields to the paramount rule that every statute is to be expounded according to its expressed or manifest intention and that all cases within the mischief aimed at are, if the language permits, to be held to fall within its remedial influence."

In the case of Bhagirath v. Delhi Administration., AIR 1985 SC 1050, the Supreme Court overruled its earlier decision and held that the beneficial provisions of Section 428 of the Criminal Procedure Code directing set off of the period of pre-conviction detention against term of imprisonment is applicable even to cases where the sentence is imprisonment for life and that such a sentence is also imprisonment for a term within the section. To deny such benefit is to withdraw the application of benevolent provision from a large majority of cases in which such benefits would be needed and justified.

Even in the case of Dilip S Dahanukar v. Kotak Mahindra Co. Ltd., (2007) 6 SCC 528, the Supreme Court held as under:

R/SCR.A/1730/2018 JUDGMENT "a penal statute, in the event different meanings are possible to be given, must be construed liberally in favour of the accused, while the Court shall give due weightage to the need of the victim. It cannot ignore the right of an accused and in a case of conflict construction which favours the accused shall prevail."

Of course, the intention was not to unnecessarily enlarge the right of the accused.

A great balance is required to be drawn between the rule of strict construction and liberty of a subject including fair trial. The Code of Criminal Procedure is intended to provide for the control of the offences, primarily the offences punishable under the Indian Penal Code. Thus, in a way, it is a procedural remedial code having the colour that of a penal statute. Thus, the basic rules of construction would still remain the same.

Lord Esher, MR, even in relation to penal sections observed that if there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions we must give the more lenient one.

In the case of Tolaram v. State of Bombay, AIR 1954 SC 496, the Supreme Court said :

"If two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather R/SCR.A/1730/2018 JUDGMENT than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature."

The provisions of Section 427 of the Code are titled to provide a benefit in favour of a convict. Whether the sentence awarded earlier or the sentence awarded on subsequent conviction to run consecutive or concurrent is a matter of importance not only from the point of view of the accused but even administration of criminal justice. The Court has been vested with this power and is expected to apply this provision in every case at the time of awarding the sentence. The obligation cast upon the Court is of a mandatory nature as it has the impact of granting or declining to grant a benefit to a convict. Thus, it may not be appropriate to read into the provisions of Section 427 any restriction or limitation on the discretion of the Court which has not been specifically imposed by the Legislature.

As I have already noticed, the Legislature in its wisdom has not imposed any bar or limitation on the basis of which case of any subsequent conviction would fall outside the ambit or scope of Section 427. On the contrary, to apply these provisions to different cases is the very intent behind this provision. Sub- Section (2) of Section 427 requires mandatorily that life imprisonment in two different cases shall run concurrently. To hold that the provisions of Section 427(1) would not apply to any case would be an interpretation which would neither be permissible on any principles or any accepted canons of R/SCR.A/1730/2018 JUDGMENT interpretation of statutes nor with reference to the legislative intent behind this provision.

I am unable to see any statutory restriction on the powers of the Court or legislative mandate to exclude any class of cases from the provisions of Section 427 of the Code once the ingredients of the provision are satisfied. It is not for the Court to read into the provisions what is not stated unless it becomes imperative due to the rule of implied construction. On its plain reading, the language of the provision does not admit any direct or implied restriction. Of course, the Court has to exercise its discretion guided by law and legal principles. It must be governed by rules, not by humour and cannot be arbitrary, vague and fanciful. It essentially has to be legal, regular and according to the rules of reason and justice. (See *Ramji Dayawala & Sons (P) Ltd. v. Invest Import*, (1981) 1 SCC 80).

Judicial discretion is vested in the Court under Section 389 of the Code in regard to grant or refusal of bail. Similarly, discretion is also vested in the Court which is exercising powers under Section 427 of the Code. The mere fact that wide discretion is vested in the Court in relation to either of these provisions, per se would not justify imposition of restrictions or limitations which are not specified by the Legislature. As already indicated, the discretion is to be well guided by law and principles enunciated by judgments of the Courts.

Once the parameters contained in Section 427 of the Code are satisfied, the competent Court is then required to exercise its discretion to pass appropriate orders in relation to the sentence R/SCR.A/1730/2018 JUDGMENT awarded in a subsequent conviction should run concurrently or consecutively with the previous imprisonment. This discretion is guided by law and stated precepts as noticed by us above as well as which are stated by development of law, but there is hardly any scope left for exclusion of cases otherwise covered under Section 427 and/or for imposing any restriction or limitation on the power of the Court vested by the Legislature in terms of Section 427 of the Code. Proper exercise of discretion has inbuilt command that it should be exercised appropriately and in consonance with the settled guidelines. The importance and impact of exercise of judicial discretion in relation to matter of sentencing has already been referred by us not only in Indian criminal jurisprudence but even principles prevalent in Laws of United Kingdom and America.

Another aspect which needs to be clarified with reference to the legislative intent apparent from the language of the section is that imprisonment of subsequent conviction shall commence at the expiration of the imprisonment to which the accused has been previously sentenced unless the Court directs such sentence to run concurrently with the previous sentence. This clearly indicates that the normal rule would be that sentence would run consecutively and exception is that they would run concurrently. The pre-requisite of the exception being that Court has to apply its mind and pass a specific order directing that the sentences shall run concurrently with the previous sentence but for such specific exercise of discretion, the rule of sentence running consecutively would cover the case. I have already noticed that this requirement of law has to be satisfied by the Court. The law intends to provide a benefit to the accused of R/SCR.A/1730/2018 JUDGMENT calling upon the Court to exercise discretion where a sentence awarded in a subsequent trial would run consecutively or concurrently with the previous sentence. Wherever the provisions of the Criminal Procedure Code are applicable the Court would be required to apply the provisions of Section 427 of the Code unless their application was specifically barred by the Legislature or by its necessary implication. The language of Section 427 read cumulatively does not command an

accused or a convict to make such an application as consideration of this aspect of sentencing requires the Courts to exercise the discretion in terms of Section 427 of the Code. No doubt, it will be always more appropriate that the factum of previous conviction and sentence and the reasons for exercising the judicial discretion under Section 427 is brought before the Court by means of an appropriate application, but this cannot be termed as a requirement absolutely mandatory and without which the Court would not be in a position to pass appropriate orders as regard directing the sentences to run concurrently or consecutively. While passing an order of imprisonment/sentence upon a subsequent conviction, it will always serve the ends of justice better and would be inconformity with public good that such discretion is even exercised by the Court suo motu. The Legislature in its wisdom did not leave any choice or discretion with the Courts in relation to sentences covered under Section 427(2) of the Code and mandated that they would run concurrently. This is to be seen in contra-distinction to the judicial discretion vested by the Legislature in the Court under Section 427(1) of the Code, where all convicts undergoing imprisonment in a previous conviction, except imprisonment for life, can invoke the jurisdiction of the Court in terms of Section R/SCR.A/1730/2018 JUDGMENT 427 of the Code. The expression "unless the Court directs"

clearly suggested that the Court would apply its mind and by virtue of some reasoned directions direct that the sentences shall run concurrently with the previous sentence. The Court while dealing with stringent laws and particularly penal statutes is required to ensure that the intention of the Legislature is not frustrated and even if necessary it should take recourse to the rule of purposive construction as more the stringent is the law less is the discretion with the Court. While dealing with such enactments, even on the first principle the course which is favourable to further the legislative cause should be adopted and an interpretation which would reduce the legislation to futility should be avoided. One provision alone need not be construed in isolation and it is always preferred rule of interpretation that a provision should be construed with reference to other relevant provisions as well as the scheme of law underlining the said provisions. (See Prakash Kumar Alias Prakash Bhutto v. State Of Gujarat., (2005) 2 SCC 409).

It is also equally well settled principle of law that the Court cannot enlarge the scope of legislation or intention when the language of the statute is plain and unambiguous as well as that the Court would not read into the provisions what has not been stated in the language of the provision. (A.N Roy, Commissioner of Police v. Suresh Sham Singh, (2006) 5 SCC 745). Section 31 and Section 427 both should be read in conjunction with the other provisions of the Code which vests the Court with judicial discretion in regard to imposition of imprisonment and should be seen in the backdrop of the scheme of the Code and basic rule of criminal jurisprudence with an interpretation which provides an R/SCR.A/1730/2018 JUDGMENT advantage to the under-trial is preferred to the one against him. May be parameters and criteria in awarding sentence under different provisions of the Code would largely be applicable even to exercise of jurisdiction under section 427 of the code. The nature and gravity of the previous offence, the punishment inflicted, the circumstances leading to the



occurrence, conduct of the accused could be looked into by the Court through the judgment of the previous conviction while deciding whether the sentence in a subsequent conviction would run consecutively or concurrently. The gravity, nature and circumstances in relation to the crime committed in subsequent conviction could further help the Court to exercise the discretion in consonance with the settled principles. Merely because the conviction is in two different cases and the punishment awarded in previous conviction was for a heinous crime, per se would not exclude the jurisdiction of the Court under Section 427(1) of the Code. It is apparent that the Legislature in its wisdom has chosen not to impose any such restriction on the power of the Court. The provisions relating to vesting of jurisdiction or judicial discretion are not to be construed narrowly when they are capable of admitting no ambiguity. the maxim *Est boni iudicis ampliare jurisdictionem* is indicative of proper amplification of jurisdiction particularly in relation to matters arising out of procedural law.

A Division Bench of the Kerala High Court in the case of *Mani v. State of Kerala*, 1983 CRI. L.J 1262, while relying upon the judgments of the Supreme Court held as under :-

"10. The real question that arises in the case is when can the court give a direction in its discretion that the subsequent R/SCR.A/1730/2018 JUDGMENT sentence should run concurrently with the former sentence. It will not be possible to give very positive directions with regard to that. It should depend on the facts of each case, the nature or character of the offences committed, the prior criminal record of the offender, his age and sex etc. As Justice Krishna Iyer had said in *Mohammed Giasuddin v. State of A.P.*, (1977) 3 SCC 287 at p. 289 : (1977 Cri L.J 1557 at p. 1559) :-

"The drawback of our criminal process is that they are built on the bricks of impressionist opinions and dated values, ignoring emperical studies and deeper researches ... the human art of sentencing remains a retarded child of the Indian Criminal System."

When he was a Judge of the Kerala High Court, he had said in *Shivaprasad v. State of Kerala* (1969 Ker LT 862) :

"Criminal trial in our country is largely devoted only to finding out whether the man in the dock is guilty. It is a major deficiency in the Indian system of criminal trials that the complex but important sentencing factors are not given sufficient emphasis and materials are not presented before the Court to help it for a correct judgment in the proper personalised, punitive treatment suited to the offender and the crime.""

14. .... The sentencing stage should not be treated as a mere matter of formality. In the matter of sentencing a person, the courts will have to take note of the fact that R/SCR.A/1730/2018 JUDGMENT human behaviour is the product of antecedent circumstances. The measures employed

to treat a convicted offender should serve a therapeutic function. Such measures should be designed to effect changes in the behaviour of the convicted person, the interest of his own happiness, health and satisfaction and the interest of social defenses. A person who is sincerely trying to rehabilitate himself ought not to be demoralised."

The formation of the question in the Order of Reference opens with the words, "whether power under Section 427 of the Code of Criminal Procedure, 1973 can be exercised when the conviction of the accused is in two or more cases for distinct and separate offences arising out of different transactions/ incidents ?".

This itself indicates that there is no ambiguity in the provision as well as in the question that the power is vested in the Court. Initially an attempt was made by the learned Counsel appearing for the parties to argue as to whether power is vested in the Court to pass an order of consecutive and/or concurrent running of sentence, but subsequently the learned Counsel were ad idem that power is vested in the Court but primarily it is the exercise of such power in relation to different convictions, different offences arising out of different transactions that needs to be answered by this Bench.

A Full Bench of the Allahabad High Court in the case of Mulaim Singh v. State, (1974 Cri.L.J 1397) stated two principles of law, one that the Trial or the Appellate Court is R/SCR.A/1730/2018 JUDGMENT competent to exercise the discretion under Section 397(1) equivalent to Section 427(1) of the present code at the stage when the court records the subsequent conviction. The language of the section does not suggest that after passing of the final judgment, the court will be competent to exercise such discretion. Secondly, that the High Court is competent under Section 561- a equivalent to Section 482 of the Code. Now the sentences could run concurrently with the previous sentence but such as the inherent powers could even be exercised to undue or wrong in the courts of administration of justice. It further clarified the principle that where the offences giving rise to separate rights of conviction are distinct and are not immediately connected, the sentences should be made to take normal course and may not be ordered to run concurrently. As far as the first principle is concerned, to the larger extent, it stands approved by the judgment of the Supreme Court in the case of M.R Kudva (supra) where the Supreme Court has held to the extent that the provisions of Section 427 could not be applied in a separate and independent proceedings by the High Court as no order was made within the scope of Section 427 at the time of passing the order of conviction by the trial court or the High Court. In this very case, the Supreme Court also indicated that the judgments of the Supreme Court in the cases of Amavasai (supra) and Mohd. Akhtar Hussein (supra) were not the authorities for the proposition that it is incumbent upon the court to direct in a case of this nature that both the sentences shall run concurrently and not consecutively. The court, of course, did not in any way indicate that the power of the court to pass direction with regard to running of the subsequent sentence consecutively or concurrently with the previous R/SCR.A/1730/2018 JUDGMENT sentence did not exist. As far as the second aspect is concerned, it again lays down some principle which the courts may examine while passing such an order. Thus, jurisdiction of the court to examine this aspect of the sentence is not questionable in law.

It is important for me to refer to the judgment of the Supreme Court in the case of Ranjit Singh v. Union Territory of Chandigarh & Anr., 1991 4 SCC 304, where a person already serving sentence of

life imprisonment was again sentenced to life imprisonment on a subsequent conviction. Following the command of Section 427(2) of the Code, the Supreme Court clearly held the subsequent sentence will run concurrently even in absence of any specific direction by the Court to that effect though in a given circumstances the convict may not be entitled to get benefit of remission and commutation in respect of the earlier sentence. Importantly, the Court, though primarily dealing with the question of life imprisonment punishment covered under Section 427(2) of the Code, held as under :

"8. Sub-section (1) of Section 427 CrPC provides for the situation when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or life imprisonment. In other words, sub- section (1) of Section 427 CrPC deals with an offender who while undergoing sentence for a fixed term is subsequently convicted to imprisonment for a fixed term or for life. In such a situation, the first sentence, being for a fixed term, expires on a definite date which is known when the subsequent conviction is made. Sub-section (1) says that in such a situation, the date of expiry of the first sentence which the R/SCR.A/1730/2018 JUDGMENT offender is undergoing being known, 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. Obviously, in cases covered by sub-section (1) where the sentence is for a fixed term, the subsequent sentence can be consecutive unless directed to run concurrently. Sub-section (2), on the other hand, provides for an offender "already undergoing sentence of imprisonment for life" who is sentenced on a subsequent conviction to imprisonment for a term or for life. It is well settled since the decision of this Court in Gopal Vinayak Godse and reiterated in Maru Ram that imprisonment for life is a sentence for the remainder of the life of the offender unless the remaining sentence is commuted or remitted by the appropriate authority. This being so at the stage of sentencing by the court on a subsequent conviction, the earlier sentence of imprisonment for life must be understood in this manner and, therefore, there can be no question of a subsequent sentence of imprisonment for a term or for life running consecutively which is the general rule laid down in sub- section (1) of Section 427. As rightly contended by Shri Garg, and not disputed by Shri Lalit, the earlier sentence of imprisonment for life being understood to mean as a sentence to serve the remainder of life in prison unless commuted or remitted by the appropriate authority and a person having only one life span, the sentence on a subsequent conviction of imprisonment for a term or imprisonment for life can only be superimposed to the earlier life sentence and certainly not added to it since extending R/SCR.A/1730/2018 JUDGMENT the life span of the offender or for that matter anyone is beyond human might. It is this obvious situation which is stated in sub-section (2) of Section 427 since the general rule enunciated in sub-section (1) thereof is that without the court's direction the subsequent sentence will not run concurrently but consecutively. The only situation in which no direction of the court is needed to make the subsequent sentence run concurrently with the previous sentence is provided for in sub- section (2) which has been enacted to avoid any

possible controversy based on sub-section (1) if there be no express direction of the court to that effect. Sub-section (2) is in the nature of an exception to the general rule enacted in sub-section (1) of Section 427 that a sentence on subsequent conviction commences on expiry of the first sentence unless the court directs it to run concurrently. The meaning and purpose of sub-sections (1) and (2) of Section 427 and the object of enacting sub-section (2) is, therefore, clear."

Thus, there is hardly any judgment brought to the notice of this court which lays universal principle that wherever the accused is convicted for two different transactions under two different enactments at two different points of time, then the court is divested of its power and jurisdiction under the provisions of section 427(1) of the Code. The emphasis in the language under section 427(1) is not on different offences but the application thereof is on the premise of undergoing sentence of imprisonment in a previous conviction and directing sentence of imprisonment on a subsequent conviction to run consecutively unless directed to run concurrently by the court of R/SCR.A/1730/2018 JUDGMENT competent jurisdiction. The exclusion of the provisions of section 427(1) with reference to different transactions, different offences and different cases, is not comprehensible within the language, particularly, in view of the unambiguous and clear terms used by the legislature in section 427(1) of the Code. The section is probably intended to achieve a twin purpose, one which is beneficial to the accused where the court is expected to consider directing the imposition of subsequent sentences to run consecutively or concurrently with the previous sentence and secondly, a general and administrative concept that of overcrowded jails where under-trials and convicts are lodged so as to even require the State to act in the interest of administration of criminal justice system and not to frustrate the purpose of sentencing by ill-treating the convict. These alongwith the above-referred criteria are relevant consideration for exercise of jurisdiction but certainly are not determinative as they would have to be seen in the facts and circumstances of a given case. The court which exercises such jurisdiction has to be the court of competent jurisdiction and the matter essentially should fall within its jurisdiction. Exercise of judicial discretion presupposes legal and inherent jurisdiction to entertain such matters.

While sub-section (2) of Section 427 Cr.P.C. provides that when a person already undergoing 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, sub-section (1) of Section 427, however, provides that the subsequent sentence of a person undergoing a sentence of imprisonment, unless of R/SCR.A/1730/2018 JUDGMENT course the previous sentence of imprisonment is not the imprisonment for life, shall run consecutively, i.e. the subsequent sentence shall commence at the expiration of the imprisonment to which such person has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with the previous sentence. Hence if a person is already undergoing a sentence of imprisonment for life, his subsequent conviction to imprisonment, which may be for any term or for imprisonment for life, shall have to run concurrently with the previous sentence for which the Court's order is not necessary. On the reverse situation i.e. if a person is undergoing a sentence of imprisonment, but not the imprisonment for life, and he has been subsequently convicted to imprisonment for any term or imprisonment for life, to run the subsequent sentence concurrently with the previous sentence, there must be an order of the Court to that effect.

The provisions of Sections 427 and 428 of the Cr.P.C. came up for consideration before the Supreme Court in the case of State of Maharashtra and another v. Najakat Alia Mubarak Ali, IV (2001)6 SCC 311. The view of the Supreme Court on Sections 427 and 428 of the Code reads thus :

"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 sub-section of Section 427 says that the sentence in the second conviction shall R/SCR.A/1730/2018 JUDGMENT 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 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."

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JUDGMENT

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 at least 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 dovetail 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 judgment of Najakat Alia Mubarak 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, inquiry or trial of a particular case and was later convicted and sentenced to R/SCR.A/1730/2018 JUDGMENT 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."

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 the 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 Section 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.

The Legislative intent obviously appears to be that when a person already undergoing a sentence of imprisonment is subsequently convicted and sentenced for another offence, the R/SCR.A/1730/2018 JUDGMENT sentence awarded under the subsequent conviction shall not commence till after the expiry of the sentence which he is already undergoing. The general rule is that a sentence commences to run from the time it is imposed, but Section 427 of the Code engrafts an exception to this general rule in the case of a person who is already undergoing a sentence of imprisonment. However, a discretion is given to a court to direct that the subsequent sentence shall run concurrently with the previous sentence. Obviously, the stage for

exercising the discretion is when the court records the conviction and inflicts punishments on the accused. The discretion under Section 427 of the Code can also be exercised at the stage when the court records the subsequent conviction. The language employed in Section 427 of the Code does not indicate that the discretion to direct that the sentence under the subsequent conviction shall run concurrently with the previous sentence can be exercised at any subsequent stage.

The discretion to make the sentence of subsequent conviction run concurrently with the previous sentence must be based on some sound principle and is not meant to be exercised in an arbitrary manner. It would be a proper exercise of discretion to make the sentence of a subsequent conviction to run concurrently with the previous sentence where separate trials are held for the offences which, while constituting distinct offences, are inherently or intimately connected with each other.

It would be an exercise in futility to lay down exhaustively the situations and circumstances in which the exercise of inherent power or writ-jurisdiction would be justified. However, it must be borne in mind that the general scheme of the Code is R/SCR.A/1730/2018 JUDGMENT that the sentence awarded at a subsequent trial shall commence at the expiration of the imprisonment to which the accused has been previously sentenced. The discretion conferred on the court under Section 427 of the Code has to be exercised on some judicial principal. If a situation arises like the one on hand, for invoking the inherent powers of the court under Section 482 of the Code or writ-jurisdiction under Article 226 of the Constitution of India, the court has to see, whether the circumstances and the object for which the inherent power is to be exercised are in existence and can be achieved. It is equally well-established that the inherent power is to be exercised to do the right and to undo the wrong in the course of the administration of justice and this power ought to be exercised sparingly only when the court feels that the ends of justice requiring it and not as a matter of course or routine.

In the aforesaid context, let me look into the decision of the Supreme Court in the case of V.K.Bansal v. State of Haryana, (2013)7 SCC 211. The question that fell for the determination of the Supreme Court in the said case was, whether the High Court was right in declining the prayer made by the appellant for a direction in terms of Section 427 read with Section 482 of the Code for the sentences awarded to the appellant in connection with the cases under Section 138 of the Negotiable Instruments Act, filed against him, to run concurrently. I may quote the relevant observations of the Supreme Court thus :

"8. Section 427 of the Code of Criminal Procedure deals with situations where an offender who is already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life. It R/SCR.A/1730/2018 JUDGMENT provides that 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. Section 427 may at this stage be extracted:

"427. Sentence on offender already sentenced for another offence -

(1) when an person already undergoing 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 sentence 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 R/SCR.A/1730/2018 JUDGMENT or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."

9. That upon a subsequent conviction the imprisonment or imprisonment for life shall commence at the expiration of the imprisonment which has been previously awarded is manifest from a plain reading of the above. The only contingency in which this position will not hold good is where the Court directs otherwise. Proviso to sub-section (1) to Section 427 is not for the present relevant as the same deals with cases where the person concerned is sentenced to imprisonment by an order under Section 122 in default of furnishing security which is not the position in the case at hand. Similarly sub-section (2) to Section 427 deals with situations where 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. Sub-section (2) provides that the subsequent sentence shall in such a case run concurrently with such previous sentence.

10. We are in the case at hand concerned more with the nature of power available to the Court under Section 427(1) of the Code, which in our opinion stipulates a general rule to be followed except in three situations, one falling under the proviso to sub-section (1) to Section 427, the second falling under sub-section (2) thereof and the third where the Court directs that the sentences shall run concurrently. It is manifest from Section 427(1) that the Court has the power R/SCR.A/1730/2018 JUDGMENT 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 judicial lines and not in a mechanical, wooden or pedantic manner. It is difficult to lay down any strait jacket 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. High Courts in this country have, therefore, invoked and exercised their discretion to issue directions for concurrent running of sentence as much as they have declined such benefit to the prisoners. For instance a direction for concurrent running of the sentence has been declined by the Gujarat High Court in *Sumlo @ Sumla Himla Bhuriya and Ors. v. State of Gujarat* and Ors. 2007 CrL.L.J. 612 that related to commission of offences at three different places resulting in three different prosecutions before three different Courts. The High Court observed:

"The rule of 'single transaction' even if stretched to any extent will not bring the cases aforesaid under the umbrella of 'single transaction' rule and therefore, this application fails. The application is rejected."

11. Similarly a direction for concurrent running of sentence has been declined by the same High Court in *State of R/SCR.A/1730/2018 JUDGMENT Gujarat v. Zaverbhai Kababhai* 1996 CrL.L.J. 1296 which related to an offence of rape committed at different places resulting in conviction in each one of those offences in different prosecutions. The High Court observed:

"....It is true that it is left to the discretion of the Court while ordering the sentence to run either consecutively or concurrently. However, such discretion has to be exercised judicially, having regard to the facts and circumstances of the case. As observed by the Supreme Court, the rule with regard to sentencing concurrently will have no application, if the transaction relating to offence is not the same and the facts constituting the two offences are quite different. The respondent- accused is found to be guilty for the offence punishable under Section 376 of the Indian Penal Code in two different and distinct occurrences on two different dates, and the transactions relating to the commission of the offences have no nexus with each other...

12. There are also cases where the High Courts have depending upon whether facts forming the basis of prosecution arise out of a single transaction or transactions that are akin to each other directed that the sentences awarded should run concurrently. As for instance the High Court of Allahabad has in *Mulaim Singh v. State* 1974 CrL. L.J. 1397 directed the sentence to run concurrently since the nature of the offence and the transactions thereto were akin to each other. Suffice it to say that the discretion vested in *R/SCR.A/1730/2018 JUDGMENT* the Court for a direction in terms of Section 427 can and ought to be exercised having regard to the nature of the offence committed and the facts situation, in which the question arises.

13. We may at this stage refer to the decision of this Court in *Mohd. Akhtar Hussain v. Assistant Collector of Customs* (1988) 4 SCC 183 in which this Court recognised the basic rule of convictions arising out of a single transaction justifying concurrent running of the sentences. The following passage is in this regard apposite:

"The basic rule of thumb over the years has been the so called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the

transaction relating to offences is not the same or the facts constituting the two offences are quite different."

14. In. Madan Lal's case (supra) this Court relied upon the decision in Akhtar Hussain's case (supra) and affirmed the direction of the High Court for the sentences to run concurrently. That too was a case under Section 138 of the Negotiable Instruments Act. The State was aggrieved of the direction that the sentences shall run concurrently and had appealed to this Court against the same. This Court, R/SCR.A/1730/2018 JUDGMENT however, declined interference with the order passed by the High Court and upheld the direction issued by the High Court.

15. In conclusion, we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor.

16. Applying the above test to the 15 cases at hand we find that the cases against the appellant fall in three distinct categories. The transactions forming the basis of the prosecution relate to three different corporate entities who had either entered into loan transactions with the State Financial Corporation or taken some other financial benefit like purchase of a cheque from the appellant that was on presentation dishonoured. The 15 cases that have culminated in the conviction of the appellant and the award of sentences of imprisonment and fine imposed upon him may be categorised as under:

1) Cases in which complainant-Haryana State Financial Corporation advanced a loan/banking facility to M/s Arawali Tubes Ltd. acting through the appellant as its Director viz. No.269-II/97; No.549-II/97; No.393-

II/97; No.371-II/97; No.372-II/97; No.373-II/97;

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No.877-II/96; No.880-II/96; No.878-II/96; No.876-II/96; No.879-II/96; No.485-II/96

2) Cases in which complainant-Haryana State

Financial Corporation advanced a loan/banking facility to the appellant to M/s Arawali Alloys Ltd. acting through the appellant as its Director viz. No.156-

II/1997 and No.396-II/1998

3) Criminal complaint No. 331-II/97 in which complainant-State Bank of Patiala

purchased/discounted the cheque offered by Sabhyata Plastics acting through the appellant as its Director.

17. Applying the principle of single transaction referred to above to the above fact situations we are of the view that each one of the loan transactions/financial arrangements was a separate and distinct transaction between the complainant on the one hand and the borrowing company/appellant on the other. If different cheques which are subsequently dishonoured on presentation, are issued by the borrowing company acting through the appellant, the same could be said to be arising out of a single loan transaction so as to justify a direction for concurrent running of the sentences awarded in relation to dishonour of cheques relevant to each such transaction. That being so, the substantive sentence awarded to the appellant in each case relevant to the transactions with each company referred to above ought to run concurrently. We, however, see no reason to extend that concession to transactions in which the R/SCR.A/1730/2018 JUDGMENT borrowing company is different no matter the appellant before us is the promoter/Director of the said other companies also. Similarly we see no reason to direct running of the sentence concurrently in the case filed by the State Bank of Patiala against M/s Sabhyata Plastics and M/s Rahul Plastics which transaction is also independent of any loan or financial assistance between the State Financial Corporation and the borrowing companies. We make it clear that the direction regarding concurrent running of sentence shall be limited to the substantive sentence only. The sentence which the appellant has been directed to undergo in default of payment of fine/compensation shall not be affected by this direction. We do so because the provisions of Section 427 of the Cr.P.C. do not, in our opinion, permit a direction for the concurrent running of the substantive sentences with sentences awarded in default of payment of fine/compensation.

18. In the result, these appeals succeed but only in part and to the following extent:

1) Substantive sentences awarded to the appellant by the Courts of Judicial Magistrate, First Class, Hissar and Additional Chief Judicial Magistrate, Hissar, in Criminal complaint cases No.269-II/97; No.549-II/97;

No.393- II/97; No.371-II/97; No.372-II/97; No.373- II/97; No.877-II/96; No.880- II/96; No.878-II/96; No.876-II/96; No.879-II/96; No.485-II/96 relevant to the loan transaction between Haryana Financial Corporation and Arawali Tubes shall run concurrently.

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2) Substantive sentences awarded to the appellant by the Court of Judicial Magistrate, First Class, Hissar in Criminal complaint cases No.156- II/1997 and No.396- II/1998 between Haryana Financial Corporation and Arawali Alloys relevant to the transactions shall also run concurrently;

3) Substantive sentences inter se by the Court of Judicial Magistrate, First Class, Hissar in the above two categories and that awarded in complaint case No.331-II/97 shall run consecutively in terms of Section 427 of the Code of Criminal Procedure.

4) No costs."

V.K.Bansal (supra) later came to be referred to and relied upon by the Supreme Court in the case of Anil Kumar v. State of Punjab, (2017)5 SCC 53. I may quote the relevant observations thus :

"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 imposed. The investiture of such discretion, presupposes that such R/SCR.A/1730/2018 JUDGMENT 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.

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."

R/SCR.A/1730/2018 JUDGMENT In Shyam Pal v. Dayawati Besoya and another, (2016)10 SCC 761, the Supreme Court, in paragraphs 12, 13, 14 and 15 observed as under :

"(12). The law on the orientation of two sentences awarded to an offender following his conviction successively, to define the cumulative duration thereof is envisaged in Section 427 of the Code of Criminal Procedure, 1973 (for short Code) in following terms:

"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 sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent R/SCR.A/1730/2018 JUDGMENT conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

(13) Though this provision has fallen for scrutiny of this Court umpteen times, we can profitably refer to one of the recent pronouncements in V.K. Bansal vs. State of Haryana and Another (2013) 7 SCC 211 where it was held that though it is manifest from Section 427(1), that the Court has the power and discretion to issue a direction that a subsequent sentence shall run concurrently with the previous sentences, the very nature of the power so conferred, predicates that the discretion, would have to be exercised along judicial lines or not in a mechanical or pedantic manner. It was underlined that there is no cut and dried formula for the Court to follow, in the exercise of such power and that the justifiability or otherwise of the same, would depend on the nature of the offence or offences committed and the attendant facts and circumstances. It was however postulated, that the legal position favours the exercise of the discretion to the benefit of the prisoners in cases where the prosecution is based on a single transaction, no matter even if different complaints in relation thereto might have been filed. The caveat as well was that such a concession cannot be extended to transactions which are distinctly different, separate and independent of each other and amongst others where the parties are not the same.

R/SCR.A/1730/2018 JUDGMENT (14) The imperative essentiality of a single transaction as the decisive factor to enable the Court to direct the subsequent sentence to run concurrently with the previous one was thus underscored. It was expounded as well that the direction for concurrent running of sentence would be limited to the substantive sentence alone.

(15) In a more recent decision of this Court in Benson vs. State of Kerala, Criminal Appeal No.958 of 2016 (since disposed of on 03.10.2016) and the accompanying appeals, arising from the conviction of the appellant from his prosecution on the offences proved, this Court in the singular facts as involved and having regard to the

duration of his incarceration and the remission earned by him, extended the benefit of such discretion and directed that the sentences awarded to him in those cases would run concurrently. It was noticeably recorded that the offences in the cases under scrutiny had been committed on the same day. The benefit of the discretion was accorded to the appellant therein referring as well to the observation in V.K. Bansal (supra) that it is difficult to lay down any straight jacket approach in the matter and that a direction that the subsequent sentence would run concurrently or not, would essentially depend on the nature of the offence or offences and the overall fact situation. Understandably, the appellant was required to serve the default sentence as awarded with the direction that if the fine imposed had not been deposited, the default sentence or sentences would run consecutively."

R/SCR.A/1730/2018 JUDGMENT For the foregoing reasons and having regard to the position of law discussed above, I am inclined to exercise my discretion in favour of the writ-applicant keeping in mind the position of law as discussed above and also considering the peculiar facts and circumstances of the case. The family circumstances narrated in para-15 of the writ-application speak for themselves.

In the result, all the five writ-applications succeed and are hereby allowed.

The substantive sentences awarded to the writ-applicant by the learned 3rd Additional Chief Judicial Magistrate, Palanpur, in the Criminal Case No.7340/2013 as well as the Criminal Cases Nos.6769/2013, 5793/2013, 5794/2013 and 5795/2013, relevant to the complaints filed under Section 138 of the Negotiable Instruments Act, shall run concurrently.

Rule made absolute. Direct service is permitted.

(J.B.PARDIWALA, J.) /MOINUDDIN