

Jeevappa S/O Dyamappa Waddar vs The State Of Karnataka on 12 April, 2022

Author: P.N.Desai

Bench: P.N.Desai

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IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 12TH DAY OF APRIL, 2022
BEFORE
THE HON'BLE MR. JUSTICE P.N.DESAI

CRIMINAL REVISION PETITION NO.2238/2013
C/W.

CRIMINAL REVISION PETITION NO.2239/2013
CRIMINAL REVISION PETITION NO.2240 /2013
CRIMINAL REVISION PETITION NO.2241/2013

IN CRL.R.P.NO.2238/2013

BETWEEN:

JEEVAPPA S/O DYAMAPPA WADDAR
AGE: 51 YEARS, OCC: BUSINESS
R/O.KUBIHAL VILLAGE,
TQ: KUNDGOL, NOW AT NAREGAL
TQ: RON, DIST: GADAG

...PETITIONER

(BY SHRI VASANT G.HOLEYANNAWAR, ADVOCATE)

AND:

THE STATE OF KARNATAKA
R/BY SPP, CIRCUIT BENCH
HIGH COURT, DHARWAD
PSI HUNGUND POLICE STATION,
HUNGUND

...RESPONDENT

(BY SMT.GIRIJA HIREMATH, HCGP.)

THIS CRIMINAL REVISION PETITION IS FILED U/SEC.397

R/W SEC.401 OF CR.P.C. SEEKING TO SET ASIDE THE
JUDGMENT AND SENTENCE ORDER DATED 23.03.2013 PASSED
BY THE SESSIONS JUDGE, BAGALKOT IN CRL.A.NO.64/2011
CONFIRMING THE JUDGMENT AND ORDER DATED 07.05.2011
PASSED BY THE PRL. CIVIL JUDGE AND JMFC, HUNGUND IN
C.C.NO.497/2009 AND ACQUIT THE PETITIONER FOR THE
CHARGES LEVELED AGAINST HIM.

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BY THE SESSIONS JUDGE, BAGALKOT IN CRL.A.NO.66/2011
CONFIRMING THE JUDGMENT AND ORDER DATED 07.05.2011
PASSED BY THE PRL. CIVIL JUDGE AND JMFC, HUNGUND IN
C.C.NO.500/2009 AND ACQUIT THE PETITIONER FOR THE
CHARGES LEVELED AGAINST HIM.

THESE REVISION PETITIONS COMING ON FOR ORDERS
THIS DAY, THE COURT PASSED THE FOLLOWING:

ORDER

The revision petition No.2238/2013 is filed challenging the judgment passed in Crl.A.No.64/2011, dated 23.03.2013 on the file of learned District and Sessions Judge, Bagalkot by confirming the judgment of conviction and order of sentence passed by learned Prl. Civil Judge and JMFC., Hungund in C.C.No.497/2009, dated 07.05.2011 for the offences punishable under Sections 457 and 380 of Indian Penal Code (for short 'IPC'), wherein the petitioner was sentenced to undergo rigorous imprisonment for a period of 3 years and sentenced to pay fine of Rs.1,000/- for the offences punishable under Section 457 and 380 of IPC and also under Section 380 read with Section 511 of IPC, the petitioner was sentenced to undergo rigorous imprisonment for a period of 3 years and sentenced to pay fine of Rs.1,000/- and directed that all are run concurrently. The benefit of under Section 428 of Code of Criminal Procedure (for short 'Cr.P.C') is extended.

2. The revision petition No.2239/2013 is filed challenging the judgment passed in Crl.A.No.63/2011, dated 23.03.2013 on the file of learned District and Sessions Judge, Bagalkot by confirming judgment of conviction and order of sentence passed by learned Prl. Civil Judge and JMFC., Hungund in C.C.No.498/2009, dated 07.05.2011 for the offences punishable under Sections 457, 380 and Section 380 read with 511 of Indian Penal Code (for short 'IPC'), wherein the petitioner was sentenced to undergo rigorous imprisonment for a period of 3 years and sentenced to pay fine of Rs.1,000/- for the offences punishable under Section 457, 380 and Section 380 read with 511 of IPC and directed that all the sentences and imprisonment shall run concurrently. Acting under Section 427 of Cr.P.C, the sentence of imprisonment shall commence after the expiration of imprisonment in C.C.No.497/2009.

3. The revision petition No.2240/2013 is filed challenging the judgment passed in Crl.A.No.65/2011, dated 23.03.2013 on the file of learned District and Sessions Judge, Bagalkot by confirming the judgment of conviction and order of sentence passed by learned Prl. Civil Judge and JMFC., Hungund in C.C.No.499/2009, dated 07.05.2011 for the offences punishable under Sections 457 and 380 of Indian Penal Code (for short 'IPC'), wherein the petitioner was sentenced to undergo rigorous imprisonment for a period of 3 years and sentenced to pay fine of Rs.1,000/- for the offences punishable under Section 457 and 380 of IPC and directed that all the sentences and imprisonment shall run concurrently. Acting under Section 427 of Cr.P.C, the sentence of

imprisonment shall commence after the expiration of imprisonment in C.C.No.497/2009 and C.C.No.498/2009.

4. The revision petition No.2241/2013 is filed challenging the judgment passed in Crl.A.No.66/2011, dated 23.03.2013 on the file of learned District and Sessions Judge, Bagalkot by confirming the judgment of conviction and order of sentence passed by learned Prl. Civil Judge and JMFC., Hungund in C.C.No.500/2009, dated 07.05.2011 for the offences punishable under Sections 457 and 380 of IPC, wherein the petitioner was sentenced to undergo rigorous imprisonment for a period of 3 years and sentenced to pay fine of Rs.1,000/- for the offences punishable under Sections 457 and 380 of IPC and directed that all the sentences and imprisonment shall run concurrently. Acting under Section 427 of Cr.P.C, the sentence of imprisonment shall commence after the expiration of imprisonment in C.C.No.497/2009, C.C.No.498/2009 and C.C.No.499/2009.

5. Learned counsel for the revision petitioner in all the petitions argued that, all the revision petitioner is convicted on the same day in all the four cases. The same person is accused in all four cases. The offences alleged are also same. He has been sentenced for imprisonment for three years. It is directed that the said sentences shall run concurrently and he is also given benefit of Section 428 of Cr.P.C. But the trial Court passed an order in C.C.No.498/2013, C.C.No.499/2013 and C.C.No.500/2013 stating that the sentences shall run only after the sentence in C.C.No.497/2013 is completed. Therefore, learned counsel argued that if in all the 4 cases for the same offence, same Sections, the accused was convicted on the same day for a period of three years, though the sentences are ordered to be run concurrently but subsequent order of the trial Court shows that, the petitioner has to undergo sentences one after the other. Though, totally petitioner was sentenced to undergo rigorous imprisonment three years, that will come to 12 years in all. The learned counsel for the petitioner argued that, the offence under Section 457 of IPC is punishable for imprisonment, which may extend to 5 years and also liable to be fine and part II is punishable with 14 years. For the offence under Section 380 of IPC, the punishment is imprisonment for a period of seven years. So total period he is directed to undergo imprisonment is taken, it will be 12 years i.e., more than the punishment prescribed for the offences under Section 457 and 380 of IPC. When he is given benefit of Section 428 of Cr.P.C and directed sentence to run concurrently. Therefore, prayed to modify the said sentences by giving benefit of set-off under Section 428 and all sentences in all the four cases shall run concurrently.

6. In support of his argument, learned counsel relied upon the decision reported in case of Azgarkhan and ors Vs. State of Karnataka in Criminal Petition No.3548/2018, dated 29.11.2019. Learned counsel relied upon another decision in case Shri. Yallappa S/o Irappa Gaddi @ Ramachari and another Vs State of Karnataka in Criminal Revision Petition No.100132/2020 and other batch matters, wherein, the detention of the accused is required to be set-off in other matters, when the petitioners-accused charged for same offence by the same police within a same year. Therefore, the benefit of set-off be extended to accused in all the matters, even though they were arrested only one matter. Hence, learned counsel prays to allow the petitions.

7. Against this, learned HCGP argued that the order passed by the trial court is just and proper and there is no need to modify the order. The trial court has properly considered the evidence and

rightly convicted the accused. Hence, this petition needs no interference and prays to reject the petition.

8. It is evident that all the cases are filed in the same year in the month of April and May-2009. The offences alleged are also similar and the date of judgment in all the cases is 07.05.2011. The appeal is also decided on the same day i.e., on 23.07.2013. Learned counsel for the revision petitioner relied on two judgments of this Court, wherein even though the accused are convicted in different cases since they are arising out of the same year. As the offences are also similar, they are directed to undergo sentences concurrently and if the petitioners have to undergo imprisonment one after the other, then it will amount to 12 years, which is not a punishment prescribed for the offence under which he is now charged. Therefore, in view of these provisions, the sentences in all the cases shall run concurrently. If the petitioner has already completed the said period of imprisonment that should be given set-off and if there is any remaining period, he has to undergo simple imprisonment. Learned counsel for the revision petitioner stated that the petitioner has already undergone imprisonment of six years.

9. The learned counsel for the revision petitioner in all the petitions relied on the judgment of this Court in the case of Shanthakumar S/O Late Chandrappa Vs State Of Karnataka in CrI.P.No.1236/2019, dated:3.12.2019, wherein at paragraph Nos.15, 16 and 17 it is observed as under:

15. Per contra, learned counsel for petitioner would place reliance on the orders of coordinate Bench of this Court in CrI.P.No.4573/2013 and 9803/2016 both disposed of on 21.08.2018. A coordinate Bench of this Court in similar circumstances where the accused were tried and convicted for the offence punishable under Section 395 IPC in two different cases, i.e., in S.C. No. 45/2012 and 48/2012 this Court after considering the provisions of Section 427 Cr.P.C. and after placing reliance on the ruling of the Apex Court, reported in the case of Mohd.

Akhtar Hussain alias Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs (Prevention), Ahmedabad and others, reported in AIR 1998 SC 2143 and also after relying on the ruling reported in (1982) Cri. Application R (S) P1 in the case of R.V. Edward Charles French has been pleased to render a ruling in the following manner at paragraph Nos. 4 to 10:

4. Section 427 of the Code of Criminal Procedure provides for order in which the sentences will take effect when an accused is sentenced to imprisonment in more than one case. The Section reads as under:

"Section 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 conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."

The sub-section(1) says that the sentence in the second conviction shall commence at the expiration of the imprisonment to which the accused has been previously sentenced. The sub-section(2) says that when a person is already undergoing a sentence of imprisonment for life and is subsequently sentenced to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with the previous sentence.

5. In the case in hand, the petitioner was convicted and sentenced to seven years R.I. (though in the operative portion the word "years" is missing) in two different trials in S.C.Nos.45/2012 and 48/2012 on the same day. The trial court has not directed whether the sentence passed in any one of the cases is to run concurrently or consecutively. The general rule is that sentence commences to run from the time it is pronounced. The section creates an exception in the sense that when an accused is already "undergoing imprisonment", by virtue of this section, the subsequent sentence would commence only after the expiration of the previous sentence unless ordered otherwise by the Court.

Therefore, in the absence of any specific direction by the court, the accused sentenced to imprisonment for term in two trials, ordinarily the subsequent sentence shall commence at the expiration of the term of the previous conviction except in cases covered under sub section(2).

6. In the instant case, sentences of imprisonment having been passed on the petitioner in two trials on the same day, the accused cannot be said to be "undergoing imprisonment" in either of the case. From the reading of the order of sentence passed by the trial court in both the above cases, it is difficult to ascertain as to which is the first sentence passed by the court. In both the cases, the trial Judge has recorded that, "After hearing both the sides Court feels that undisputedly accused was tried for similar offence in several Courts and on enquiry by Court accused stated that no other proceedings are pending against him. Hence, Court feels that by taking lenient view R.I. for a period of 7 years and a fine of Rs.10,000/- has to be awarded and in default of payment of fine Two months S.I. has to be suffered and Court feels that by giving set off, S.I. in default of non payment of fine, shall run concurrently."

7. It can be gathered from the above, that the trial Court has proceeded on the basis that no other proceedings were pending against the petitioner.

In similar situation, the Hon'ble
Supreme Court in Mohd. Akhtar

Hussain alias Ibrahim Ahmed Bhatti vs. Assistant Collector of Customs (Prevention), Ahmedabad & Others AIR 1988 SC 2143, while observing that sentences will take effect in the order in which they are passed, has held that:

"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."

8. In the instant case, petitioner is convicted under Section 395 of Indian Penal Code in two different cases. The offences in S.C.No.45/2012 is said to have taken place on 20.04.2011 and the offence in S.C.No.48/2012 is said to have been committed on 14.04.2011. Thus the petitioner having been sentenced in two trials for the offence of the same nature under the same enactment, in view of the principles laid down in the above decision, it would be just and proper to direct that the sentences imposed on the petitioner-accused to run concurrently.

9. As observed by the Hon'ble Supreme Court in the above decision, sentencing is a tortuous process and the sentencing Judge may have to do the balancing act by weighing various factors to determine proper sentence.

One of the tests devised by the Hon'ble Supreme Court in the above decision is the "totality of the sentences" which the accused may have to undergo if the sentences are served consecutively endorsing the view taken in case of R.V. Edward Charles French reported in (1982) Cri Application R (S) P 1, wherein it is held that, "whether the sentences are made consecutive or concurrent, the sentencing judge should try to ensure that the totality of the sentences is correct" in the light of all the circumstances of the case. Applying the above decision to the facts of the present case, having regard to the nature of the offences proved against the petitioner, in my view, it would be gross injustice to incarcerate the petitioner for 14 years equal to the offence of murder. Records indicate that the petitioner was a young man of 21 years at the time of commission of the offence. The trial Court itself has observed that no other cases are pending against the petitioner. Under the said circumstance, it would be just and proper to direct the sentences to run concurrently.

10. Accordingly, the petition is allowed. It is hereby directed that the substantive sentence of imprisonment awarded by the trial court in S.C.No.45/2012 and S.C.No.48/2012 shall run concurrently.

16. The facts involved in the said case and the instant case are similar. In the instant case the trial Court having passed the judgments on the same day, in the opinion of this Court, ought to have considered the applicability of Section 427 Cr.P.C. and the law laid down by this Court as hereinabove noted. The accused was aged about 29 years on the date of conviction and they has served the sentence for nearly more than five years as it is submitted that the petitioner remained in the custody from the year 2014 i.e., one year prior to the date of conviction and sentence for almost seven years now. Keeping in view the age and value of the articles stolen, this Court is of the considered opinion, that the benefit of concurrent running of sentence is required to be extended to

the petitioner.

17. Accordingly, petition is allowed. The substantive sentence of simple imprisonment ordered in C.C.No.96/2015, C.C.No.97/2015 & C.C.No.98/2015 by the Court of Addl. Civil Judge & JMFC at Gowribidanur by order dated 25.04.2016 are to run concurrently with the sentence of simple imprisonment ordered in C.C.No.95/2015 by the Addl. Civil Judge & JMFC at Gowribidanur, by order dated 25.04.2016."

He also relied on another decision in the case of Azgarkhan @ Yanna S/o Rafeek Khan (supra) and argued that when the accused is tried for similar offence, benefit of concurrent sentence or set-off also to be allowed. In view of these, I answer the point holding that the revision petitioner in all the cases is entitled for benefit of set-off, which can be extended to accused in all the cases. Even though, the revision petitioner is arrested only in one case, his sentence in all four cases shall run concurrently in view of decision of this court referred above. Accordingly, all the revision petitions succeed and I pass the following;

ORDER

(i) The Criminal Revision Petition Nos.2238/2013, 2239/2013, 2240/2013 and 2241/2013 are hereby partly allowed.

(ii) The judgments of conviction and order of sentence passed in C.C.No.498/2009, C.C.No.499/2009 and C.C.No.500/2009, dated:07.05.2011, by Prl. Civil Judge and JMFC., Hungund, which is confirmed by District and Sessions Judge., Bagalkot, in Criminal Appeal No.63/2011, Criminal Appeal No.65/2009, Criminal Appeal No.66/2009 dated 23.03.2013, are hereby confirmed.

(iii) The sentence of imprisonment ordered in C.C.No.498/2009, C.C.No.499/2009 and C.C.No.500/2009, by the learned Prl. Civil Judge and JMFC., Hungund on 07.05.2011 to run concurrently, with the sentence of imprisonment passed in C.C.No.497/2013, dated 07.05.2013. The petitioner is entitled for benefit of set-off. The Jail authorities to verify as to the sentence of imprisonment already undergone by accused and if accused has undergone sentence of imprisonment of three years imposed in one case, in view of above order by giving benefit of sentence running concurrently, he be released and set at liberty if he is not required in any other case.

(iv) Office is directed to send back the records to the concerned Courts.

(v) In view of disposal of main petitions, pending applications, if any, stand disposed off as they do not survive for consideration.

Sd/-

JUDGE am/-