

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.**

D.B. CIVIL WRIT (PAROLE) PETITION NO.5573/2014
AJIT V/S STATE & ORS.

DATE OF ORDER

03.09.2014

HON'BLE MR. GOPAL KRISHAN VYAS,J
HON'BLE MR. ATUL KUMAR JAIN ,J

By post.

Mr.Rakesh Mohan Sharma, Superintendent, Central Jail, Jodhpur

Reportable

The instant petition has been filed by convict prisoner Ajit S/o Shri Shiv Lal Meghwal who is serving the sentence at Central Jail, Bikaner for giving him benefit of section 427 Cr.PC in five criminal cases in which he had been convicted. It is an admitted position that in five cases he was convicted and sentenced by the different courts as follows:-

- (1) In criminal case No.274/2001 convicted by the court of Additional Chief Judicial Magistrate, Nohar on 9.5.2002 under section 3/25 1 B (a) of the Arms Act, 1959 and sentenced by two years rigorous imprisonment with fine of Rs.500/- (with usual default clause). The prisoner served the actual sentence but the amount of fine remains outstanding against him.
- (2) In Criminal Case No.217/2000 convicted by Judicial Magistrate, Bhiwani (Haryana) decided on 9.7.2002 whereby he was convicted and sentenced under section 457 and 380 IPC by 01 year RI. He has also served with the sentences.
- (3) In criminal Case No.53/2001, convicted and sentenced by the court of Additional Session Judge, Bhiwani (Haryana) under section 392, 394 and 34 IPC and sentenced to undergo 07 years RI with fine of Rs.500/- (with usual default clause). In appeal he was ordered to be released on undergone sentence by the High Court.
- (4) In Criminal Case NO.70/2001: By the court of Additional Session Judge, Hisar (Haryana), he was convicted under section 392 and 397 IPC and was sentenced to undergo 03

years RI and 07 years RI with fine of Rs.500/- (with usual default clause respectively). He has suffered actual sentence but the amount of fine is outstanding against him.

(5) In Sessions Case No.76/2001 by Additional Sessions Judge, Nohar (Haryana), he was convicted and sentenced under section 392 and 395 IPC for life imprisonment with fine of Rs.1000/- (with usual default clause) on 31.5.2005 and his appeal was dismissed by this court and his SLP was also dismissed by the Hon'ble Apex Court.

By this time, the petitioner has suffered only five years , two months and seventeen days sentence including jail and State remissions. The present petition has been filed by the petitioner for an order from this court that his sentence in all the five cases should be allowed to run concurrently.

We have perused the record. Section 427 of Cr.PC 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

against him under this section shall be deemed to be a single sentence”.

In **M.R.Kudva V/s State of Andra Pradesh, AIR 2007**

SC 568 which was followed by Bombay High court in 2007 Criminal Law Journal Bombay ,DB, 844 Rajendra B.Choudhary V/s State of Maharashtra, it was held that when the provisions of section 427 Cr.PC. are neither invoked in original criminal case nor in appeal, the High Court could not have given the benefit of concurrent sentence by the application of section 482 Cr.PC etc. Previously also, in 2003, Cr.L.J. 4599, Pyari Devi V./s State of Rajasthan, it was held by a Division Bench of this Court that when the trial court had directed the sentences to run consecutively and the order had attained finality then the High Court under section 482 Cr.PC or otherwise cannot direct that the sentences shall run concurrently. Section 31 Cr.PC in the light of section 427 Cr.PC was interpreted accordingly.

In view of the legal position noticed above, the petitioner is not entitled to the relief claimed by him and so the present petition is hereby dismissed.

[ATUL KUMAR JAIN], J.

[GOPAL KRISHAN VYAS], J.