

(4)

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH
AT BILASPUR

Cr.M.P. No. 124/10 / 2009 - S.B.

Applicant :
(In Jail)

Jahir Khan @ Javed Akhtar,

~~1370 Jahir Khan @ Javed Akhtar @~~ 27-3-09

Jahir/h Jahir Ansari S/o Usman Khan @
Ismail Ansari Aged about 38 years,
R/o Village Chama, at present R/o
Mahuwadhoda, behind Bukbuka
Masjid Police Station Khalari,
District Ranchi, (Bihar)

VERSUS

RESPONDENTS :

- 1) State of Chhattisgarh
Through : Station House Officer,
Police Station Patna District
Korea (C.G.)
- 2) State of Chhattisgarh
Through : Station House Officer,
Police Station Jhhilmili
(Bhaiyathan) District Sarguja
(C.G.)

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PETITION UNDER SECTION 482 OF THE CODE OF
CRIMINAL PROCEDURE READ WITH SECTION 427 OF
CRIMINAL PROCEEDURE CODE FOR ORDERING TO
RUN THE SENTENCE CONCURRENTLY IMPOSED
UPON THE APPLICANT VIDE IN JUDGMENTS OF
ANNEXUER A-1, AND ANNEXURE A-2 OF THIS
HON'BLE HIGH COURT

AHJ

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HIGH COURT OF CHHATTISGARH AT BILASPUR

(Hon. Mr. Justice Pritinker Diwaker)

Cr.M.P. (PR) No. 1219 of 2009.

APPLICANT

Cronp 124/10
Jahir Khan alias Javed Akhtar @ Jahir Ansari.

VERSUS

RESPONDENTS

State of Chhattisgarh and another.

Shri Abhay Tiwari counsel for applicant.

Shri Vaibhav Goverdhan PL for respondent/State.

**PETITION UNDER SECTION 482/427 OF THE CODE OF
CRIMINAL PROCEDURE.**

ORDER
(29.01.2010)

By way of present petition the applicant seeks the sentences awarded to him in Criminal Appeal No. 784/2002 {Jahir Khan & Ravindra Singh vs. State of C.G. (Annexure A-1)} vide judgment dated 10.5.2006 and in Criminal Appeal No. 767/2004 {Jaheer Ansari and others vs. State of Chhattisgarh)} vide judgment dated 9.8.2007, to run concurrently.

2. Facts, necessary for disposal of this petition in brief, are that vide judgment dated 24.4.2002 in S.T. No. 62/2002 the applicant was convicted under sections 395/397 IPC and Section 27 (1) of the Arms Act by the Sessions Judge and sentenced to undergo rigorous imprisonment for 10 years u/s 395/397 IPC and rigorous imprisonment for three years u/s 27 (1) of the Arms Act. The said judgment was challenged by the applicant before this Court by way of Criminal Appeal No. 784/2002 which was however dismissed by judgment dated 10.5.2006 and the judgment of the Sessions Judge was maintained. Likewise, in S.T. No. 93/2002 by judgment dated 31.8.2004 applicant was convicted for the same offence and was awarded the same sentence as by judgment dated 24.4.2002 in S.T. No. 62/2002 and the appeal preferred there- against also came to be dismissed vide judgment dated 9.8.2007 and the judgment of the Sessions Court was confirmed.



3. Counsel for the applicant submits that as in each of the aforesaid two cases the applicant has been directed to undergo rigorous imprisonment for 10 years, he would be required to undergo the total jail sentence of 20 years and therefore in exercise of the powers under Section 482/427 Cr.P.C. both the sentences may be directed to run concurrently.

4. On the other hand counsel for the respondents/State opposes the prayer made by the counsel for the applicant and submits that the applicant has failed to file a separate application under Section 427 of the Code of Criminal Procedure, relief as sought for by him cannot be granted at this stage. He submits that in a petition under Section 482 Cr.P.C. application under Section 427 cannot be entertained as it being a separate and independent proceeding can be initiated at the appropriate stage only.

5. Heard counsel for the parties and perused the documents available on record.

6. Before drawing any conclusion on the factual position of the case in hand, it would be necessary to refer to the relevant provision which reads 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 :

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."



(12)

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7. Thus, if the factual position is seen in the light of the aforesaid legal position it is not disputed that during the initial stage of the case nor even at appellate stage, the provisions of Section 427 of the Cr.P.C. remained un-invoked. Section 482 is not an appropriate remedy to direct the sentences concurrently when no such question was raised before the trial Court or even before the appellate Court. This Court cannot exercise the inherent jurisdiction in a case of this nature at this stage as it was not done at the time of passing of the judgment in appeal. That being so the applicant is estopped from making such a prayer for directing the sentences to run concurrently in exercise of the powers under Section 482 of the Code of Criminal Procedure.

8. In the result, the petition being without substance is liable to dismissed. It is dismissed as such.

Sd/-
Pritinker Diwakar
Judge