IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/10/2002

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THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

H.C.P.NO.2015 OF 2002

Kora Karuppan @
Chinnathambi
aged 43 years
S/o.Chinnapaiyan
Sahadevan Kottai
Perambattu village
Tirupathur Taluk
Vellore District .. Petitioner

-Vs-

Superintendent of Prisons,
Central Prison,
Salem-7. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India for issue of a writ of Habeas Corpus to produce the petitioner from the Central Prison, Salem, where the petitioner is illegally confined under the care and custody of the respondent and set him at liberty.

For Petitioner :: Mr.Ramaiah for
M/s.Ram and Ram

For Respondents :: Mr.I.Subramanian, Public
Prosecutor assisted by
Mr.A.Navaneethakrishnan,
Addl.Public Prosecutor.

:ORDER
(Order of the Court was made by V.S.SIRPURKAR, J.)

The question in this case is really concluded by the reported decision of the Supreme Court in STATE OF MAHARASHTRA AND ANOTHER VS. NAJAKAT ALIA MUBARAK ALI reported in 2001 SCC (Cri)6 1106, wherein it is held by the Supreme Court that the words "of the same case" appearing in Section 428 of Criminal Procedure Code 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 Supreme court has observed thus:
"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 to the pre-sentence period of detention undergone by him. Nothing more can be made out of the collocation of those words. It must therefore, be held that Section 428 of the Code permits the accused to have the period undergone by him in jail as an under trial prisoner set off against the period of sentence imposed on him irrespective of whether he was in jail in connection with the same case during that period.

2. The facts are peculiar in this habeas corpus petition. The petitioner was undergoing sentence in various crimes. In that way, the petitioner appears to be a regular jail bird. He points out that he was taken in custody on 18.5.1998 in respect of four crimes, they being Crime Nos. 2422 of 1992, 2420 of 1992, 2421 of 1991 and 2429 of 1992 and all these crimes were committed within the jurisdiction of Dharmapuri Town Police Station. It seems that the petitioner was absconding after these crimes and was apprehended for the first time on 18.5.1998 and has continued to be inside till all the four cases based on these crime numbers are decided.

3. It is contended by the petitioner that these four cases in respect of the aforementioned crime numbers were C.C.Nos.146 of 1996, 143 of 1997, 144 of 1997 and 13 of 1998. They were all tried by Judicial Magistrate of I Class No.1, Dharmapuri. The petitioner points out that in the first of these cases, he was sentenced to suffer three years of rigorous imprisonment, while in others, the same Court awarded the same sentence and directed to be made concurring with the sentence awarded under C.C.No.146 of 1996. The argument of the learned counsel is very simple. He says that if that is so, then the C.C.No.146 of 1 996 becomes the basic case. If for that, the petitioner was sentenced to suffer three years of rigorous imprisonment, he had already suffered rigorous imprisonment in between the period 18.5.1998 to 8.4.200 2 when the judgment was declared. He points out that in all the four matters, the petitioner was in remand during this period of 18.5.1998 to 7.4.2002 and therefore he had completed three years of sentence period in C.C.No.146 of 1996 and since the sentence in other three cases was ordered to run concurrently with the sentence in C.C.No.146 of 1996, that would be completion of the three years period.

4. As against this, the jail authorities point out that while the petitioner was in remand for C.C.No.146 of 1996, the remand in C.C.Nos.143 of 1997, 144 of 1997 and 13 of 1998 could not be given advantage to him insofar as the calculations to be made in the light of the language of Section 428 of Cr.P.C. Precisely that question has been decided by the Supreme Court in the aforementioned matter by a majority judgment. The Supreme Court has very precisely held that the accused can suffer incarceration of more than one

sentence at one and the same time. It is not necessary that the period of incarceration should be calculated separately or should be so calculated as regards only the first offence and not against the following offences.

5. It is apparent from the record that while the petitioner was in remand for the offence in C.C.No.146 of 1996, he was also under remand for the other cases such as C.C.Nos.143 of 1997, 144 of 1997 and 13 of 1998. It is the admitted position and very fairly admitted by the learned Public Prosecutor and the Senior Advocate Mr.I.Subramanian that the accused undoubtedly used to be produced under Prisoner's Transit Warrant in all the four cases. Therefore, it is apparent that while the petitioner was suffering an incarceration on remand in the crime related to C.C.No.146 of 1996, he was also in remand in the other three cases. When we read the Supreme Court judgment, it is apparent that the Supreme Court has accepted this principle that the accused could be in remand for more than one offence. Once this position is clear, then it is apparent that the petitioner has undergone the sentence of three years from 18.5.1998 till the judgment was declared in these cases on 8.4.2002. Under such circumstances, we are of the clear opinion that the above Supreme Court case applies on all fours.

6. The learned Senior Counsel tried to argue that if the judgments were to be seen separately of the three Supreme Court judges, it would be apparent that the judgment of R.P.Sethi,J was a minority judgment taking a view that the remands would have to be calculated separately for separate offences and that the accused could not be sought to be in a common remand for more than one offence. The learned counsel further goes on to suggest that the judgment of Justice S.N.Phukan, J also in a way supports this when the learned Judge says in paragraph 44 thus:
"The only question which according to me needs consideration is the true effect of the expression "same case" as appearing in Section 428 of the Code of Criminal Procedure. The provision is couched in clear and unambiguous language and states that the period of detention which it allows to be set off against the term of imprisonment imposed on the accused on conviction must be one undergone by him during investigation, enquiry or trial in connection with the "same case" in which he has been convicted. Any other period which is not connected with the said case cannot be said to be reckonable for set-off. The view of learned Brother Mr.Justice Thomas according to me accords the legislative intent. Acceptance of any other view would mean necessary (sic necessarily) either adding or subtracting words to the existing provision, which would not be a proper procedure to be adopted while interpreting the provision in question."

7. However, we find that the learned Judge has ultimately agreed with the views expressed by Justice Thomas in which the learned Judge holds that there could be a common remand also. We have no doubt that in this present case, there was a common remand and therefore the accused was also suffering the incarceration prior to his conviction in all the four cases. In that view, there would be no question of retaining the petitioner in jail. Hence, the Habeas corpus petition is allowed and the petitioner is directed to be released forthwith unless he is required in some other case.

Index: Yes
Internet: Yes
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To
1.The Superintendent of Prisons,
Central Prison,
Salem-7.

2.The Public Prosecutor,
High Court,
Madras.